

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

**OFFICIAL ASSIGNEE'S REPORT NO. 7 OF 2013
IN
INSOLVENCY PETITION NO. 45 OF 2003**

Surendra M. Dorwani

...Insolvent

Ex. Parte

Apna Shakari Bank Ltd.

... Petitioning Creditor

And

The Official Assignee of Bombay

...Petitioner

Mr. A. J. Jadhav, for the Petitioning Creditor.

Ms. Kavita A. Shah for the Official Assignee.

Mr. A. A. Siddique, for the landlord.

Mr. M. D. Narvekar, Official Assignee present.

CORAM : R.D. DHANUKA, J.

DATE: APRIL 18, 2017

P.C. :

1] By this report the Official Assignee seeks to take forcible physical possession of the tenanted premises of Gala No. 3A situated at Habibul Rehman Industrial Estate, Ansari Compound, Jarimari, Shivaji Nagar, Kurla Mumbai – 4000 72, which was alleged to be occupied by the insolvent admeasuring 73.2 sq. mts. equivalent to 890 sq.ft by breaking open the locks and seeks permission to sell the tenancy rights of the entire gala.

2] By an order dated 20th July 2015, the insolvent Mr. Surendra M. Dorwani was adjudicated as an insolvent. He has expired. It is the case of the Official Assignee that on 28th December 2005 the representative of the Official Assignee visited the premises of the

insolvent i.e. gala No. 3-A. It was noticed by the Official Assignee that Gala No. 3-A and 3-B were closed. The Official Assignee thereafter fixed an appointment on 17th February 2006 for the purpose of taking possession of movable property lying in the premises. The Official Assignee could not take possession on that date. The Official Assignee thereafter visited the premises and also held private examination.

3. Ms. Shah learned counsel for the Official Assignee invited my attention to the tenancy agreement dated 1st July 1981 between the landlord and M/s Yenkey Packaging Industries in which the insolvent was a partner. She submits that admittedly in accordance with the said agreement the said partnership firm was a tenant of Gala No.3-A admeasuring about 73.2 sq. mts. It is submitted by the learned counsel that, when the actual possession of the Gala is taken it is found that the said gala is admeasuring 678.37 sq. ft. equivalent to 63.02 sq mts. She submits that, after the insolvent was adjudicated the landlords appears to have sub-divided the said Gala No.3 into three parts and created license in respect of one of such Gala and has sold the other portion of Gala in favour of a third party. She invited my attention to some of the documents from the compilation and would submit that the documents of license and also the sale are sham and bogus. No stamp duty was paid on these documents. None of those documents are registered.

4] My attention is also invited to the orders passed by Shri Justice S. J. Kathawalla on 4th February 2014, thereby directing an Architect on the panel of Court Receiver to take measurement of all the three Galas in presence of the representative of the parties. She invited my attention to the inspection report dated 7th March 2014 submitted by H. Mehta Associates and submitted that, even according to the said report the Unit No.3 was subsequently divided in three parts as Unit No.

3-A, 3-B and 3-C.

5] Learned counsel invited my attention to the order dated 10 April 2014 passed by Shri Justice S.J.Kathawalla. The Mumbai Municipal Corporation reproduced the assessment record of the year 2004-2005. She submits that, the said assessment record produced by the Municipal Corporation before this court also indicated that the said Unit No.3 was sub-divided into three parts.

6] It is submitted by the learned counsel that, though the landlord has filed two affidavits before this court, landlord has not produced any documents for perusal of this Court to show that the original Gala prior to creation of tenancy in the partnership of the insolvent was sub-divided into three parts and only one part of that Gala was given on tenancy to the partnership firm to the insolvent. She submits that, a notice to the occupant of Gala No.3-B has been already served. Notice to the occupant of Gala no.3-C could not be served as the same was found locked. He submits that the Official Assignee be permitted to give the said property on leave and license for the time being. Learned counsel appearing for Official Assignee stated that, at this moment the Official Assignee is not pressing for sell of the said property and may press for permission to sell the said tenanted premises in future. She submits that the Official Assignee may be permitted to give the said premises on leave and license for time being so as to generate some income to clear the claims of the claimant and other creditors.

7. The learned counsel for the Petitioning Creditor states that, if any income is generated out of the said premises, Petitioning Creditor can also be paid some amount out of such income if generated by the Official Assignee. The learned counsel for the landlord on the other

hand, invited my attention to an agreement of tenancy dated 1st July 1981 and submits that, according to the said agreement the partnership firm of the insolvent was given tenancy right in respect of area admeasuring 73.2 sq.mts. He invited my attention to the report submitted by H. Mehta and Associates pursuant to the order passed by this Court. Learned counsel submits that, even according to the said report there were three separate units bearing No. 3-A, 3-B and 3-C. He submits that, in so far as the area of Unit No.3-A is concerned according to the said report the area was 678.37 sq.ft. equivalent to 63.02 sq. mts., whereas the area of Unit No.3-B and 3-C was 71.62 sq. ft. equivalent to 6.65 sq. mts. and 261.74 sq.mts. equivalent to 24.32 sq. mts. respectively. He submits that, if the area of these three units alongwith common space which is around 150 sq. ft. is taken into consideration, the total area of Unit No.3 would be much more than the area mentioned in the tenancy agreement entered into with the partnership of the insolvent. He submits that, some part of the common passage admeasuring 150 sq.ft. was being used also by the insolvent as a partner of the said partnership firm which was included into the tenancy agreement shown an area of 73.02 sq.mts.

8] Learned counsel also invited my attention to the assessment record submitted by the Municipal Corporation before this Court. He submits that, even according to the record of the Municipal Corporation the property was assessed to municipal tax with effect from 1st April 1968 and as per record available for the year 1991-1992, the Unit No.3 was sub-divided into three parts i.e. Unit No.3-A, 3-B and 3-C. According to the Municipal Corporation Unit No.3-A is admeasuring about 63.02 sq.mtrs. Unit No.3-B admeasuring about 64.65 sq.mts. and Unit No.3C is admeasuring about 24.32 sq.mtrs. He submits that, the

landlord has not sub-divided said property in three parts after adjudication of Mr. Dorwani as insolvent by this court but the same was done much prior to the date of creation of tenancy. He submits that, the official assignee can not seek possession of the other area which is not formed part of the tenancy agreement entered into the partnership firm of the insolvent.

9] A perusal of the record indicates that, the area mentioned in the agreement of the tenancy entered into with the partnership firm of the insolvent is about 73.02 sq.mts. under the Municipal Assessment No. L.3922. Pursuant to the order passed by this Court, H. Mehta and Associates has submitted a report dated 7th March 2014. A perusal of the said report indicates that, the Industrial Unit No.3 which were subsequently divided in three parts as Unit No.3-A, 3-B and 3-C has separate individual identity with individual access of a common entrance passage in the said report. All three units have a common entrance passage admeasuring about 150 sq.ft out of which the portion admeasuring about 102 sq.ft is covered with A.C. Sheets roof and remaining 48 sq.ft is open to sky. According to the said report the area of Unit No.3-A, 3-B and 3-C is about 678.37 sq.ft, 71.62 sq.ft and 261.74 sq.ft respectively. It is not in dispute the Official Assignee has already taken physical possession of the area of 678.37 sq.ft. of the unit bearing No.3-A. If the total of the three units including the common passage is considered, the area thereof would be much more than the area mentioned in the tenancy agreement entered into with the partnership of the insolvent and the landlord.

10] A Perusal of the record submitted by the Municipal Corporation also indicates that, the Unit No.3-A, 3-B and 3-C were in existence for quite some time. According to the Municipal Corporation

the said data is made available before this Court based on the record of year 1991-92 i.e. prior to the date of the adjudication of Mr. Dorwani as insolvent. On perusal of this document, in my view there is some substance in the submission made by the learned counsel for the landlord that the three Unit No.3-A, 3-B and 3-C were not forming part of the tenancy agreement with the partnership firm of the insolvent. In my view the learned counsel for the landlord appears to be right in contending that the common passage area of 150 sq.ft was being used by the occupant of all the three units i.e. Unit No.3-A, 3-B and 3-C. The learned counsel for the landlord states that his client has no objection if the said common passage is allowed to be used by the Official Assignee or any other occupant who is allowed to occupy the said unit bearing No.3-A by order of this Court alongwith other occupant. Statement is accepted. In so far as, submission of the learned counsel for the Official Assignee that the agreements entered into by the landlord with the other two occupants are not sufficiently stamped or are not registered is concerned, this court need not go into that issue at this stage.

11] In my view, the interest of justice will be met with if for the time being the Official Assignee is permitted to give the said premises bearing No.3-A admeasuring about 678.37 sq.ft equivalent to 63.02 sq.mts on leave and license initially for a period of eleven months and for like period after obtaining permission of this Court.

12] In so far as, the submission made by the learned counsel for the petitioning creditor is concerned, if any income is generated out of such leave and license agreement by the Official Assignee, the Official Assignee to submit a report for declaration of dividend if any, and shall serve a copy thereof upon the Petitioning Creditor.

13] It is made clear that, the Official Assignee is at liberty to apply for

permission to sell the tenanted premises in future if so required. It is made clear that the Official Assignee will consider the claims of all the creditors of the insolvent and the claim of landlord if any against the insolvent. The report is disposed off in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)