IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO.347 OF 2014

IN

COMPANY PETITION NO.87 OF 2004

WITH

OLR NO. 346 OF 2013

In the matter of Companies Act, I of 1956;
AND
In the matter of M/s. Rainbow Heat Transfer Equipment Pvt. Ltd. (In liquidation)

Mr. Naushad R. Engineer for the Official Liquidator.
Mr. S.G. Kudle for Applicant.
Mr. Nikhil Rajani i/b V. Deshpande and Co. for the Petitioner

CORAM : S.J. KATHAWALLA, J.

DATE : 6TH FEBRUARY 2015

P.C. :

1. Company Application (Lodging) No.347 of 2014 has been filed by the Applicant, seeking validation of the assignment and transfer of the Respondent company's land and factory in its favour. Vide the Deed of Assignment dated 8th February 2006, the respondent Company assigned its right, title and interest in respect of plot No.E-18, MIDC, Ambad, Nasik,

admeasuring 1000 sq. meters alongwith the factory constructed thereon (hereinafter referred to as "**the said property**") in favour of the Applicant.

2. Official Liquidator Report No.346 of 2013 has been filed, seeking directions that the sale / transfer of the said factory premises of the Company (in liquidation) in favour of the Applicant vide Deed of Assignment dated 8th February 2006 be set aside and that the Applicant be directed to hand over possession of the said property to the Liquidator forthwith.

3. On 15th October 2003, a Memorandum of Understanding ("**MOU**") was executed, by which the Respondent-Company agreed to transfer and assign its leasehold rights in the said property in favour of the Applicant for a consideration of Rs.10,00,000/-. On 5th February 2004, the Winding up Petition was presented in this Hon'ble Court. The Applicant had paid Rs.2,25,000/- on 17th March 2004 and further installments of Rs.60,000/- per month from April 2004 till 2005. The present winding up Petition was admitted on 10th March 2005. The NOC for the assignment of the leasehold rights of the Company in favour of the Applicant was granted on 27th October 2005. The duly registered Deed of Assignment was executed on 8th February 2006. The Respondent-Company was ultimately wound up vide order dated 8th December 2011. On 11th May 2012, when the Liquidator went to take possession of the said property, it was found out

that the said property was transferred and assigned in favour of the Applicant. On 29th July 2013, the Liquidator filed the present Liquidator's Report and the present Company Application came to be filed on 23rd July 2014.

4. The learned Counsel appearing on behalf of the Official Liquidator has submitted that even though the MOU was entered into on 15th October 2003, which is prior to the presentation of the Petition, the actual transfer of rights took place on 8th February 2006 pursuant to NOC of MIDC, which was granted on 27th October 2005, all of which were after the Petition was admitted on 10th of March 2005. The learned Counsel has further submitted that the consideration paid by the Applicant appears to be a lower amount as compared to the actual valuation of the property, which could be noted even from a bare perusal of the Deed of Assignment, in which the Stamping Authorities have valued the said property at Rs.15,96,000/-.

5. The learned Advocate appearing on behalf of the Applicant, however, submitted that the initial MOU was executed even before the Petition was presented and that there was no undervaluation, and that therefore the transaction should be validated.

6. On a query from the Court, it was pointed out that there are no pending claims against the Company. In order to ascertain whether the

property was transferred to the applicant at an undervaluation, this Court had appointed a Valuer to ascertain the value of the said property as on 15th October 2003 as also the value as on 8th February 2006. The Valuer has submitted his Report dated 24th December 2014, in which the value of the said property in the year 2003 has been shown as Rs.17,24,386/- minus Rs.96,000/- (MIDC transfer charges) = Rs.16,28,387/-. The value of the said property as on 8th February 2006 has been shown as Rs.20,31,928/- minus Rs.96,000/- (MIDC transfer charges) = Rs.19,35,928/-. On a further query put by the Court, the learned Advocate, appearing for the Applicant, submitted that the Applicant is ready and willing to make payment of Rs.7,00,000/- being the approximate difference in the consideration and the valuation.

7. The Learned counsel appearing for the Petitioning creditor has pointed out that though he has not yet filed his claim before the Liquidator, he has a principal claim of Rs.2,00,000/- alongwith interest thereon. He submits that the said amount deposited should be released in his favour to such extent so as to satisfy his claim.

8. Considering the fact that there are no pending claims against the Company and considering the fact that the initial MOU was entered into prior to the Company Petition being presented, and as the Applicant company is ready and willing to make good the difference in the

valuation, it is agreed that on payment of Rs.7,00,000/-, the sale of the said property in favour of the Applicant may be validated. It is made clear that this is a concession that is being granted to the Applicant only in view of the peculiar facts of the present case.

9. In view of the above discussion, the Company Application and the Official Liquidator Report both stand disposed of in terms of the following order:-

(i) The Applicant has deposited with the Official Liquidator on 4.2.2015, a demand draft dated 31.1.2015, bearing no. 053513 for Rs. 7,00,000/- drawn on Muslim Co-operative Bank. The sale assignment / transfer of the said property i.e. plot No.E-18, MIDC Industrial area, Ambad, Nasik in favour of the Applicant shall accordingly stand validated.

(ii) The Petitioner shall lodge/file his claim with the Official Liquidator within 3 weeks from today. The delay in filing the said claim is condoned. The Liquidator to decide and adjudicate the claim in 6 weeks from its being filed.

(S.J. KATHAWALLA, J.)