IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 22 OF 2017

IN

COMPANY PETITION NO. 4 OF 2015

A. W. FABER-CASTELL (INDIA) PVT. LTD. ... Applicant

Versus

PUMA STATIONERY PRIVATE LIMITED., ... Respondent

Mr. Jitendra P. Supekar, *Advocate for the applicant.*
Mr. S. D. Bhosle, *Senior Technical Assistant for Official Liquidator.*

Coram: G. S. PATEL, J.
Date: 10th August, 2017

P.C.

1. Heard.

2. The petition was admitted on 20th August 2015 and on 16th June 2016 the Provisional Liquidator was appointed to take charge of the affairs and assets of the respondent company.

3. It appears that the petitioner had leased an immovable property situated at 24/1-D-1, Corlim Village, Goa to the

respondent company. The petitioner owns this land. It was leased to the respondent under a lease agreement dated 13th January 1998 for 20 years from 1st July 1997 to 30th June 2016.

4. That lease has thus expired. It appears that the Provisional Liquidator took possession of this land. Being leasehold land, it is clearly not an asset of the respondent company. It cannot be used to satisfy the claims of the creditors. Possession has to be returned to the petitioner, especially now that the lease has expired.

5. The above application is made absolute in terms of prayers (A) and (B) which read as follows:

> "(A) This Hon'ble Court be pleased to direct the Official Liquidator's office to release possession of the said land with immediate effect as the Respondent Company has no rights of any nature on the said land or any portion thereof.
>
> (B) This Hon'ble Court be pleased to direct the Official Liquidator's Office to physically remove the "possession board" affixed by representatives of the Official Liquidator over a portion of the said land."

6. The Official Liquidator will act on an authenticated copy of this order and will deliver possession within two weeks from today.

7. It is however pointed out that the respondent caries on its books a deposit of Rs.25 lakhs placed with the petitioner. Obviously the petitioner cannot possibly appropriate this amount towards its claim. The petitioners are unsecured creditors. Assuming that the company is taken to liquidation, it is the statutory duty of the liquidator to assess and rank in priority as required in law the claims of the workmen, secured creditors and unsecured creditors. The petitioner will have to join the ranks of unsecured creditors and all assets will be distributed between the unsecured creditors after the other priority creditors are satisfied. It is not open to the petitioner to compromise this process by retaining any asset of the company, including this deposit of Rs.25 lakhs.

8. With regard to this amount, the Provisional Liquidator shall file a separate report by 31st August 2017 and serve a copy on the Advocate for the petitioner. Reply to be filed by 11th September 2017.

9. The matter will be listed for orders on 21st September 2017.

G. S. PATEL, J.

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