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

COMPANY APPLICATION NO.234 OF 2017
IN
COMPANY PETITION NO.601 OF 2009

J.B. Chemicals & Pharmaceuticals Limited ....Applicant

IN THE MATTER BETWEEN :

Board for Industrial & Finance Reconstruction ....Petitioner

Vs.

Official Liquidator of Artek Organic Industrial Ltd. & Ors. ....Respondents

WITH
COMPANY APPLICATION NO.377 OF 2016
WITH
COMPANY APPLICATION NO.102 OF 2017
IN
COMPANY PETITION NO.601 OF 2009

Dr. Birendra Saraf a/w. Mr. Rohan Sawant and Ms. Poonam Teddu i/b. Mr. Mahesh A. Mahadgut for applicant in CA/234/2017.
Mr. Sameer K. Sawant for applicant in CA/377/2016.
Mr. Akbar Rizbi i/b. AKS Legal Consultants for applicant in CA/102/2017.
Mr. Punit Damodar a/w. Ms. Nikita Vardhan i/b. Kanga and Co. for ex-directors.
Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator present.

CORAM : K.R.SHRIRAM, J.
DATE : 12th MARCH, 2018

P.C.:

COMPANY APPLICATION NO.234 OF 2017

1 This application is filed by applicant to direct Official Liquidator to make payment to G.I.D.C. (respondent no.3) to the tune of Rs.72,99,535/- and further sum of Rs.12,00,000/- to Dakshin Gujarat Vijlee Company Limited (respondent no.4) and to pass such further orders directing respondent nos.3 and 4 to transfer and execute all such documents and take all such steps for transfer of the premises and electrical

connections to applicant.

2 The company was recommended to be wound up by BIFR by an order dated 9th April, 2009. An appeal came to be filed before AAIFR and the appeal before AAIFR was dismissed on 19th May, 2011. Challenging that order of dismissal, the company filed writ petition being writ petition no.9562 of 2011. The said writ petition has been withdrawn and fresh writ petition being writ petition no.5220 of 2013 challenging the AAIFR order has been filed. No stay to hearing of this company petition has been granted.

3 On 30th January, 2014, Provisional Liquidator was directed to take physical possession of all assets of the company. An order dated 1st August, 2014 came to be passed fixing the reserve price at Rs.3.35 Crores and EMD of Rs.25 Lakhs in terms of Official Liquidator's Report dated 23rd July, 2014.

4 On 9th October, 2014, this Court considered various bids received for the asset of the company including an offer from the ex-director of the company for Rs.5 Crores. The ex-director's representative did not agree to pay anything beyond Rs.5 Crores. After open bidding amongst other bidders, applicant herein was the highest bidder offering Rs.5.60 Crores. That offer was accepted. While passing an order accepting that offer, this Court, in paragraph 10 of the order dated 9th October, 2014, was

pleased to observe as under :

> *10. After hearing the above responses of the above mentioned lenders, the ex-director again has nothing to submit. In any event, as stated earlier, in the present application, the ex-director himself has submitted that he has an offer of Rs.5 Crores qua the said property of the company and that he should be allowed to dispose of the said property and settle the dues of the bank. This Court has now received an offer of Rs.5.60 Crores. The purchaser brought in by the ex-director has refused to match this offer. In view of the above, I am satisfied that the ex-director is only attempting to stall/delay the sale of the said property through the Court. He is objecting to the sale which has fetched 5.60 Crores for the said property, which he himself wanted to sell at Rs.5 Crores or above. In view thereof, I proceed to accept the offer of J.B. Chemicals and Pharmaceuticals Limited for Rs.5.60 Crores and confirm the sale of the property in its favour. The EMD shall be deposited with the Prothonotary and Senior Master of this Court on or before 14th October, 2014. The balance amount shall be paid to the Liquidator within a period of one month from the date of this order. The Liquidator shall not disburse the sale proceeds without obtaining prior permission of this Court. In the meantime, the ex-director is at liberty to have settlement talks with the lenders/financial institutions.*

5 Against this order, the ex-director of the company filed an appeal being appeal lodging no.659 of 2014. While disposing of the appeal on 30th October, 2014, this Court was pleased to order as under :

> *3. Appeal (Lodg) No.659 of 2014 challenges the order of the learned Judge confirming the sale of the property in favour of respondent no.6 for a sum of Rs.5.60 Crores. The appellant had obtained an offer of Rs.5 Crore for the said purpose. The learned Judge permitted the bidders to increase their bids. The 6th respondent's bid of Rs.5.60 Crores, being the highest, was accepted.*
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> *4. The challenge to the order dated 9th October, 2014, is on the ground that the property is worth far more than that. The matter cannot be allowed to be dragged on endlessly. We intend granting the appellant yet another opportunity of obtaining a higher bid than the one submitted by respondent no.6 which has been accepted by the company Judge. If a blanket stay is granted and if the property does not fetch an amount of Rs.5.60 Crores at any subsequent sale, the creditors of the company would suffer graver harm and irreparable injury. Their rights also must be protected. We intend doing so by this order.*
>
> *5. In the circumstances, appeal (lodg) no.659 of 2014, is disposed of*

> *by the following order :*
>
> *(i) The impugned order confirming the sale of the property in favour of the respondent no.6 in the sum of Rs.5.60 Crores shall stand set aside provided the appellant is able to deposit, either by himself or through any other nominee or nominees or purchaser or purchasers, a sum of not less than Rs.5.65 Crores on or before 1st December, 2014. Further, the person depositing the amount shall agree and undertake that this would be the minimum bid by him/them for the purchase of the said property upon a fresh sale.*
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> *(ii) In the event of the amount being deposited, the Prothonotary and Senior Master shall invest the same in a fixed deposit of a Nationalized Bank, initially for a period of one year and thereafter for like periods of one year each.*
>
> *(iii) Further, upon the amounts being deposited, respondent no.6 shall, in the first instance, be entitled to withdraw the amounts deposited by it together with any accretions thereto as well as interest at a rate of 12% p.a. from the date of deposit till the date of the refund. The interest of 12% per annum shall be computed after adjusting the accretions to the amounts deposited.*
>
> *(iv) In the event of the amounts not being deposited as aforesaid, the appeal shall stand dismissed and the impugned order confirming the sale in favour of respondent no.6 shall stand confirmed but subject to any orders that may be passed in the writ petition filed by the company challenging the order of the BIFR and AAIFR.*
>
> *(v) All applications for refund/repayment by IDBI or any other person shall be made before the company Judge.*

6 Mr. Damodar, counsel for one of the ex-directors states that this Court should not grant the reliefs as prayed for because the writ petition filed by the company in liquidation against the order of AAIFR is still pending and incase the writ petition is allowed in favour of the company, it will be difficult to take back possession from applicant and also to recover the amounts paid to respondent nos.3 and 4.

7 In my view, this submission of Mr. Damodar is baseless and cannot be accepted, the reason being when the sale was confirmed by the learned Single Judge in his order dated 9th October, 2014, this writ petition

was still pending as could be seen from paragraph 2 of the order dated 9th October, 2014. When the appeal against that order came to be disposed on 30th October, 2014, the Division Bench also was aware about the writ petition filed by the company in liquidation and that the same was pending. Notwithstanding that the Division Bench also was pleased to confirm the sale unless the ex-director deposited more than Rs.5.60 Crores. The Appeal Court said "*In the event of the amounts not being deposited ………. order confirming the sale in favour of respondent no.6 shall stand confirmed ……… AAIFR*". Admittedly, this amount has not been deposited.

8 Dr. Saraf, counsel for applicant states that the attempt of the ex-director is only to stall/delay the sale of the property and having failed in his attempts to stall/delay the sale of the property is now creating hurdles so that the property is not effectively transferred by G.I.D.C. in favour of applicant and respondent no.4 does not transfer the electrical connections.

9 A learned Single Judge of this Court (Hon'ble Mr. Justice G.S. Patel) in company application (lodging) no.146 of 2013 also was pleased to make an observation on the conduct of the ex-director of the company represented by Mr. Damodar and paragraph 19 of the order dated 30th January, 2014 reads as under :

> *19. The entire conduct and approach of the applicant was surreptitious, mischievous and a blatant attempt to interfere with the administration of justice. The applicant's conduct is, in my view, prima facie, in willful and contumacious disregard of the orders of this Court sufficient to warrant the issuance of a suo motu notice*

> *under Rule 1036 of Chapter LVIII of the High Court (Original Side) Rules, calling upon the applicant to show cause why he should not be punished for having committed contempt of this Court. Let such notice be issued forthwith to the applicant, returnable on 13th March, 2014.*

10 I am, therefore, satisfied that this is nothing but an attempt by the ex-director(s) of the company in liquidation to cause hindrance in applicant getting complete right and title to the property purchased by applicant in a sale conducted by Official Liquidator and confirmed by this Court. This attempt by the ex-director represented by Mr. Damodar, I would say, is an attempt to again interfere with the administration of justice. The terms and conditions of sale that was issued by Official Liquidator in clause 13 provides that "*The purchaser shall be liable to pay taxes, charges, fees and outgoings in respect of immovable property from the date of confirmation of sale in their favour only and that any earlier taxes, charges, fees and outgoings dues payable to any authorities till the date of sale will be paid out of the sale proceeds in accordance with the provisions of the Companies Act, 1956 read with Companies (Court) Rules, 1959 by the Official Liquidator, High Court, Bombay*".

11 Even the Deed of Assignment of Leasehold Rights executed between Official Liquidator and applicant clause 10 provides that "*The Purchaser/Assignee shall be liable to pay all statutory dues, if any, due and payable on the said property for the period after the date of order of confirmation of sale.*

12 Therefore, applicant, viz., assignee/purchaser will be liable for dues payable to respondent nos.3 and 4 only from the date of assignment/sale and this would ofcourse include all transfer charges etc. but any dues payable to respondent no.3 or 4 upto the date of assignment of leasehold rights will have to be paid by company in liquidation through Official Liquidator.

13 If this Court entertains such opposition of ex-directors, no party that has purchased a property in an auction by Official Liquidator and confirmed by the Court will have any faith in judiciary. No buyer will ever come forth to buy any asset.

14 In the circumstances, the application is disposed as under :

(a) Respondent no.3, who is not present in Court though served (there is an affidavit of service of one Atmaram Vaman Patade affirmed on 3rd July, 2017) shall transfer and execute all such documents and take all such steps for transfer of the premises, i.e., land situated at Plot No.204/C, Panoli Industrial Estate, GIDC, Survey no.204/D, 241/D, Village Sanjali, Taluka Ankleshwar, District Bharuch, Gujarat, in the name of applicant.

(b) Respondent no.4 shall also transfer the electrical connections/meter(s) in the name of applicant and execute all documents and take all such steps to give effect thereto.

(c) Official Liquidator shall consider the affidavits of proof of debt filed by respondent nos.3 and 4 and dispose the same in accordance with law.

COMPANY APPLICATION NO.377 OF 2016

Having considered the affidavit in support, application is allowed and accordingly disposed in terms of prayer clauses – (a) and (b).

(K.R. SHRIRAM, J.)