IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO. 132 OF 2013
IN
COMPANY PETITION NO. 158 OF 2010
WITH
OLR NO. 7 OF 2013

M/s. Bhairav Industries .. Applicant
And
The Official Liquidator
M/s. Shree Ghanshyam Parts P. Ltd. .. Respondent
V/s.
M/s. Gopani Metal Industries Pvt. Ltd. .. Petitioner

Mr.Kunal Bhange i/b a/w. Mr.Vasim Siddiqui i/b M/s. Utangale & Co. for applicant.

Mr.Naushad Engineer for official liquidator with Ms.Yogini Chauhan, Asstt. O.L.

Mr.Kamlesh Raswani i/b N.S. Legal for Bank of Baroda.

CORAM : K.R.SHRIRAM, J.
DATE : 21ST DECEMBER, 2015

REASONED ORDER :

1 The applicant is claiming to be a *bona-fide* purchaser of plot No.W-89 (the said plot) without notice of any proceedings pending or initiated against the Company (in liquidation) and is praying the official liquidator be restrained from taking possession of the said plot.

2 On 29.05.2012, the representatives of the official liquidator went to take possession of the said plot, the applicant stated that he purchased the said plot and he and his son are carrying on business in the said plot. According to the applicant, he and his son were carrying on business in the same MIDC area and in view of his expanding nature of business, he negotiated with the director of the Company (in liquidation) to purchase the said plot. The plot was mortgaged with bank of Baroda and upon Bank of Baroda giving an NOC, dated 22.03.2011, an agreement for Deed of Assignment dated 30.04.2011, the applicant has acquired the said plot. Though the applicant claims to have obtained rights under the said Deed of Assignment, the document dated 30.04.2011 relied upon it should be noted, is only an agreement to enter into Deed of Assignment.

3 The following dates and events are very necessary for deciding this application :

Sr.No.	**Date**	**Events**
1	30.09.2009	Company Petition No.404 of 2009 was presented. This petition has been admitted.
2	6.04.2010	Company Petition No.156 of 2010 was presented. This petition has been admitted.
3	13.04.2010	The present petition No.158 of 2010 was

		presented.
4	26.04.2010	The petition is numbered.
5	22.03.2011	NOC was granted by Bank of Baroda for assignment of lease rights in mortgaged property, i.e., the said plot.
6	30.03.2011	According to the counsel for the applicant, it is the date of the Demand Draft for Rs.37,50,000/-, but he is not sure whether this Demand Draft has been handed over or when it was handed over. I have serious doubts about this Demand Draft because in the agreement of Deed of Assignment, dated 30.04.2011which is distinct from the Deed of Assignment dated 24.12.2012, which is annexed to the affidavit in rejoinder, in clause 1, it is stated that consideration for the Deed of Assignment is only Rs.25 lakhs. But it is also stated that the assignors (viz. Company [in liqin]) has paid Rs.37,50,000/- to the Bank of Baroda.
7	30.04.2011	Agreement for Deed of Assignment of lease executed between the Company (in liqn.) and the applicant.
8	30.07.2011	Board Resolution of the Company to sell the plot of land
9	14.09.2011	Application for transfer of lease submitted by

		the applicant.
10	20.03.2012	Company ordered to be wound up and the official liquidator appointed.
11	18.05.2012	Notice issued by the official liquidator for taking possession of the said plot.
12	25.05.2012	Company wrote to official liquidator that the said plot is mortgaged to the Bank of Baroda.
13	28.05.2012	The Appeal filed by Company (in liquidation) against order dated 20.03.2012, is dismissed
14	29.05.2012	The liquidator visits the said plot to take possession
15	7.06.2012	The applicant files an application to MIDC to assign the said plot to the applicant
16	4.07.2015	Intimation from the applicant to the official liquidator requesting not to take possession.
17	5.07.2012	The affidavit in support of this applicant affirmed.
18	5.10.2012	The present application lodged.
19	6.11.2012	MIDC's permission for transfer comes through.
20	24.12.2012	Deed of Assignment signed.
21	24.12.2012	The transfer takes place.

4 The counsel for the applicant stated that the applicant has paid consideration and purchased the lease rights (not purchased the plot of land) as a *bona-fide* purchaser without notice. The Bank of Baroda who gave a NOC in its affidavit in reply dated 30.04.2013 has stated that the Company (in liquidation) has disposed of the said plot to the applicant who had deposited the entire sale proceeds of sum of Rs.37,50,000/- with the Bank. It is also stated that the bank was not aware, when the NOC was given, that winding up procedure had been initiated against the Company and they came to know for the first time only on or about 20.03.2012. In the affidavit, the Bank states that the applicant has deposited the entire sale proceeds of Rs.37,50,000/, with the Bank but if one considers the agreement of Deed of Assignment annexed to the petition, dated 30.04.2011, the consideration mentioned therein for the plot of land is only Rs.25,00,000/-. Out of the agreed sale price, the applicant has paid Rs.12,00,000/- to the Company by RTGS and the Company had paid Rs.37,50,000/-. If the consideration for the plot of land is Rs.25,00,000/-, it is not clear that as to how the Company has paid Rs.37,50,000/-. Moreover, the order of winding up and appointment of liquidator was passed on 20.03.2012. On 29.05.2012, the liquidator has visited the said plot to take possession. Despite that and when the applicant was aware that the liquidator has been appointed, still the applicant applied to MIDC on 7.06.2012 to transfer the lease of the said plot

to the applicant. On 4.07.2012, the applicant writes to the official liquidator requesting not to take possession again but still proceeds on 24.12.2012, i.e., more than 9 months after the Company was ordered to be wound up and the liquidator was appointed, and enters into a Deed of Assignment with the Company (in liquidation). The Deed of Assignment is a void document inasmuch as when an order to wind up the Company has been passed and liquidator has been appointed, in effect, the Company is a dead Company. It is akin to entering into an agreement with a dead person. The applicant could not have entered into this Deed of Assignment with a Company (in Liquidation). In view of the above, I come to a conclusion that the applicant is not a *bona-fide* purchaser without notice. Therefore, the judgment of a Single Judge of this Court (Justice F.I.Rebello, as he then was) ***in Iftex Oils and Chemicals Pvt. Ltd. Vs. Official Liquidator and Others***[1] relied upon by the counsel for the applicant is of no assistance to the applicant. It is settled law that under Section 536(2) of the Companies Act, 1956 (for short referred as ‘the said Act’), the Court has discretion to protect in the case of *bona-fide* sale. For an applicant, in case he wants a transfer to be validated under Section 532(2) of the said Act, the applicant must not only plead and prove that the transfer is *bona-fide* but also that the transfer was in the interest of the Company.

1 1999 Company Cases (Vol.96) 386

5 The assets of a Company cannot be disposed of at the mere pleasure of the Company once a petition is admitted. If the business is going to be paralyzed, then the Court in appropriate cases, for the benefit and interest of the Company, may save the transaction. It is for enabling the Company to continue as a going concern and to protect the interest of the shareholders and creditors that such a power is conferred and must be exercised. Of course, whether a transaction was in the best interest of the Company or not, is a factual aspect to be pleaded and proved by the party seeking validation. In this case, there is not even a pleading in the affidavit in support that the transaction was in the best interest of the Company. In fact, the application is not made by any ex-directors but by a person who claims to have *bona-fide* purchased the said plot without notice. I have anyway stated above that I doubt his *bona-fide*.

I find support for my view above in the judgment of a Single Judge of this Court (S.J.Kathawalla, J.), in the matter of ***Board of Industrial and Financial Reconstruction Vs. M/s. Hindustan Transmission Products Ltd. (in Liquidation)***[2].

6 A Division Bench of this Court in ***Sunita Vasudeo Warke Vs. Official***

2 Unreported Judgement pronounced on 5.09.2012 in OLR.145/2011 in CP/827/2007 in CP/327/1997 in CP 870/1999

Liquidator and Others[3] not only upheld the above principles that the transaction has to be *bona-fide* and should be in the interest of the Company for getting it as a going concern to be validated, but also has held that an incomplete transaction also cannot be completed after winding up. In paragraph 12 of the said judgement, the Court has held as under :

> *12 …..*
> *In view of the judgment of the Supreme Court it is now a settled principle of law that if a transfer is not completed before an order of winding-up has been passed, an application would not be maintainable before the Court for a direction to the Official Liquidator to complete the transfer. This principle necessarily follows the settled legal position that upon the passing of an order of winding up, no new rights can be completed and no uncompleted rights can be completed.*

7 In this case, in addition to the fact that I cannot accept that it was a *bona-fide* transaction, as on 20.03.2012 when the Company was ordered to be wound up and the official liquidator was appointed, the parties had only entered into an agreement for assignment of lease and actually assignment happened on 24.12.2012, i.e., 9 months after the Company was ordered to be wound up. The settled position is upon passing of the order of winding up, no new rights can be completed and no incomplete rights can be completed.

3 Unreported Judgement dated 11.01.2013 in Appeal No.737/2012

8 In the circumstances, the alleged assignment cannot be validated under Section 536(2) of the said Act. The application, therefore, stands dismissed.

9 In view of the above, prayer (b) of the OLR No.7 of 2013 is also granted. The OLR stands disposed accordingly.

10 At this stage, the counsel for the applicant requested for a stay of eight weeks of this order. When I have found that the transaction itself is not *bona-fide* and in view of the settled legal position that a transaction not completed before the order of winding up has been passed, cannot be completed after the winding up order is passed I cannot grant any stay. Hence, stay is rejected.

(K.R. SHRIRAM, J.)