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

**COMPANY APPLICATION (L) NO.430 OF 2016
IN
COMPANY PETITION NO. 158 OF 2010**

M/s Bhairav Industries

...Applicant/Petitioner

VS

The Official Liquidator

...Respondent

.....

Mr Hemant Sethi a/w Kunal Bhanage i/b Anish Khandekar for the Applicant.

Mr Anil Agarwal for the original Petitioner.

Mr Mahendhar Aithe, co-prosecutor for OL present.

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CORAM : B. P. COLABAWALLA J.

JUNE 15, 2016

P.C. :

1 Though this Company Application has been shown on board for urgent ad-interim reliefs, by consent of parties the same is heard finally and disposed of by this order.

2 By this Company Application the Applicant M/s Bhairav Industries seeks a direction against the Official Liquidator to take only symbolic possession of the immovable property and structure lying thereon being Plot No.W-89, MIDC, Waluj Industrial Area, Village Waladgaon, Taluka & District Aurangabad (the “said

property”) and appoint the Applicant herein as an agent of the Official Liquidator.

3 It is the case of the Applicant that two Company Petitions, namely, Company Petition No.404 of 2009 and Company Petition No.156 of 2010 were presented in this Court on 30 September, 2009 and 6 April, 2010 respectively. It is also the case of the Applicant that the said property belongs to MIDC and was leased to the Company (In Lqn.). It is the further case of the Petitioner that it was wanting to obtain an assignment of the aforesaid lease from the Company (In Lqn.). However, the said property was mortgaged by the Company (In Lqn.) to the Bank of Baroda to secure its dues. In view of the fact that the Applicant was wanting an assignment of the leasehold rights in the mortgaged property, on 22 March, 2011 the Applicant approached Bank of Baroda and obtained an NOC for assignment of the leasehold rights in the said property. Pursuant thereto, on 30 March, 2011 the Applicant also made payment (by Demand Draft) of Rs.37.50 Lacs to the Bank of Baroda. Thereafter, on 30 April, 2011 an agreement for Deed of Assignment of lease was executed between the Company (in Lqn.) and the Applicant. An Assignment Deed was finally executed between the Applicant and the Company (in Lqn.) only on 24 December, 2012.

4 In the interregnum, the Company was ordered to be wound up and the Official Liquidator was appointed in respect of its assets on 20 March, 2012. Pursuant to this order, on 29 May, 2012, the Official Liquidator visited the said property to take possession. It is around this time, the Applicant learnt that the Company was wound up and, therefore, on 5 October, 2012 filed an application (Company Application No.132 of 2013) in this Court *inter alia* praying for an order of injunction restraining the Official Liquidator from taking possession of the said property.

5 Mr Sethi, learned counsel appearing on behalf of the Applicant very fairly stated that this application was dismissed by the a learned Single Judge of this Court by his order dated 21 December, 2015. The challenge to this order to the Appeal Court was also without any success. The Appeal Court order dated 10 March, 2016 was thereafter subjected to a challenge by filing an SLP before the Supreme Court and the Supreme Court, by its order dated 10 May, 2016 allowed the Petitioner to withdraw said SLP with permission to approach the Official Liquidator with a necessary application. It is pursuant to this liberty granted by the Supreme Court that the present Application has been filed.

6 Mr Sethi, very fairly conceded to the fact that he has already lost in the earlier round of litigation. He is not insisting that the property be handed over to him. He, however, submitted that as and when the Official Liquidator auctions the said property, he (along with other purchasers, if any) is willing to bid for the same. If he is successful in that auction, then no further orders would be needed and the said property would be assigned to him by the Official Liquidator subject to other statutory compliances. If, however, he were to be unsuccessful, he would handover physical possession of the said property to the Liquidator who would then be in a position to handover the same to the successful purchaser. He submitted that while the process of sale is going on, he ought not to be physically dispossessed from the said property and he may be allowed to continue as an agent of the Official Liquidator on payment of reasonable compensation (Rs.30,000/- per month suggested by Mr Sethi). It is in this light that Mr Sethi is pressing prayer (a) of the Company Application.

7 Mr Mahendhar Aithe, co-prosecutor for the Official Liquidator, who is present in court states that the has taken instructions that the Official Liquidator has no objection to this

course of action being taken. He also states that on perusal of the records it appears that the plant and machinery lying in the said property does not belong to the Company (in liqn.) and it is only the said property along with the structures thereon of which he would be required to take the possession.

8 I have heard learned counsel for the parties and perused the papers and proceedings in the Company Application. In my view, the suggestion made by Mr Sethi to which the Official Liquidator has no objection, seems reasonable. In this view of the matter, the following order is passed:

- (i) The Official Liquidator shall take possession of the said property, namely, Plot No.W-89, MIDC, Waluj Industrial Area, Village Waladgaon, Taluka and District Aurangabad, along with the structures standing thereon from the Applicant. Thereafter, he shall appoint the Applicant as an agent of the Official Liquidator. The Applicant will remain in possession of the said property not in their independent capacity but as an agent of the Liquidator and shall pay compensation of Rs.30,000/- per month to the Official Liquidator, which shall be credited to

the account of the Official Liquidator. In the event the Applicant commits default in making payment of compensation for even a single month, then the official liquidator shall take physical possession of the said property, by force, and with the help of police, if necessary;

(ii) The Official Liquidator will be at liberty to obtain a valuation of the said property and thereafter take necessary steps for continuing with the sale of the said property. It is clarified that in the auction conducted by the Official Liquidator, the Applicant will be at liberty to bid for the said property. The Applicant undertakes that for the valuation and inspection of the said property, he shall give access to the said property to the Official Liquidator as well as the intending purchasers/bidders;

(iii) If the Applicant is the successful bidder in the auction conducted by the Official Liquidator, then the Official Liquidator shall take all further steps to ensure that effective title is passed on to the Applicant;

- (iv) In the event, the Applicant is not the successful bidder and some other third party is the successful bidder, then, in that event, the Applicant undertakes that it shall hand over physical possession of the said property along with the structures lying thereon to the Official Liquidator within two weeks from the date the Applicant is called upon to do so. The Official Liquidator shall then take all effective steps to ensure that an effective title is passed on to the successful purchaser along with the possession of the said property.
- (v) In the event, the Applicant fails to hand over possession, the Official Liquidator shall be at liberty to take physical possession of the said property by force and with the help of police, if necessary, entirely at the risk and consequences of the Applicant;
- (vi) The Official Liquidator is directed to carry out the process of valuation and inspection as well as for sale of the said property, as expeditiously as possible.
- (vii) This order is passed without prejudice to the rights and

contentions of the Applicant against Bank of Baroda for any payment which they have made to Bank of Baroda. The Applicant is at liberty to take appropriate proceedings in that regard against the Bank of Baroda, if it is so advised, which shall be decided on its own merits and in accordance with law;

9 The Company Application is disposed of in the aforesaid terms. Parties to act on an ordinary copy of this order duly authenticated by the Associate.

(B. P. COLABAWALLA J.)