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

OFFICIAL LIQUIDATOR REPORT NO.617 OF 2015
COMPANY PETITION NO.412 OF 2013
And
COMPANY PETITION NO.433 OF 2013

In the matter of the Companies Act, I of 1956 ;
And
In the matter of M/s.Birla Surya Ltd. (In Liquidation).

1 Anil Manohar Kshirsagar & Ors.)
2 M/s.Larsen and Tourbo Ltd.)....Petitioners

Mr.Vinod Sharma-OL & Ms.Yogini Chauhan Asstt. OL present.
Adv.Seoula Vas i/by Manilal Kher Ambalal for Larsen & Tourbo.
Ms.Purvi Joshi i/by MDP & Partners for Edelwiess & Ors.-intervenors.
Adv.Suvarna Joshi for ex-director Ashish Mahendrikar.
Ms.Bhakti Sutar i/by Vikas Mahangare for Madan Diwan.

CORAM : K.R.SHRIRAM,J
DATE : 22.1.2016

P.C.:-

1 By an order dated 12.2.2014 this court had appointed the official liquidator as provisional liquidator of the company in liquidation with usual powers under the Companies Act 1956. By an order dated 25.3.2015 this court directed the official liquidator to take possession of the remaining plots of the company in liquidation situated at village Rajewadi, Taluka-Khandala, Dist. Satara and also directed to take possession of the structures/movables of the company in liquidation

on the aforesaid land and appoint security guards if required to protect the same. The official liquidator therefore, sent notices on 9.9.2015 as the order was uploaded only on 1.9.2015, to the ex-directors, the petitioners, security creditors, enforcement directorate and other noticees informing them that the official liquidator would be proceeding to village Rajewadi on 11.9.2015 to take possession of the land in question and requesting the addressees to remain present. When the official liquidator went to take possession, though the ex-director and others including security guard of Larsen & Tourbo were present, they were not able to identify the gat numbers of the land of which possession has to be taken as per the order dated 25.3.2015. The representative of the official liquidator thereafter proceeded to the Tahsildar's office to get their help to identify the gat numbers but they were informed that nobody can be deputed to assist them due to shortage of staff. It is stated in the official liquidator's report that there is no complete boundary wall around the land and they are finding it difficult to identify the plots of the company in liquidation. Therefore, this Official Liquidator Report is filed to direct the parties mentioned in prayer clause-(b) of the report to assist the official liquidator in identifying the plots of which the possession is to be taken. The prayer is also sought to direct the Edelweiss ARC Ltd. to appoint security to safeguard the assets of the company in liquidation and to make payment accordingly. Further prayer is sought to direct Edelweiss ARC Ltd. to appoint the valuer to value the assets of the company and to pay the charges of the valuer. Edelweiss ARC Ltd has filed an affidavit in reply to the Official Liquidator's Report. The counsel for the Edelweiss ARC Ltd. submits that though Edelweiss will not have problem in assisting official liquidator in identifying the plots and to take possession of the plots, the counsel submits that there are various other secured creditors as mentioned in paragraph-2 of the affidavit in reply who should also be directed to share the cost of the security and the cost of valuation. The official liquidator submits that the State Bank of India was the lead bank among the consortium of builders. He submits that in effect Edelweiss stepped into the shoes of State Bank of India and therefore, Edelweiss may pay the cost and ask the other bank to contribute for the security cost and valuation charges equally or as in such proportion they may agree.

2 In my view, the submission made by the official liquidator make sense. The official liquidator was appointed by an order dated 12.2.2014. It is almost two years since then the possession of all the assets of the company in liquidation has not been taken. The official liquidator has been running around to get the plots identified and he has to approach each of the consortium towards security cost and valuation charges and take their consent. The entire process will be

defeated. In the end of the day it is secured creditors who are going to be paid off first and the efforts being put in by the official liquidator will basically enure to the benefit of the secured creditors. Therefore, leaving it open to Edelweiss ARC Ltd to claim charges from the other consortium, I am inclined to allow Official Liquidator's Report in terms of prayer clauses-(a), (b), (c) and (d). The official liquidator's report accordingly disposed.

(K.R.SHRIRAM,J)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/Order.

KJ