

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO.6421 OF 2018

M/s Mauria Udyog Limited.,
a company incorporated under
the Companies Act, 1956,
having its Registered Office at
602, Chiranjeev Tower, 43,
Nehru Place,
New Delhi 110 011

..Petitioner

Versus

Laxmi Ventures (India) Limited
A company incorporated under
the Companies Act, 1956, having
its Registered Office at 36/40,
Mahalaxmi Bridge Arcade,
Mahalaxmi,
Mumbai 400 034

..Respondent

Mr P.M. Shah, Senior Counsel i/b Mr S.S. Gangakhedkar, Advocate for
petitioner

- WITH -

WRIT PETITION NO.14596 OF 2017

Laxmi Ventures (India) Limited
A company incorporated under
the Companies Act, 1956, having
its Registered Office at 36/40,
Mahalaxmi Bridge Arcade,
Mahalaxmi,
Mumbai 400 034

..Petitioner

Versus

M/s Mauria Udyog Limited.,
a company incorporated under
the Companies Act, 1956,
having its Registered Office at
602, Chiranjeev Tower, 43,
Nehru Place,
New Delhi 110 011

..Respondent

Mr A.P. Piratwad, Advocate for petitioner

**CORAM : R.M. BORDE AND
A.M. DHAVALA, JJ.**

DATE : 9th July 2018

PER COURT

1. Heard both the parties.
2. In terms of the agreement arrived at between the parties, admittedly, the consent award dated 12.3.2014 has been passed. It is agreed between the parties in terms of the award as stated in paragraphs 3 to 10 as under :

“3. It is agreed, understood and compromised that the Respondent agrees and undertakes to put the Claimant and/or its Nominee in quiet, vacant and peaceful possession of the said Property Industrial Plots of land bearing Nos.R-3, admeasuring 32,368 Sq. Mt. and R-3/A admeasuring 14,390 Sq. Mt. totally admeasuring 46,758/- Sq. Mt. situated in the Aurangabad Industrial Area at Chikalthana, within the village limits of Mukundwadi Taluka along with the Rama International, the Five Star Hotel thereon as is whereas. The Respondent agree and undertakes that it shall handover quiet, vacant and peaceful possession of the said Property to the Claimant and/or its Nominee, within a period of 6 months from 31-3-2014, and the Respondent records its confirmation of accomplishment of the transaction of assignment of Leasehold/ownership rights in the said property based on receipt of the advance consideration of Rs.30,00,00,000/- (Rupees Thirty Crore only) and the balance Rs.5,00,00,000/- (Rupees Five Crores only) to be paid by the Claimant at the time of completion of the Assignment.

4. It is agreed, understood and compromised that the Respondent agrees and undertakes to procure the necessary approvals/permissions from all the relevant authorities including the MIDC for the purpose of transferring and assigning the said Property in favour of the Claimant and/or its Nominee, as per the terms of the said Agreement.

5. It is agreed, understood and compromised that the Respondent agrees and undertakes to execute the transfer deed/deed of assignment in favour of the Claimant and/or its Nominee, for transferring and assigning all right, title and interest in the said Property as undertaken under the said Agreement. The Respondent agrees and undertakes to execute a deed of Assignment of lease of the said Property and conveyance of the building (hotel standing thereon) in favour of the Claimant and/or its Nominee and the draft of these deeds and documents shall be in the form drafted and provided by the Claimant.

6. It is agreed, understood and compromised that the Respondent agrees and undertakes that the Respondent, its servants and agents shall refrain themselves from in any manner dealing with, disposing off, alienating, selling, transferring, creating third party rights including but not restricted to creating encumbrance at any nature in favour of any secured or unsecured creditor, or handing over possession of the said Property being Industrial Plots of land bearing Nos.R-3, admeasuring 32,368 Sq. Mt. and R-3/A admeasuring 14,390 Sq. Mt. totally admeasuring 46,758 Sq. Mt. situated in the Aurangabad Industrial Area at Chikalthana, within the village limits of Mukundwadi Taluka and the Rama International the Five Star Hotel thereon or any part thereof.

7. It is agreed, understood and compromised that the Respondent agrees and undertakes that the Respondent, its servants and agents shall refrain themselves from mortgaging, keeping as charge, create any lien or encumbrances on the said Property. They agree and undertake not to do anything that would impair or adversely affect the said Property, or cause it to depreciate in value.

8. It is agreed, understood and compromised that the Respondent agrees and undertakes to save the said Property from any court attachment, liquidation, or bankruptcy proceedings etc.

9. It is agreed, understood and compromised that, should however, if it is legally impermissible or impossible for the Respondent to transfer and assign the said Property and handover quiet, vacant and peaceful possession of the said Property to the Claimant and/or its Nominee, within the stipulated period, the Respondent agrees and undertakes that it shall on the demand from the Claimant pay a sum of Rs.30,00,00,000/- (Rupees Thirty Crore only) to the Claimant on account of the refund of the entire amount of advance of Rs.30,00,00,000/- (Rupees Thirty Crore only) paid already under the said agreement. In addition to this an amount of Rs.50,00,00,000/- (Rupees Fifty Crore only) shall be paid by the Respondent to the Claimant as compensation in lieu of the said property. The amount shall be paid within a period of 15 days from the date of the Claimant demanding such payment from the Respondent on account of impressibility or impossibility specified hereinabove, save and except for the delay in obtaining permission from MIDC for assignment and transfer of Leasehold rights in favour Claimant and such delay is condoned by the claimant.

10. It is specifically agreed, understood and compromised that the terms of this Memorandum of Compromise shall override all the previous Agreements, Deeds, documents, writings, letters, correspondence that have or may have been executed by the parties hereto or any one or more of them, in so far as the provisions thereof concern the said Property and in so far as the same are inconsistent with the provisions of this Memorandum of Compromise. It is further agreed, understood and

compromised that the terms hereof shall and the terms, conditions and covenants contained in all previous documents, including the said Indenture of Cancellation and Development Agreement, stand modified and altered by this Memorandum of Compromise to the extent and in the manner herein provided.

3. The decree holder has presented execution application which is pending before the Court of District Judge-1, Aurangabad. It has also been brought to our notice that order of attachment came to be issued whereby the judgment debtor or any person claiming under him is restrained from transferring the property as mentioned in Schedule - 'A'. It is stated that attachment of the property is continued. The decree holder presented an application at Exh.22 requesting for appointment of the receiver for conducting supervision and management of the Hotel i.e. the suit property until the execution of Deed of Assignment/Transfer deed and also till handing over the possession off the property in favour of petitioner/decreed holder. In the alternate, it is prayed that the judgment debtor be restrained by an order of injunction from alienating, transferring and/or creating third party interest over the suit property until complete satisfaction of the decree in the form of execution of Deed of Assignment/Transfer Deed and also till handing over the property in favour of the decreed holder. Although in the say tendered by judgment debtor, it is stated that the judgment debtor seeks leave of the Court to mortgage the property for raising the funds, it has not been controverted before us by the learned Counsel for the judgment debtor that the attachment of the property is still continued. It is further stated that judgment

debtor has no intention to create any third party interest or alienate the property or encumber it in any manner.

4. So far as the request made by the petitioner for appointment of Court Receiver is concerned, in view of the fact that the judgment debtor has stated before us that it has no intention to transfer the property or to create third party interest or to create any encumbrance, there is no need to consider the request at this stage. It is desirable to direct the judgment debtor to submit the account of income and expenditure to the executing Court. The judgment debtor is directed to tender the monthly statement of account of income and expenditure to the executing Court from the date of this order.

5. In Writ Petition No.14596 of 2017, the judgment debtor has requested for quashing and setting aside the order passed on 4.4.2016 in Regular Darkhast No.96/2016 by District Judge-1, Aurangabad. The request made in the instant petition by the judgment debtor does not deserve to be considered for the reasons that the terms of the settlement arrived at between the parties and the consent award, which is based on the said terms prohibits the judgment debtor from transferring the property or creating third party interest. The judgment debtor, in the circumstances, cannot make request in respect of quashing of the order passed by the executing Court dated 4.4.2016. The judgment debtor has also questioned the jurisdiction of the District Judge-1 to entertain the execution application. Objection raised is devoid of merit since there is no prohibition under the law for entertaining the execution application by the District Judge-1.

6. The Writ Petitions presented by both the parties, judgment debtor and decree holder stand disposed of in view of the order passed hereinabove.

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(A.M. DHAVAL, J.)

(R.M. BORDE, J.)

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