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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COURT RECEIVER'S REPORT NO. 388 OF 2014
IN
ARBITRATION PETITION NO. 226 OF 2013**

L & T Finance Ltd ...Petitioner
Versus
Glodyne Technoserve Ltd 7 Ors ...Respondents

Ms Shakuntala Joshi, *with Jalpa Pithadia i/b SI Joshi & Co for the Petitioner.*

Mr Mikhail Behl, *with Rajendra Jain & Natasha Gupta i/b Thakore Jarimala & Associates for the Respondent No.2.*

Ms Benedicton Lobo, *i/b Katariya & Associates for Aditya Birla Finance Ltd.*

Mrs KY Ambekar, *1st Assistant to CR present.*

Mr K Rajput, *STA Official Liquidator.*

CORAM: G.S. PATEL, J
DATED: 1st March 2017

PC:-

1. There is a further Affidavit in Reply 25th February 2016. It makes very little difference and adds almost nothing. The Respondent No.2, one Anand Sarnaik, says in this Affidavit that the articles that are part of the secured assets under a lease finance agreement between the Petitioner and the 1st Respondent were sent by the 1st Respondent to third parties, viz., M/s Vikas Enterprises, one Infoland Technologies and one M/s JK SoftTech (P) Ltd. Previous orders have directed disclosures by these parties. In

paragraph 3 of this Affidavit, Sarnaik refers to an agreement dated 1st September 2011 between the 2nd Respondent and Vikas Enterprises. In paragraph 4 he says that the items in question shown in Exhibits “B” and “C” to this Affidavit were delivered to Vikas Enterprises at Bangalore.

2. I am unable to understand why either the Court Receiver or the Petitioner / lender should criss-cross the length and breath of the country chasing down third parties to whom the 1st Respondent sent these secured assets. It was surely for the 1st Respondent and its Directors to ensure that those articles were properly inventoried and retrieved. The 1st and the 2nd Respondent cannot possibly shirk all responsibility like this. As far as I can tell, what the 1st and 2nd Respondents say is this: they had the right to truck with these articles; they are now entitled to throw up their hands and say they know not where the articles are; it is now for the Petitioners and the Court Receiver to find out what those third parties to whom the 1st and 2nd Respondents sent the articles did with them; and, finally, now that the 1st Respondent is in liquidation, the 1st and 2nd Respondents have no financial liability to the Petitioners. This is what Mr Sarnaik’s affidavit amounts to saying, though I will note that Mr Behl is careful not to put it in these words. What Mr Behl has, however, repeatedly suggested today is that the Court Receiver should go to the premises of Vikas Enterprises, Infoland Technologies and JK SoftTech Pvt Ltd. and others to secure these assets.

3. I find this unacceptable. The Petitioners as far as I can tell are secured creditors. The 1st Respondent company is in liquidation. I

see no reason to continue with the Court Receiver. The Official Liquidator will undoubtedly gather all assets of the 1st Respondent in liquidation, a process that will take its statutorily mandated course, and in which the Petitioner can of course participate. Once the Petitioner obtains an award against the 1st Respondent, it will get such property or recovery as it is entitled in law in the winding up process.

4. No further orders are required.

5. As far as Aditya Birla Finance is concerned, it has filed no proceeding of its own. It too had a lease finance agreement with these very Respondents for similar assets. Since the Court Receiver was tracing the Petitioners' assets, he was asked to trace those of Aditya Birla Finance too. That does not mean that Aditya Birla Finance is not required to file its own proceedings. It is at liberty to file a substantive proceeding whether under the Arbitration and Conciliation Act or under any other law protects it. All its rights and contentions are specifically kept open.

6. The Court Receiver's Report is disposed of in these terms. The Court Receiver stands discharged. His costs, charges and expenses and the costs of this Report will be paid by the Petitioner, which will be entitled to recover these at actuals in the arbitration proceedings against the 1st and 2nd Respondents.

(G. S. PATEL, J.)