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

COMPANY APPLICATION (L) NO. 544 OF 2015
IN
COMPANY PETITION NO.606 OF 1998

Gold Chip Infraventure Pvt. Ltd. ...Applicant
In the matter between
M/s Metal Tubes & Rolling Mill ...Petitioner
Vs
The Official Liquidator of Transpower Engineering Ltd. (In Liqn.) ...Respondent

WITH
OFFICIAL LIQUIDATOR REPORT NO. 185 OF 2015

Mr Mayur Khandeparkar, a/w Mr Vinod Kothari, i/b M/s Apex Law Partners for the Applicant.
Mr Prashant Chavan i/b Navdeep Vora & Associates for MIDC.
Mr Sharan Jagtiani for the Official Liquidator.
Mr S. Ramakantha, Official Liquidator present.

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CORAM : S.C. GUPTE, J.

Reserved on : 26 OCTOBER 2015
Pronounced on : 14 JANUARY 2016

P.C. :

This Company Application seeks directions against the Official Liquidator for payment of Rs.8.50 crores with interest.

2 The Applicant is an auction purchaser of immovable property at Survey No. A-26/2/2 and 26/3, MIDC, Butibori, Nagpur. This property was held by the Company in liquidation in lease from MIDC. The Official Liquidator called for offers for purchase of the property as part of the administration in winding up. The Applicant made an offer of Rs.8 crores and paid an EMD of Rs.2 crores on 14 February 2013. When the sale was before the Court for sanction, the Applicant increased its offer to Rs.8.5 Crores. This Court, in its order dated 21

February 2013, accepted the increased offer and confirmed the sale in favour of the Applicant. Thereafter, in accordance with the terms of sale, on 16 May 2013, the Applicant paid the entire consideration of Rs.8.5 crores. Subsequent to the conclusion of the sale, and pending further formalities for transfer of title, M/s Five Fort Infrastructure Pvt. Ltd. and M/s Grant Town Trading Ltd. applied to this Court to have the sale in favour of the Applicant set aside by offering a higher price, i.e. Rs.10 crores. By an order dated 22 July 2013, this Court directed that on either of these two parties making payment to the Official Liquidator, the sale in favour of the Applicant shall stand cancelled. Despite several extensions, the parties failed to deposit any amount. The sale in favour of the Applicant, thus, stood confirmed. However, in the process, the formalities for transfer of title could not be completed. The Applicant, in the premises, filed an application, being Company Application No.461 of 2013, praying for conveyance and possession of the property or in the alternative, for refund of the purchase price. Though possession of the property was given to the Applicant on 18 October 2013, the Applicant could not put the property to any commercial use, since conveyance of the property was not effected in its favour.

3 When Company Application No.461 of 2013 came up for hearing before the Company Court, the Official Liquidator offered to transfer the subject property to the Applicant and also to pay all MIDC charges (for transfer of the property), as may be determined by the Court. The Official Liquidator was challenging the quantum of charges demanded by MIDC. The Company Court, in the premises, directed the Official Liquidator to take out an application, if he so desired, within two weeks, seeking reliefs pertaining to the demand of MIDC charges. This order, which disposed of Company Application No.461 of 2013 *inter alia* in terms of the statement of the Official Liquidator regarding transfer of the subject property to the Applicant and payment of MIDC charges, referred to above, was passed on 2 March 2015.

4 On 16 March 2015, the Official Liquidator presented the present OLR before this Court, seeking *inter alia* appropriate orders concerning payment of MIDC charges including a suitable waiver or reduction of those charges. In its

reply to the OLR, MIDC took a position that the Company (In Liqn.) had failed to complete the factory building within the stipulated period as per the lease agreement and as a result, MIDC had an option either to determine the lease or continue the demise on payment of additional charges to MIDC; that MIDC vide its notice dated 12 June 2010 had accordingly called upon the Company (In Liqn.) to show cause regarding violation of the terms of the lease agreement; that since there was no response from the Company (In Liqn.), MIDC vide its letter dated 21 September 2011 had cancelled the allotment and agreement of lease of the subject property; and that in the premises, the subject property could not be transferred by the Official Liquidator to any third party including the Applicant herein. MIDC has, however, offered to accept such transfer, if the Official Liquidator pays (a) outstanding amount of its service and other charges, (b) extension charges and (c) differential premium, all aggregating to a total sum of Rs.8,40,05,474. It is claimed that these charges are according to various applicable circulars and in keeping with the terms and conditions of the lease agreement. MIDC objects to the jurisdiction of this Court to order any waiver or modification of these charges.

5 In the premises, the Applicant has taken out the present Company Application for cancellation of the sale and refund of the sum of Rs.8.50 crores paid by the Applicant to the Official Liquidator. The Applicant has also claimed damages against the Official Liquidator. The Company Application and the OLR are heard together.

6. Before the Application and OLR are considered, one more important fact needs to be noticed, which has added a further dimension to this controversy, compounding the confusion so to say. After receipt of the purchase price from the Applicant, the Official Liquidator has gone ahead and distributed a sum of over Rs.1 crore to the workmen of the Company (In Liqn.) as part of the total dividend paid in winding up and also incurred expenses for administration of assets in winding up. As a result, only a sum of Rs.7,39,90,694/- is said to be now available with the Official Liquidator (as of 16 March 2015) to the account of the Company (In Liqn.) as against the sum of Rs.8.50 crores received from the

Applicant towards the sale of the subject property.

7 It is the case of the Applicant that the Applicant has made an offer of Rs.8 Crores for the property and paid EMD of Rs.2 Crores on 14 February 2013; that its enhanced offer of Rs.8.5 Crores was accepted and the sale was confirmed by the Court on 21 February 2013; and that the entire sum, i.e. the balance of Rs.6.5 Crores, was paid with interest by the Applicant to the Official Liquidator on 16 May 2013 as per the order of confirmation of sale. It is submitted that though possession of the property was given to the Applicant, albeit after a considerable delay, on 18 October 2013, the Applicant has been unable to make any use of the property since there has been no conveyance of the property in its favour. It is submitted that in terms of the order dated 2 March 2015 passed by this Court on Company Application No.461 of 2013, the Official Liquidator was bound to pay the dues of MIDC and convey the property to the Applicant within 16 weeks. It is submitted that though 34 weeks have passed since the date of that order, there is no conveyance in favour of the Applicant, but on the other hand, the question of quantum of charges payable to MIDC is still unresolved. Learned Senior Counsel appearing for the Applicant submits that considering the fact that there is no finality still on the subject and that even after this Court rules on the subject, after hearing all stakeholders including MIDC, there is a concrete prospect of the issue of MIDC charges being subject matter of further litigation, the Applicant does not desire to go ahead with the sale and would instead press for refund of the price paid.

8 I find considerable force in the submissions of the learned Counsel. For no fault of it, the Applicant has been denied the conveyance even after paying the full consideration for the purchase of the property as far back as on 16 May 2013. Nearly two and a half years have gone by since then and we are still on the question as to whether the charges demanded by MIDC are in order. Several intricate questions concerning the quantum of such charges, including the jurisdiction of the Company Court to order a waiver or revision of some of these charges, arise in respect thereof. Whilst this Court is prepared to go into these questions and give its ruling, the matter may not get finally concluded. If

this Court were to accept MIDC's case and order payment of the full amount claimed by MIDC, the Official Liquidator is not in a position to pay, since, as I have recounted above, the Liquidator does not have the requisite sum in the account of the Company (In Liqn.). Apart from the fact that the Liquidator would have to be out of pocket, for which, in the premises referred to above, he alone seems to be responsible (the Liquidator had no reason to go ahead with the distribution of dividend from out of the price received from the Applicant, particularly since the sale was being objected to by third parties whom the Liquidator was supporting and also since, the issue of transfer charges payable to MIDC was unresolved), payment of over Rs.8.40 Crores to MIDC would imply net availability of only a small sum of less than Rs.10 lacs for dividend in winding up. It is like incurring an administration expense of over Rs.8.40 Crores to earn a value of less than Rs.10 lacs. On the other hand, if the MIDC charges are determined at a reduced value, after rejecting the contentions of MIDC, the matter may not rest there and is likely to be further agitated at the instance of MIDC, which would in effect imply a delay in the Applicant getting a clear and marketable title to the property.

9 In these peculiar circumstances, it is reasonable to give an option to the Applicant to withdraw from its offer, and cancel the sale and order refund of the price paid by it. In that case, however, the Applicant would have to make do with an upfront refund of only such sum as is available with the Official Liquidator as of date and await refund of further dues only in winding up and as part of administration of assets in liquidation. Since the amount deposited by the Applicant with the Official Liquidator has been invested (i.e. Rs.8.50 Crores less the amount paid by way of dividend as referred to above) at about 9 per cent interest per annum, it is just and equitable that the refund be made to the Applicant with interest at the rate of 9 % per annum. The Applicant agrees to receive such interest in settlement of its dues. Needless to add, the Applicant cannot expect any damages from the Liquidator, particularly so, since the refund is being ordered in deference to the commercial predicament of the Applicant and not as a matter of its legal right. As a legal right, the Applicant can only hope to get a title to the property, with damages, if any, occasioned by the delay in getting

such title. (Such damages would in that case have to be determined by the Company Court.)

10 Since the Applicant is prepared to take refund of the available sum presently and claim its balance dues in liquidation, I have thought it fit not to go into the question of payability of the MIDC charges on this application and report. That question, however, would have to be decided by the Company Court, since without any clarity on the issue it would not be possible to conduct sale of the property in liquidation. Any further attempt of sale without any clarity on this issue may land all the stakeholders in a similar predicament as in the present case.

11 In the premises, the following order is passed :

(i) The sale of the property, namely, Survey No.A-26/2/2 and 26/3, MIDC, Butibori, Nagpur, confirmed in favour of the Applicant in terms of the order of 21 February 2013 is cancelled;

(ii) The Official Liquidator shall refund the entire amount paid by the Applicant to the Official Liquidator towards the sale of the property with interest at the rate of 9 per cent per annum from the dates of the Applicant's respective payments of Rs.2 Crores and Rs.6.50 Crores till payment or realization;

(iii) The amount available with the Official Liquidator as of the date of this order to the account of the Company (In Liqn.) shall be made over to the Applicant forthwith and in any event within a period of two weeks from today;

(iv) The entire amount paid to the Applicant in terms of clause (iii) above shall be appropriated towards the principal amount, and the overdue interest at the rate provided above on such amount together with the principal amount short recovered and interest thereon recoverable for the future period shall be treated as the balance amount to be recovered as provided in clause (v) below;

(v) The Applicant shall be entitled to receive the balance amount in terms of clause (iv) above subject to and in pursuance of winding up of the Company (In Liqn.) provided, however, that such amount shall be treated as administration expenses of the Official Liquidator and shall be accorded priority as such expenses over all other debts;

(vi) The Official Liquidator shall present a report to this Court in respect of charges payable to MIDC for any transfer of the subject property in favour of a third party as part of administration of assets of the Company (In Liqn.), within a period of two weeks from today, with notice to MIDC;

(vii) The Official Liquidator shall also seek directions for taking further steps in the matter of sale of the subject property in liquidation in such report;

(viii) The Company Application and the OLR are disposed of accordingly;

(ix) No order as to costs.

(S.C.GUPTE J.)