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

COMPANY APPLICATION NO. 43 OF 2014
IN
COMPANY APPLICATION NO. 108 OF 2013
IN
COMPANY PETITION NO. 945 OF 1998

HSBC Bank Oman S.A.O.G. …Applicant
vs.
1. The Official Liquidator of
Eupharma Laboratories Ltd.,

2. M/s.Vasa Pharma-Chem Pvt.Ltd., and

3 M/s.National Packaging ….Respondents

AND
M/s.National Packaging ...Orig.Petitioner
vs.
M/s.Eupharma Laboratories Ltd. (In Liqn) ...Orig.Respondent

Mr.Rajeev K. Panday, Dharma Raj I/b. M. Janardanan for Applicant.
Mr.Cherag Balsara I/b. V.P. Verma for Respondent No.2.
Mr.Naushad Engineer for OL.
Mr.Mahendra Aithe, Company Prosecutor for OL present.

CORAM : S.C. GUPTE, J.

30 NOVEMBER 2016

P.C. :

Heard learned Counsel for the parties, including the Official Liquidator.

2 This application seeks recall of an order passed by this court on

23 July 2013 allowing the company application of Respondent No.2 herein for regularization of a sale in his favour by the company (in liquidation).

3 The facts of the case may be briefly stated as follows :

In Company Petition No.945/1998 presented on 7 August 1998, an order was passed by this court on 28 February 2008 winding up M/s. Eupharma Laboratories Ltd. (hereinafter referred as the "company (in liquidation)"). The predecessor-in-title of Respondent No.2, one Lalitkumar Dave, claimed to have purchased the factory premises of the company (in liquidation) on 27 December 2007. By an agreement dated 16 November 2011, Respondent No.2 claims to have purchased the property from Lalitkumar Dave. The property was initially purchased by Respondent No.2 at a consideration of Rs.49 lakhs. When the Official Liquidator sought to take possession of the property, Respondent No.2 was found to be in possession thereof, claiming to have purchased the same. The Official Liquidator thereupon presented a report, being OLR No.68/2012 along with resubmitted OLR No.130/2012, to this court for declaring the sale of the property in favour of Respondent No.2 to be void. The Liquidator also sought an order against Respondent No.2 for delivery of possession of the property to the Liquidator. During the pendency of that report, Respondent No.2 also moved its own application before the Company Court, namely, Company Application No.108/2013. It was the case of Respondent No.2 in its company application that it had purchased the property *bona fide*; that after taking over possession of property, it had spent an amount of Rs.234.30 lakhs for improvement of the property and for setting up of a chemical factory therein; that it had started production activities in the property since October 2012; and that during the period from 1 October

2012 to 31 March 2013 had produced goods worth over Rs.378 lakhs. In pursuance of the OLR and the company application, kept along therewith, this court vide an order dated 20 June 2013 *inter alia* directed the Official Liquidator to appoint a valuer from his Panel of Valuers to value the property, being the subject matter of the OLR and the company application. The valuer appointed by the Official Liquidator submitted a valuation report in respect of the property in a sealed cover. At the hearing of the OLR and the company application, when the report was opened by the court, the property was found to be valued at Rs.139 lakhs. At that stage, learned Counsel for Respondent No.2 offered to pay the sum of Rs.139 lakhs to the Official Liquidator towards regularization of the sale under Section 536(2) of the Companies Act, 1956. After taking into account the objections on the part of the Official Liquidator, including the submissions on his behalf that the sale was suspicious and could not have been entered into, the Company Court allowed the application of Respondent No.2 by exercising its discretion under Section 536(2) of the Companies Act, 1956, thereby regularizing the sale in favour of Respondent No.2. The Company Court also disposed of the Official Liquidator's report, in the premises.

4 The Applicant, who claims to be a secured creditor of the company (in liquidation), has now filed the present company application alleging that there was no notice of the OLR as well as the company application of Respondent No.2 to the creditors of the company, including the Applicant. It is submitted that the property was valued by the court appointed valuer at a considerably lower value. It is submitted that the valuation report obtained by the Applicant puts the value of the property at about Rs.5.08 Crores. It is submitted that considering such a vast difference in valuation, it is just and fair that the order regularizing sale passed by the

Company Court on 23 July 2013 be reviewed and recalled in the interest of the creditors and workers of the company (in liquidation).

5 At the hearing of the company application, learned Counsel for the Applicant submits that the sale in favour of Respondent No.2 is not by the company (in liquidation) but by a transferee of it. He submits that the transfer in favour of the predecessor-in-title of Respondent No.2 is itself null and void and in the premises, there is no question of considering any regularization of the sale effected by him in favour of Respondent No.2. Secondly, it is submitted that this order regularizing the sale is obtained behind the back of the creditors and workmen of the company (in liquidation), including the Applicant. Thirdly, it is submitted that the valuation, on the basis of which the sale was regularized by the Company Court, had to be as on the date of the regularization of the sale and not as of the date of the sale, and if the valuation is so made, the sale in favour of Respondent No.2, being at a gross under-valuation, ought not to have been regularized.

5 There is some controversy between the parties as to whether or not the earlier OLR and the company application of Respondent No.2 were served on the Applicant and other creditors of the company (in liquidation). Whereas neither of the other creditors or workmen is before the court today, it is submitted by learned Counsel for the Applicant that the Applicant had no notice of the OLR and the company application. On the other hand, it is submitted by learned Counsel for Respondent No.2 that there have been several notices addressed by the Official Liquidator to all stakeholders, including the Applicant herein and other creditors of the company (in liquidation), as far as the OLR was concerned and that the Applicant has chosen to remain absent at the hearings of the OLR. It is submitted that on

all dates, the OLR was placed along with the company application of Respondent No.2 and that finally, the two were heard together and disposed of by one common order, i.e., order dated 23 July 2013. Be that as it may, the Applicant cannot hope to have the order dated 23 July 2013 regularizing the sale in favour of Respondent No.2 set aside or recalled merely on the ground that there was no notice to the Applicant. The Applicant must show that there is, in fact, a case for review or recall of the order of the Company Court either based on discovery of some new or important piece of evidence, which was not before the court when the order was passed or on account of some other mistake or error apparent on the face of record or for other sufficient reason calling for either review or recall of the order. The only material, which is placed by the Applicant before this court for seeking a recall of the order, is the report of the valuer produced by the Applicant. This valuation report values the property at over Rs.5 Crores. A cursory reading of this valuation report shows, however, that the same is as of the date of 8 October 2013, whereas the valuation on the basis of which the Company Court regularized the sale in favour of Respondent No.2 was as of 16 November 2011, i.e. the date on which the property was sold to Respondent No.2. There is nothing to show that, as on the date of the sale, i.e. on 16 November 2011, the value of the property was not Rs.139 lakhs as assessed by the court appointed valuer.

7 Learned Counsel for the Applicant submits that the valuation has to be as of the date when the sale is sought to be regularized and not as of the date of the sale. That is not quite correct. Sub-section (2) of Section 536 requires the court to consider whether to regularize any disposition of property of the company (in liquidation) after the commencement of the winding up. As held by our court and several High Courts, the matters to be

considered by the court at the stage of an application under Section 536 are the *bona fides* of the parties in the matter of such disposition and the adequacy of consideration of such sale. Both *bona fides* as well as adequacy of consideration have to be ascertained with reference to the date of the purported disposition. There is no meaning in considering the adequacy of consideration of the subject sale with reference to any posterior date such as the date when the application for regularization is made or as of the date when the court considers whether or not to declare the disposition as void. There is no law to the contrary cited at the Bar by learned Counsel for the Applicant. Besides, the Company Court, first by its order dated 20 June 2013, calling for the valuation of the property as on the date of sale, and later by its order dated 23 July 2013, accepting such valuation, has finally decided this issue and the matter cannot be reviewed or revisited on the basis of a new or different argument. The valuation report relied upon by the Applicant, in the premises, cannot support its application.

8 At any rate, even from a cursory reading of the valuation report relied on by the Applicant, it is apparent that the same is without any basis and is simply premised upon mere *ipse dixit* of the valuer. The valuer, in his report, accepts that he has not taken into account any sale instance, simply for the reason that there was no such sale instance available for consideration. In the absence of any sale instance, ordinarily one would expect the valuer to go by the ready reckoner rates published by the State Government for the particular locality. The valuation report of the court appointed valuer, on the basis of which the sale was regularized by the Company Court, is commensurate with the ready reckoner rates published by the Government. The valuer appointed by the Applicant is wide off the mark in his valuation insofar as ready reckoner rates are concerned and that

too without disclosing any reasons why he disregards the ready reckoner rates even in the absence of any comparable sale instance. The valuation report relied upon by the Applicant, in the premises, does not afford any ground whatsoever to review or recall the order passed by this court on 23 July 2013.

9 The argument of learned Counsel for the Applicant that the sale in favour of the predecessor-in-title of Respondent No.2 itself being void and ineffective, there is no question of regularizing the sale by that predecessor in favour of Respondent No.2, is merely required to be stated to be rejected. At the stage, when the matter was brought before the Company Court for consideration as to whether the disposition was void or otherwise, the person in possession of the property and claiming title thereto was Respondent No.2. The case of the Official Liquidator was that the disposition in favour of Respondent No.2 was void as against the Liquidator. The Court was really concerned with the *bona fides* of Respondent No.2 in purchasing the property. As for the adequacy of the consideration, though the company (in liquidation) was divested of the property on 27 December 2007 when Dave claimed to have purchased it from the company, the valuation considered by the court was as of a much later date, i.e. as of 16 November 2011, when Respondent No.2 purchased the same from Dave. In other words, it was after disregarding the prior disposition in favour of Dave and on the footing that the later disposition (by Dave) was by the company in favour of Respondent No.2. That means even if the company were to transfer the property in favour of Respondent No.2 on 16 November 2011, the consideration paid by the latter (after the exercise of court valuation) can be described as adequate. In the premises, the court was clearly justified in using its discretion in favour of the disposition. There is no error of law

here.

10 There is, thus, no merit in the company application and the same is dismissed. No order as to costs.

(S.C. Gupte, J.)