

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION (L) NO. 594 OF 2015
IN
COMPANY PETITION NO. 735 OF 1997
ALONGWITH
OFFICIAL LIQUIDATOR'S REPORT

Mr.Bhavesh Hasmukh Mehta	...Applicant
vs.	
Solaris Premises Co-operative Society Ltd. & Anr.	...Respondents

Mr.Suresh J. Thaker for Applicant.
Mr.Vijay B. Kanoria for Respondent No.1.
Ms.Prathibha Ramaswamy, Asstt.OL.

CORAM : S.C. GUPTE, J.

21 OCTOBER 2015

P.C. :

The present company application seeks directions to the Official Liquidator to execute a Deed of Conveyance in favour of the Applicant for galas auctioned by this Court by order dated 10 April 2015. The Applicant also seeks directions to the first Respondent co-operative society to transfer membership in the name of the Applicant in respect of the galas.

2 This Court, by an order dated 10 April 2015, sanctioned sale of Gala Nos.108 and 110 in Solaris -II, 1st Floor, Tunga Village Sakivihar Road, Opposite L & T Gate No.6, Powai, Mumbai – 400 072, which form part of the property of the company in liquidation, in favour of the Applicant herein. The Applicant has duly paid the earnest money deposit as also the entire balance consideration payable for sale of the galas to the Official Liquidator in accordance with the order sanctioning sale. The Applicant now seeks execution of a Deed of Conveyance in his favour.

3 Learned Counsel for Respondent No.1 society does not oppose the relief of execution of a Deed of Conveyance, but submits that the society is entitled to resist the transfer of membership in favour of the Applicant, since the dues of the society in respect of the two galas are still unpaid. The society has filed its proof of debt for its outstanding dues with the Official Liquidator and these dues have since been adjudicated upon by the Official Liquidator. The Official Liquidator has admitted a total claim of Rs.10,71,734/- towards the dues of the society along with interest at the rate of 4% per annum with effect from the respective dates of default till the date of confirmation of sale. The Official Liquidator, in fact, has filed a report seeking permission of this Court to admit and pay the said amount to the society. Learned Counsel for the society submits that in addition to the society's outgoings, there are two bills for the sums of Rs.61,500/- for gala no.108 and Rs.46,500/- for gala no.110, which are paid by the society towards enhanced taxes for these galas to the Municipal Corporation of Greater Mumbai. He claims that in addition to the claims adjudicated upon by the Official Liquidator, even these two amounts should be directed to be paid by the Official Liquidator to the society. The two amounts, being principal amounts claimed towards taxes actually paid for the two galas, will have to be paid by the Official Liquidator to the society. The Society's claim, however, for interest over and above 4% per annum cannot be admitted against the Official Liquidator. Learned Counsel for the first Respondent society relied on a judgment of a learned Single Judge of this Court, Bobde, J. (as the learned Judge then was) in **United Matachem Pvt.Ltd.**¹ in the matter of Mafatlal Engg. Industries Limited (In Liqn.) The learned Judge held that any outstanding demands or dues of a co-operative society by any member or past member create a first charge on the property, which is unaffected by the Companies Act, 1956 and can be enforced outside winding up. There is no quarrel with this proposition. But then, no amount can be claimed from the Official Liquidator within the winding up, over and above what is payable under the Companies Act. Whatever rights the society may have outside winding up to enforce its charge for unpaid dues, to the extent the society seeks to recover its dues from the official Liquidator by filing a proof of debt, the

¹ (Company Petition No.743/1990 dt. 30.8.2008)

only amounts that can be admitted for declaration of dividend can be the principal amount due and interest at the rate of 4% per annum for the period after the winding up of the company. Learned Counsel for the society, in the premises, submits that he shall accept the adjudicated amount together with the two amounts referred to above towards the claim of the society, whereupon the society shall admit the Applicant as a member of the society. Learned Counsel, however, submits that liberty may be reserved to his client for claiming the balance interest from the Official Liquidator, if they are so entitled in law. Respondent No.1 society will have such liberty.

4 In the premises, the following order is passed :

(i) The company application is allowed in terms of prayer clauses (a) and (b);

(ii) The Official Liquidator shall take all steps necessary for transfer of membership of the company in liquidation in favour of the Applicant;

(iii) The Official Liquidator shall pay to the society the sum of Rs.10,71,734/- together with interest at the rate of 4% per annum from out of the sale proceeds available with the Official Liquidator. Such interest shall be calculated with effect from the dates of the respective defaults and till the date of the confirmation of the sale. In addition to these amounts, the Official Liquidator shall also pay sums of Rs.61,500/- and Rs.46,500/- to the first Respondent society towards its pending dues. As far as the dues of the society after the date of confirmation of sale are concerned, the Applicant shall pay the same to the first Respondent society. Upon receipt of the amounts from the Official Liquidator and the Applicant, the society shall transfer the share certificate in respect of the two galas in favour of the Applicant in accordance with prayer clause (b).

(iv) The first Respondent society shall be at liberty to adopt such proceedings against the company in liquidation, as it may be advised, and such proceedings shall be dealt with on merits, without being prejudiced by this order;

(v) The Company Application and Official Liquidator's Report are disposed of accordingly.

(S.C. Gupte, J.)