IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3284 OF 2013

Mrs. Managala Namdeo Kharade,
Age : 48 Years, Occu. : Business,
Proprietor of M/s Krishna Associates
Having its office at Plot No. E-80,
MIDC Area, Waluj, Aurangabad. .. Petitioner

Versus

1. The Assistant Commissioner of Sales Tax, Recovery Branch, Aurangabad Ground Floor, Annex Building Vikrikar Bhavan, Opp. Railway Station, Aurangabad 431 005.

2. Maharashtra State Financial Corporation, Aurangabad, Regional Office, Mahavittabhavan, Opp. Fire Brigade, Station Road, Aurangabad, through its Regional Manager. .. Respondents

Shri S. V. Adwant, Advocate for the Petitioner.
Shri A. S. Deshpande, Special Counsel for the Respondent No. 1.
Shri P. K. Joshi, Advocate for the Respondent No. 2 - absent.

CORAM : S. V. GANGAPURWALA AND K. L. WADANE, JJ.
DATE : 09TH MARCH, 2017.

<u>ORAL JUDGMENT</u> (*Per S. V. Gangapurwala, J.*) :-

. Rule. Rule made returnable forthwith. With the consent of parties taken up for final hearing.

2. The petitioner is a purchaser of the assets of one M/s. Varns Engineering Pvt. Ltd. The said assets were sold by the Maharashtra State Financial Corporation (for short "M.S.F.C.") exercising its powers U/Sec. 29 of the State Financial Corporations Act. The respondent No. 1 Sales Tax Department has issued demand notice dated 22.01.2013 and the order of attachment dated 28.03.2013 to the petitioner in respect of property purchased by the petitioner in auction. The same is assailed in the present petition.

3. The moot question in the present matter is the liability qua the assets purchased by the auction purchaser with regard to the sales tax dues outstanding against the original owner.

4. Mr. Adwant, the learned counsel for the petitioner submits that, M.S.F.C. was a secured creditor of M/s Varns Engineering Pvt. Ltd. (M/s Renuka Press Fab Pvt. Ltd.). Property purchased by the petitioner was hypothicated/mortgaged with the secured creditor. The said property was taken in possession by the M.S.F.C. on 28.06.2007 and the said property was put to auction by the secured creditor. The petitioner tendered her offer letter on 20.02.2009. After negotiations the consideration was finalized at Rs. 1,07,01,000/-. Subsequently deed of assignment came to be

executed in favour of the petitioner on 15.03.2011 and the petitioner became the owner of the said assets.

5. The learned counsel submits that, the Sales Tax Department could not have recovered the dues outstanding as against the M/s Varns Engineering Pvt. Ltd. from the assets purchased by the auction purchaser. The said dues of sales tax was with regard to the business conducted by M/s Varns Engineering Pvt. Ltd. The petitioner is not the purchaser of the on going business of M/s Varns Engineering, however, is purchaser of the land, building, plant and machinery. In view of the fact that, the petitioner was only purchaser of the assets of M/s Varns Engineering and not on going business, the petitioner is not liable to pay outstanding dues, as said dues were against M/s Varns Engineering. To substantiate his contention, the learned counsel relies on the judgment of the Apex Court in a case of **State of Karnataka and another Vs. Shreyas Papers (P) and others** reported in ***(2006) 1 SCC 615*** and the judgment of the Division Bench of this Court in a case of **Sherwood Resorts Pvt. Ltd. and another Vs. State of Maharashtra and others dated 16th October, 2015** in **Writ Petition No. 2086 of 2015** so also another judgment of the Division Bench of this Court in a case of **National Steel and Agro Industries Ltd. Vs. State of Maharashtra and others** reported in ***2015(5) LJSOFT 38***.

6. Mr. Deshpande, the learned counsel for the respondent No. 1/Department submits that, the petitioner is successor-in-title of the erstwhile dealer i. e. M/s Varns Engineering Pvt. Ltd. The erstwhile dealer had availed the benefit under package scheme of incentives for deferred payment of Sales Tax. The dealer availed the said benefit and when time came for payment of those deferred dues, the dealer wound up the business activities and sold the land, building, plant and machinery through financial institution. The deceit and fraud is played by the dealer that is the predecessor-in-title of the petitioner and such transaction cannot be protected. The learned counsel submits that, the dealer has allowed the financial institution to auction the property. The financial institution was made aware of the sales tax dues outstanding against the said dealer. Considering those aspects, the M.S.F.C. had incorporated a clause of liability of the purchaser to pay the sales tax dues. The learned counsel relies on clause (viii) of the deed of assignment dated 15.02.2011. According to the learned counsel upon getting knowledge that M.S.F.C. has taken up the proceedings for the recovery of the dues, the sales tax department sought information about auction under letter dated 01.06.2012. The respondent No. 1 obtained the copy of the deed of assignment. Under clause (ii) of the said deed of assignment, the petitioner had agreed to pay all the liability including tax. Under Clause (viii), the petitioner agreed

to make payment of dues of the existing and future liabilities of the concerned authorities. So also agreed to discharge the liability of taxes and more particularly the sales tax liability. The petitioner now cannot be permitted to resile from his commitment. The petitioner has accepted entire liability under the deed of assignment and has purchased the land, building, plant and machinery on her own volition. Therefore, now cannot be permitted to disown the contractual liability. The learned counsel refers to Sec. 38(c) of the Maharashtra Sales Tax Act, 1959 to submit that, the charge in relation to payment of sales tax is always qua the property of the dealer and not qua the activity of the dealer. The present petitioner has stepped into the shoes of erstwhile owner of the property in question. The petitioner having agreed to discharge sales tax liability, now cannot be permitted to deny the same. According to the learned counsel dues of sales tax department is a crown debt.

7. We have considered the submissions canvassed by the learned counsel for respective parties.

8. Following aspects are not debated.

(i) M.S.F.C. was a secured creditor of M/s Varns Engineering Pvt. Ltd.

(ii) For non payment of the dues of the M/s Varns Engineering, M.S.F.C. resorted the auction U/Sec. 29 of the State

Financial Corporations Act and took over possession of assets of said M/s Varns Engineering Pvt. Ltd. on 28.06.2007.

(iii) The said property was put to sale. The petitioner submitted her offer letter to purchase the property on 20.02.2009.

(iv) The deed of assignment came to be executed on 15.02.2011.

(v) Till 2013 the process of attachment was not undertaken by the Sales Tax Department and it is only on 28.03.2013, the Sales Tax Department issued notice of attachment of the property of M/s Varns Engineering Pvt. Ltd., which is purchased by the petitioner. The petitioner on the said date had become owner and possessor of the said assets.

09. The deed of assignment reads about sale of the property on 'As is Where is basis', clause (viii) of the deed of assignment is relevant. The same is reproduced as under :

> "viii) The existing liabilities if any, and the liabilities which may arise in future in respect of dues of the concerned authorities for transfer of property in question shall be payable by the Purchaser. The property offered for sale is on "AS IS WHEREIS AND WHAT IS BASIS". The Corporation does not undertake any responsibility to procure any permission / license etc. in respect of the property offered for sale or for any dues like MIDC water/service charges,

> transfer fees, electricity dues and charges for fresh power connection taxes such as dues of Sales Tax Deptt., Excise Deptt. Customs Deptt. if any in respect of the said property and the same shall be payable by the Purchaser."

10. Much emphasis is laid by Mr. Deshpande, the learned counsel for the respondent No. 1 on the aforesaid clause. Reading and re-reading the said clause, it transpires that the petitioner had taken over the liability to pay the dues of the concerned authorities of the property in question. So also the dues of the sales tax department, if any in respect of the said property.

11. The question is whether the dues of the sales tax department can be said to be over the property sold to the petitioner by M.S.F.C. of M/s Varns Engineering Pvt. Ltd.

12. As observed supra, the petitioner had became owner of the property in the year 2011 and for the first time in the year 2013 a notice of attachment was issued to the petitioner in respect of claim against the erstwhile owner. In the year 2011, the erstwhile owner was divested of the rights of ownership over the said property. The secured creditor that is M.S.F.C. at no material point of time was communicated about the dues of sales tax department till the auction of the property and/or the same

being sold to the present petitioner by the secured creditor. It appears that, notice was given to the M.I.D.C. with regard to sales tax, but not to the secured creditor/M.S.F.C., who has placed the property of M/s Varns Engineering Pvt. Ltd. in auction. Neither secured creditor, nor the purchaser was aware of the outstanding liability of the sales tax department, till sale of the assets.

13. Be that, as it may, the petitioner has not purchased on going business of M/s Varns Engineering Pvt. Ltd., but has purchased the property i. e. the assets. A purchaser of the assets is not liable to pay the sales tax dues of the erstwhile owner. Reference can be had to the judgment of the Apex Court in a case of **State of Karnataka and another Vs. Shreyas Papers (P) and others** and to the judgment of the Division Bench of this Court in a case of **Sherwood Resorts Pvt. Ltd. and another Vs. State of Maharashtra and others** referred to supra.

14. It would also appear that, the deed of assignment does not exactly specify liability of the sales tax department. It was only a general term incorporated in the deed of assignment without specifying the extent of the liability of the sales tax department. The clause in the said regard was uncertain. The exact liability of the sales tax was never detailed and specified in the deed of assignment. The liability was uncertain, nor can be made

certain by the said clause. The petitioner can place reliance on Sec. 29 of the Contract Act. Be that as it may, the same would not be relevant. Unless liability of sales tax department is specified, the purchaser certainly would not be made liable to pay the said dues.

15. Considering aforesaid conspectus of the matter, rule is made absolute in terms of prayer clause "B", however, there shall be no order as to costs.

Sd/-	**Sd/-**
[K. L. WADANE, J.]	**[S. V. GANGAPURWALA, J.]**

bsb/March 17