

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

**COMPANY APPLICATION NO. 575 OF 2016
IN
COMPANY PETITION NO. 1044 OF 1997**

Mohini Ashok Manghnani ... **Applicant**

IN THE MATTER BETWEEN

Paper Chase International ... **Petitioner**

V/s.

The Official Liquidator's
M/s. B.K. Paper Mills Ltd. (in Liqn) ... **Respondent**

Mr. Prathamesh Kamat a/w Mr. C.N. Mehta I/b MMK Law Associates for the Applicant.

Ms. Geeta Shastri, AGP for Respondent No.1/State.

Mr. Rakesh Reddy for Official Liquidator.

Mr. Suhas Sawant, Dy. Official Liquidator present.

**CORAM : K.R. SHRIRAM, J.
DATE : 03rd OCTOBER, 2018**

P.C.:

. This application is under Section 536(2) of the Companies Act, 1956 to ratify the sale of the office premises situated at 1318, 13th floor, Dalamal Towers, Nariman Point, Mumbai – 400 021 ('said premises') which Applicant states was purchased vide Agreement for Sale dated 08.08.2003 and to direct the Liquidator to handover possession of the said premises.

2 It is the case of Applicant, whose husband owns the premises adjacent to the said premises being office No. 1317 that Applicant was looking for an office premises for expansion of husband's business. Applicant states that on inquiry, it came to light that the said premises which was owned by the Company (in Liquidation) was available for sale. Applicant then negotiated with the Company (in Liquidation) to purchase the said premises for Rs.27,03,500/-. Applicant thereafter, through Applicant's Advocate published a notice on 06.06.2003 in 'Free Press Journal' and in 'Nav-Shakti' on 09.06.2003 inviting claims/objections. As no claim or objection was received, Applicant applied to the society namely Dalamal Towers Premises Co-operative Society Ltd. for no objection, which was accorded and hence, Applicant went ahead in entering into an Agreement for Sale on 08.08.2003 and also paid Rs. 27,03,500/-. However, when Applicant went to register the document, it came to light that the market value of the premises was somewhere around Rs.76 lakhs and stamp duty on the market value was paid. It is also stated that the society, thereafter, transferred the share certificates in favour of Applicant and communicated, by a letter dated 23.08.2003, that the Society, in its committee meeting held on 22.08.2003, has decided to enroll Applicant as member of the society subject to approval of General Body.

3 Before we proceed further, the following dates will be relevant.

i) 04.12.1997 - Company Petition No. 1044 of 1997 was presented.

ii) 29.09.2005 - Petition was admitted and provisional liquidator was appointed.

iii) 17.08.2006 - order of winding up was passed.

4 As noted above, the sale deed is dated 08.08.2003, i.e., entered during the pendency of this petition. During the pendency of this petition, some of the individuals who had given deposits to the Company (in liquidation) filed complaint with the Economic Offences Wing ('EOW') which, in exercise of the power under Section 102 of the Criminal Procedure Code, 1973, attached the said premises on 29.12.1999. The complaint was registered for offences under Sections 3 and 4 of the Maharashtra Protection of Interests of Depositors ('MPID') Act, read with Sections 406, 420 and 120(B) of the Indian Penal Code against one Mr. Samir Lakhani who was the Managing Director of Company (in Liquidation) and two others. To the affidavit in reply by Respondent No.2, namely EOW, is annexed a copy of F.I.R. dated 04.11.1999 and copy of the Panchnama dated 29.12.1999 attaching the said premises. Also annexed to the affidavit is a copy of letter dated 02.01.2000 addressed by the Senior Inspector of Police, Crime Branch to the Chairman/Secretary of Dalamal Tower Premises Co-operative Society Limited informing the society that the said premises with another premises in the same building of the Company (in Liquidation) has been attached and the said premises should not be transferred or parted with without permission from the Crime Branch or Competent Court.

5 After the Company has been wound up, the said premises naturally has to be handed over to Official Liquidator. Ms. Shastri in fairness and on instruction stated that the police has no objection to handover the premises to Official Liquidator because the provisions under the MPID Act is only to help the investors to recover their money from the Company and since as per Official Liquidator's Report, all the investors have lodged their claim with Official Liquidator and most of them have been paid of, the Official Liquidator can continue with the process of paying all the investors. In the Official Liquidator's reply dated 27.02.2008, it is stated that Ex-Director of the Company Samir Lakhani has deposited Rs.22,40,00,000/- with the Official Liquidator and 100% dividend has been paid up to 7th supplementary list and only claim of 17 investors for a total amount to Rs.11,04,000/- is pending for adjudication.

6 Ms. Shastri at the same time also points out, and I agree with Ms. Shastri, that Court should not ratify the transaction because Applicant was always aware about the attachment by EOW, and atleast should be deemed to have been aware because Applicant's husband admittedly owned the adjacent premises No. 1317. Ms. Shastri points out that the said premises had been sealed on 29.12.1999 and nowhere in the affidavit-in-support Applicant has stated that between December 1999 till 2003, Applicant has seen the office premises unsealed or open. It is also stated that notice of attachment has been pasted on the door of the said premises. Applicant was aware that this premises has been attached because Applicant has

paid only Rs.27,03,500/- for a premises which was worth in excess of Rs.76,00,000/- and paying stamp duty on Rs.76,00,000/- would not make the Applicant a person of virtue. Ms. Shastri also pointed out that EOW has registered a complaint bearing CR No. 13 of 2004 under Sections 409, 120(B) of the Indian Penal Code against Ex-Managing Director of the Company (in Liquidation) Mr. Samir Lakhani and one Abrat Wadhwani, the then Manager of Dalamal Towers Premises Co-operative Housing Society for breach of trust and conspiracy. According to Respondent No.2, the Manager of the society in connivance with the Ex-Managing Director of the Company (in Liquidation) has deliberately concealed the letter dated 02.01.2000 addressed to the Society by EOW and even the share certificates issued are by forging signatures of the office bearers of the said society. Ms. Shastri stated that the said Criminal proceedings are still pending. In short, what Ms. Shastri submitted was that Applicant, particularly because Applicant's husband was holding the adjacent office, and it is the Applicant's case that the Applicant was looking for the premises to expand the business of the husband, the Applicant should have been aware that the said premises has been sealed by EOW/Police.

7 Mr. Kamat submitted that Applicant, to ratify the sale was ready and willing to pay a sum of Rs.80,00,000/- to the Official Liquidator and also pay the outstanding dues of the society which is today in the region of approximately Rs.30,00,000/- and thereafter claim the society charges from the Official

Liquidator.

8 Mr. Reddy strongly opposed because according to Mr. Reddy and of course according to Ms. Shastri, the premises will be worth about Rs.2 Crores today and if the Applicant is willing to pay market value as on date, the Court may consider exercising its discretion to ratify the sale. Otherwise, the transaction as it is already void under Section 536(2), the Court should put up the said premises for re-auction. Ms. Shastri has no objection if the Court re-auctions the premises and the sale proceeds are handed over to the Official Liquidator to be made available for distributing it to the Creditors in accordance with law. Ms. Shastri agreed that even the police having attached the premises in December 1999 have not taken any steps to even dispose of the said property and therefore, Official Liquidator may do the needful. In my view, if Cuffe Parade Police Station hands over the possession of the said premises to Official Liquidator, the police will also be able to close one file. Moreover, the distribution to all the depositors cannot be made by the police and it has to be made in accordance with law, only by Official Liquidator with whom all the depositors have lodged their claim.

9 In the facts and circumstances of the case, I am inclined not to accept the Applicant's case that Applicant was bonafide purchaser of the said premises. The Agreement of Sale dated 08.08.2003 is declared void.

10 Respondent No.2/Cuffe Parade Police Station, shall, within one week from today handover the possession of the said premises to the Official Liquidator and

shall also handover the keys to the Official Liquidator. Official Liquidator shall within 2 days of receiving possession from the police, take physical possession of the premises, change the locks and re-seal the premises.

11 The Official Liquidator shall, on or before 17.10.2018, hold a meeting of concerned Advocates and parties for settling the terms and conditions for auction sale and also issue public advertisement of auction in the newspapers 'Free Press Journal' (in English) and 'Navshakti' (in Marathi) and in 2 property sale websites for sale of the said premises.

12 Inspection by bidders to be held from 17.10.2018 to 24.10.2018.

13 Last date of submission of bids to the Official Liquidator by 26.10.2018.

14 Opening of bids and confirmation of the offer by the highest bidder by the Court on 31.10.2018 at 3.00 p.m.

15 Parties interested in bidding will give earnest money deposit of 25% of the offer and if the offer is enhanced, the balance 25% within 48 hours of acceptance of offer, and the remaining sale price within 4 weeks of acceptance of offer.

16 The costs and expenses of publication and sale as mentioned above, shall be paid by the Official Liquidator from the funds that the Ex-Director has given to the Official Liquidator and that shall be redeposited first from the sale proceeds.

17 It is made clear that the Applicant, if she wishes, may also bid for the said premises.

18 Application disposed.

19 Mr. Kamat seeks stay on the sale of the premises. Stay refused.

(K.R. SHRIRAM, J.)