

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

COMPANY APPLICATION NO.470 OF 2015

IN

COMPANY PETITION NO.893 OF 1997

Five Fate Infrastructure Pvt. Ltd.Applicant

IN THE MATTER BETWEEN :

IIT Capital ServicesPetitioner

Vs.

The Official Liquidator for
M/s. Amrut Industries Limited and Ors.Respondents

Shri Rahul Narichania, senior advocate a/w. Shri Prathamesh Kamat,
Shri Zoeb Cutterywala and Shri Vikram Kamath I/b. Kochhar and Co. for
applicant.

Shri S.S. Prasad, senior advocate I/b. Shri Sahil Mahajan for respondent
no.2.

Shri Sahil Mahajan for respondent no.3.

Shri Sharan Jagtiani a/w. Ms. Surabhi Agarwal for Official Liquidator.

Shri Mahendhar Aithe, Company Prosecutor for Official Liquidator present.

CORAM : K.R.SHRIRAM, J.

RESERVED ON : 17th OCTOBER 2018

PRONOUNCED ON : 26th NOVEMBER 2018

P.C.:

1 This application has been taken out for various reliefs, but the
prayers in support of which submissions were made are prayer clauses – (a)
and (b) and they read as under :

(a) That this Hon'ble Court be please to declare that :

*(i) the sale of the property of the Company (in liqn.) situated at Survey
No.122 and 128 comprising 21 Acres and 22 Guntas of Boppidi Village
and 1 Acre 80 cents in Survey No.6/2 Chinna Pasumarru, Village of
Chilakaluripet Mandal, Guntur District, Andhra Pradesh is illegal, non-
est and void ab-initio;*

*(ii) all subsequent sale, transfer, possession, encumbrances subsequent to
the winding up of the company (in liqn) be declared null and void;*

(b) That this Hon'ble Court be pleased to cancel and revoke the said

transactions of sale executed by M/s. Amrut Industries, Company (in liqn.), which have taken place after the order directing the Liquidation of Amrut Industries has been passed in respect of the said property situated at Survey No.122 and 128 comprising 21 Acres and 22 Guntas of Boppidi Village and 1 Acre 80 cents in Survey No.6/2 Chinna Pasumarru, Village of Chilakaluripet Mandal, Guntur District, Andhra Pradesh and direct the Official Liquidator to take immediate possession of the same.

2 The application initially was taken out only against the first three respondents. Later on respondent no.4 and no.5 to no.158 were added. Though applicant has proceeded on the basis that the company – M/s. Amrut Industries Limited (hereinafter referred to as the company) has been ordered to be wound up, Official Liquidator stated that the company has not been finally ordered to be wound up. Provisional Liquidator, however, was appointed even before the petition was admitted and after the petition was admitted nothing has been done to wind up the company.

3 Applicant has approached this Court seeking the prayers as quoted above as an assignee of the rights of three creditors, viz., Hong Kong and Shanghai Banking Corporation (HSBC), Global Trust Bank (GTB) and Shamrao Vithal Co-operative Bank (SVC Bank). According to applicant, it has taken over the entire debt of the company to HSBC, GTB and SVC Bank and all its assets are under the control of Official Liquidator. Applicant is claiming a sum of Rs.46,45,51,584/- as on 11th March 2015 being the amount due with interest calculated separately as payable to each assignor. The assets, which is the subject matter of prayer clauses – (a) and

(b), are the properties situated at Survey No.122 and 128 comprising 21 Acres and 22 Guntas of Boppidi Village and 1 Acre 80 cents in Survey No.6/2 Chinna Pasumarru, Village of Chilakaluripet Mandal, Guntur District, Andhra Pradesh (hereinafter referred to as Guntur properties).

4 According to applicant, pursuant to a search conducted in the Office of the Sub Registrar, Andhra Pradesh and from the statement of encumbrance, it came to light that the Guntur properties have been sold vide an Agreement of Sale dated 18th December 1997 signed and executed at Hyderabad by the company in favour of one Shri Yarramreddy Narsimha Reddy (Y. Narsimha Reddy) for a total consideration of Rs.12,75,000/-. According to applicant, since the petition was lodged on 15th October 1997 and Provisional Liquidator was appointed on 18th December 1997, also the date on which the Agreement of Sale was entered into, it amounts to disposition of an asset of the company after the petition was presented and therefore, is void as per the provisions of Section 536 (2) of the Companies Act, 1956. According to applicant, the sale, therefore, be declared void.

5 Shri Jagtiani, counsel for Official Liquidator submitted :
that under Section 536 of the Companies Act, 1956, any disposition of the property after the commencement of winding up, shall, unless the Court otherwise orders, be void. Shri Jagtiani submitted that therefore, as Section 536 reads, and I agree with him, any disposition

automatically becomes void unless the company or the buyer makes an application to validate the sale or the Court on an application either by the company or the buyer orders otherwise.

relying upon *Navjivan Mills Limited, In re.*¹, that this would be the position even if the company is not ordered to be wound up and only Provisional Liquidator is appointed.

relying upon judgment of the Division Bench of this Court in *Kamani Metallic Oxides Limited V/s. Kamani Tubes Limited*² that the transactions/dispositions are not void *ab initio* but become void on the passing of an order for winding up or appointment of Provisional Liquidator and thus the voidness takes effect on the passing of the order of winding up or appointment of Provisional Liquidator. Shri Jagtiani further submitted that by virtue of the legal fiction in Section 441(2) it then relates back to the date of presentation of the petition for winding up. Shri Jagtiani also relied upon *Pankaj Mehra and Anr. V/s. State of Maharashtra and Ors.*³.

even though Section 536(2) begins with the words “in the case of a winding up by the Court” it is settled position that Section 536(2) to be applicable even where voidness of any disposition takes effect on the appointment of Provisional Liquidator and therefore, it is immaterial that respondent company has not been ordered to be finally wound up.

1. 1986 Company Cases 201 Guj

2. (1984) 56 Comp Cas 19

3. (2000) 2 SCC 756

Since Provisional Liquidator has been appointed on 18th December 1997, the date on which the Agreement of Sale has been entered into and since Section 536(2) also provides “..... made after the commencement of the winding up” and commencement of winding up under Section 441 is the date of presentation of the petition and the petition has been lodged on 15th October 1997, the Agreement dated 18th December 1997 is void.

since the Agreement of Sale itself is void, the question of validating the sale does not arise and in this case, respondent nos.2 to 158 have not approached this Court to validate the sale and therefore, the question of Court granting a sanction does not arise.

6 I agree that all dispositions will be void unless validated. In such a situation, this application itself will not be maintainable and will have to be dismissed. In that case, respondent nos.2 to 158 will have to file a fresh application praying for validating the sale. In my view, that would only amount to multiplicity of proceedings because respondents (excluding respondent no.1 – Provisional Liquidator) have raised all defences that they would have taken in an application for validation, in the affidavits filed in opposing this application.

7 Shri Jagtiani also submitted that the Deed of Conveyance dated 18th December 1997, in any event, was not registered and therefore, it does

not convey any right, title or interest over the Guntur properties in favour of Y. Narsimha Reddy and it came to be stamped only on 29th November 2002 when the complete stamp duty of Rs.1,65,250/- was paid to Revenue Divisional Officer, Narasaraopet. He further submitted that since the Deed of Conveyance was not registered on 18th December 1997, the sale had not been completed on 18th December 1997 and therefore, is void. In any event, it was completed after appointment of Provisional Liquidator and relates back to the date of commencement of the winding up petition.

8 It is respondents' case that the Guntur properties did not belong to the company when the petition was presented but it belonged to Y. Narsimha Reddy, who has not been made a party to this application by applicant despite the prayer that the sale to him should be declared void and therefore, the question of applying for any leave or validation under Section 536 of the Companies Act, 1956 does not even arise. For this, respondents relied upon an order of Debt Recovery Tribunal passed on 4th November 2009. Shri Narichania for applicant submitted that the application of Y. Narsimha Reddy in the Debt Recovery Tribunal was to validate the sale under Section 536 and Section 537 of the Companies Act, 1956.

Shri Prasad for respondent no.2 submitted that even before the initiation of the proceedings of liquidation against the company, the company had entered into an Agreement for Sale on 12th August 1995 with

Y. Narsimha Reddy followed by Deed of Conveyance dated 18th December 1997 executed between the company and Y. Narsimha Reddy which was duly stamped and registered. According to respondents, pursuant to meeting of the Board of Directors of the company held on 10th November 1997, before Provisional Liquidator was appointed, a resolution was passed to execute conveyance in respect of the Guntur properties in favour of Y. Narsimha Reddy and Deed of Conveyance was registered on or about 26th April 2006. Y. Narsimha Reddy also paid stamp duty of Rs.1,65,250/- inclusive of registration fees. Shri Prasad submitted that under Section 49 of the Transfer of Property Act, such sale in favour of Y. Narsimha Reddy will take effect from the date of the Agreement of Sale and not from the date of the Deed of Sale and therefore, long before the initiation of liquidation proceedings, Y. Narsimha Reddy has obtained title to the Guntur properties. It was also submitted that Provisional Liquidator took possession of the Guntur properties on 13th January 2003 under wrong and/or incorrect impression that the said Guntur properties belong to the company.

9 It was further submitted on behalf of respondents that SVC Bank had filed affidavit in the recovery proceedings initiated by HSBC Bank before the Debt Recovery Tribunal for attaching the Guntur properties. Official Liquidator as Provisional Liquidator of the company was also party to the proceedings before the Debt Recovery Tribunal. Y. Narsimha Reddy

took out a misc. application in the recovery proceedings before the Debt Recovery Tribunal to submit that the Guntur properties actually belong to him and Official Liquidator should be directed to hand over possession of the said Guntur properties to Y. Narsimha Reddy and also the Debt Recovery Tribunal should set aside recovery proceedings against the said Guntur properties. The Debt Recovery Tribunal, by an order dated 4th November 2009, allowed the application of Y. Narsimha Reddy and concluded that the Agreement for Sale was executed on 12th August 1995 which was much prior to 18th December 1997, the date of the appointment of Provisional Liquidator and mortgage created on 16th April 1996 in favour of SVC Bank and therefore, the Guntur properties belonged to Y. Narsimha Reddy. This order attained finality because neither HSBC nor SVC Bank or Provisional Liquidator challenged the said order. Respondents submitted that Debt Recovery Tribunal was the appropriate forum to which SVC Bank had approached for recovering the Guntur properties and for its sale and Debt Recovery Tribunal gave a finding that Guntur properties belonged to Y. Narsimha Reddy and not the company. Therefore, the question of approaching the Company Court under Section 536, did not arise.

10 Shri Prasad further submitted that in any event, the sale price of Rs.12,75,000/- was much more than the then market value for the Guntur properties and therefore, the Court should consider the sale was in the interest of the company. He also submitted that subsequently, to put an

end to the dispute with SVC Bank, Y. Narsimha Reddy also paid a sum of Rs.60,00,000/- to SVC Bank on 24th November 2010 by which SVC Bank also decided to cancel and delete the charge recorded on the Guntur properties with the Registrar of Companies.

Respondents also filed an affidavit of one Dr. K. Shivaram Krishna affirmed on 16th October 2018 to submit that the market value of Guntur properties in 1995-1998 was Rs.22,100/- per Acre for Survey No.122 in Boppudi Village, Rs.19,500/- per Acre for Survey No.128 and Rs.15,000/- for Survey No.6/2A at Chinnapasumaruru Village, which would mean that even the amount of Rs.12,75,000/- paid to the company pursuant to Agreement for Sale dated 12th August 1995 was much higher than the market value. It was submitted that, therefore, Y. Narsimha Reddy having paid Rs.12,75,000/- to the company and Rs.60,00,000/- to SVC Bank on behalf of the company to cancel the charge of SVC Bank on Guntur properties, means the company has received Rs.72,75,000/- for a property which at the relevant time was not even worth Rs.10 lakhs. This Court should, therefore, validate the sale on the ground that it was a bonafide transaction and it was for the benefit of and in the interest of the company.

11 Shri Prasad submitted that the Court has an absolute discretion to validate the transaction and this discretion is controlled only by the general principles which applied to every kind of judicial discretion. The Court must have regard to all surrounding circumstances and if, from

all surrounding circumstances, it comes to the conclusion that the transaction should not be void, it is within the power of the Court under Section 536(2) to say that the transaction is not void. Shri Prasad submitted that Debt Recovery Tribunal was the forum which had the jurisdiction on an application by secured lenders to take recovery proceedings against the Guntur properties and in those proceedings, Debt Recovery Tribunal has come to a finding that the Guntur properties belong to Y. Narsimha Reddy and not the company and this position has been accepted by SVC Bank, HSBC and Official Liquidator and these are the surrounding circumstances which should persuade the Court to conclude that the transaction was not void. Shri Prasad submitted that Y. Narsimha Reddy having paid Rs.72,75,000/- for the Guntur properties (Rs.12,75,000/- to the company and Rs.60,00,000/- to SVC Bank) it should be found that the transaction was for the benefit of and in the interest of the company.

12 Shri Prasad also submitted that applicant has come to this Court with unclean hands. It was submitted that in the Deed of Assignment relied upon by applicant, it was expressly provided that the Debt Recovery Tribunal has held that Guntur properties belong to Y. Narsimha Reddy and against that order, SVC Bank has not preferred any appeal and the said order has become final and in view thereof the Guntur properties was not subject of the assignment. Shri Prasad submitted that the recital clause (D) of the Deed of Assignment also makes it clear that applicant was purchasing

the debts of SVC Bank relating to the company excluding the Guntur properties. This has not been even disclosed by applicant in the affidavit in support of the application and interim orders have been obtained by suppressing this material fact. Shri Prasad submitted that Shri Narichania's submissions that applicant has taken assignment of three banks, including GTB and as GTB was not part of the proceedings before the Debt Recovery Tribunal, it was open to GTB to make this application is baseless. Shri Prasad submitted that GTB is not a secured creditor and that there has been a total suppression of factum of Debt Recovery Tribunal order in the present application. Shri Prasad added, all the three creditors entered into Memorandum of Understanding (MOU) dated 7th May 2004 whereby HSBC, a secured creditor and one of the assignor, was designated as a convenor for recovery of dues from the company and applicant obtained Assignment Deed from GTB, an unsecured creditor on 25th/26th March 2013. Immediately thereafter, applicant obtained Assignment Deed dated 6th May 2013 from SVC Bank and in this Assignment Deed, it has been specifically mentioned that the Assignment is subject to the order of the Debt Recovery Tribunal and Guntur properties were specifically excluded. Therefore, Shri Prasad contended that it is not open to applicant to plead that the order of Debt Recovery Tribunal is not binding on GTB, in as much as GTB being aware of the exclusion of Guntur properties from the Assignment Deed of SVC Bank, applicant still executed the Assignment Deed for recovery of dues

from the company. Shri Prasad also submitted that GTB is not applicant and applicant has not approached this Court only on the basis of the assignment of GTB but relying on the assignment of debts by GTB, HSBC and SVC Bank and therefore, applicant is deemed to be aware about the fact that Debt Recovery Tribunal has finally concluded that the Guntur properties was that of Y. Narsimha Reddy and not of the company and by virtue of the assignment, applicant has also accepted that the Guntur properties was not part of the asset of the company. Shri Prasad also submitted that the application itself is malafide because the Assignment Deed executed by SVC Bank in favour of applicant is dated 16th May 2013 which specifically excluded the Guntur properties as it was covered under the order passed by the Debt Recovery Tribunal on 4th November 2009, whereas this application has been lodged only on or about 1st April 2015, almost two years after the assignment. Shri Prasad submitted that there is no explanation in the affidavit as to why after two years such an application was taken out in which this specifically excluded Guntur properties also is included.

Counsel for respondent no.3 adopted the submission of Shri Prasad.

13 Shri Narichania submitted that Debt Recovery Tribunal by directing Liquidator to hand over Guntur properties to Y. Narsimha Reddy had usurped power which is exclusively within the jurisdiction of the Company Court and hence, the order of Debt Recovery Tribunal is without

jurisdiction. Shri Narichania submitted that even though applicant has not disclosed the order passed by the Debt Recovery Tribunal in its application or of exclusion of Guntur properties from the Deed of Assignment dated 6th May 2013 applicant is still entitled to raise legal contentions or issues.

14 As regards applicant's case that Debt Recovery Tribunal had no jurisdiction or that it decided an application by usurping the powers of Company Court and hence non-disclosure of Debt Recovery Tribunal orders was not a serious issue, in my view, Debt Recovery Tribunal was only dealing with a claim petition made in respect of the Guntur properties which was proposed to be sold in execution of a Recovery Certificate issued by it and such an exercise of jurisdiction under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 is perfectly valid. It is also a settled position in law that a person who does not come to the Court with clean hands and a person who has suppressed material facts from the Court is not entitled to any indulgence from the Court. There is no explanation given by applicant for not disclosing before the Court the order passed by Debt Recovery Tribunal or about the non-disclosure of exclusion of Guntur properties from the Assignment Deed obtained from SVC Bank.

15 Shri Narichania, Shri Jagtiani and Shri Prasad relied on the following judgments to make their submissions :

1) Kamani Metallic Oxides Limited V/s. Kamani Tubes Limited (Supra)

2) Suraj Lamp and Industries Pvt. Ltd. V/s. State of Haryana and Anr.⁴

3) G. Kadambari W/o. G. Kesavulu (Smt.) V/s. District Registrar of Assurances and Ors.⁵

4) International Coach Builders Ltd. V/s. Karnataka State Financial Corporation⁶

5) Jitendra Nath Singh V/s. Official Liquidator and Ors.⁷

6) Asha Bhosale V/s. M/s. Magnasound India Limited⁸

7) Kanchan Kumar Dhar, Official Liquidator (as liquidator of Star of Cochin Chit Schemes P. Ltd.) V/s. Dr. L.M. Visarai and Ors.⁹

8) Balvant N. Viswamitra and Ors. V/s. Yadav Sadashiv Mule (dead) through LRS. and Ors.¹⁰

9) Board of Industrial and Financial Reconstruction M/s. Jaipur Golden Transport Co. Ltd. M/s. Intec Polymers Limited V/s. M/s. Hindustan Transmission Products Limited¹¹

10) Pankaj Mehra and Anr. V/s. State of Maharashtra and Ors. (Supra)

11) Sunita Vasudeo Warke V/s. Official Liquidator and Ors.¹²

12) Navjivan Mills Limited, In re. (Supra)

13) Viral Filaments Limites, Mumbai V/s. Indusind Bank Limited, Mumbai¹³

14) Board for Industrial and Financial Reconstruction, In re V/s. Modi Stone Limited (In Liquidation), In re.¹⁴

4. (2012) 1 SCC 656

5. 2008 DGLS (AHC) 4289

6. (2003) 10 SCC 482

7. (2013) 1 SCC 462

8. Official Liquidator's Report No.188 of 2014 in Company Petition No.719 of 2002 judgment pronounced on 21st October 2015

9. (1986) 60 Comp Cas 746

10. (2004) 8 SCC 706

11. (2013) 176 Comp Cas 53

12. 2013 (2) Mh.L.J. 777

13. 2001 (3) Mh.L.J. 552

14. (2017) 202 Comp Cas 551 (Bom)

15) Allahabad Bank V/s. Canara Bank and Anr.¹⁵

16) State of Kerala V/s. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and Ors.¹⁶

17) M. Meenakshi and Ors. V/s. Metadin Agarwal (dead) by Lrs. And Ors.¹⁷

18) Janardhan Reddy and Ors. V/s. The State of Hyderabad and Ors.¹⁸

19) Daryao and Ors. V/s. State of U.P. and Ors.¹⁹

20) Gulabchand Chhotalal Parikh V/s. State of Gujarat²⁰

21) Union of India V/s. Nanak Singh²¹

22) Babu Rama Chaugule V/s. The Goodwill Bank Limited, Miraj²²

Having heard the counsels, I am holding in favour of respondent no.2 to 158. Many of the judgments, in my view, need not be gone into as I felt they were not really germane to the issue at hand.

16 Section 536 (2) of the Companies Act, 1956 reads as under :

536. Avoidance of transfers, etc., after commencement of winding up.

(1)

(2) In the case of a winding up by or subject to the supervision of the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

15. (2000) 4 SCC 406

16. (1996) 1 SCC 435

17. (2006) 7 SCC 470

18. AIR 1951 SC 217

19. AIR 1961 SC 1457

20. AIR 1965 SC 1153

21. AIR 1968 SC 1370

22. AIR 1973 Bombay 342

Section 441 (2) of the Companies Act 1956 reads as under :

441. Commencement of winding up by Court.

(1)

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

17 Therefore, in the case of a winding up by the Court, any disposition of the property of the company made after the commencement of the winding up, shall, unless the Court otherwise orders, be void. Winding up of the company by the Court is deemed to commence at the time of presentation of the petition for winding up.

18 Before we proceed further, the following dates and events will be necessary to be kept in mind:

<i>Date</i>	<i>Particulars</i>
12 th August 1995	Agreement for Sale between the company and Y. Narsimha Reddy for Guntur properties.
12 th August 1995	Rs.3 lakhs paid as part consideration by Y. Narsimha Reddy to the company.
4 th September 1995	Rs.3 lakhs paid as further part consideration by Y. Narsimha Reddy to the company.
15 th October 1997	Winding up petition lodged against the company.
10 th November 1997	Resolution for conveyance of Guntur properties passed by the company.
18 th December 1997	Order passed appointing Provisional Liquidator.
18 th December 1997	Agreement of Sale of Guntur properties entered into between the company and Y. Narsimha Reddy at Hyderabad.
18 th December 1997	Balance Rs.6,75,000/- paid by Y. Narsimha Reddy to the company.
6 th July 1998	Petition admitted and directions for advertising the petition passed.

18 th November 2002	Stamp duty with penalty amounting to Rs.1,65,250/- paid on the Agreement of Sale.
24 th December 2002	Application by Y. Narsimha Reddy to mutate the Guntur properties in his name.
6 th January 2003	Letter from Y. Narsimha Reddy to Provisional Liquidator received by Office of Official Liquidator on 12 th March 2003 informing Official Liquidator that he has purchased the Guntur properties, paid full consideration and as per his knowledge, the Guntur properties did not figure in the list of assets taken by Official Liquidator as it was deleted after payment.
13 th January 2003	Official Liquidator took possession.
26 th April 2006	Guntur properties transferred in the name of Y. Narsimha Reddy by the Revenue Divisional Officer.
20 th September 2007	Documents registered and Conveyance Deed registered.

19 I have to note that Official Liquidator did not have any material to show that the Guntur properties form part of the fixed assets of the company on the date the petition was lodged. Shri Jagtiani agreed that there is nothing on record to indicate that even in the revenue records was there any evidence to show that the Guntur properties was registered in the name of the company. Shri Jagtiani also had no explanation as to why Provisional Liquidator did not challenge the Debt Recovery Tribunal's order dated 4th November 2009. Shri Jagtiani had also nothing on record to indicate what Provisional Liquidator did between 13th January 2003 until the present application was taken out in 2015. Shri Jagtiani also candidly agreed that in none of the Liquidator's Reports taken until now there has been any challenge to the sale of the Guntur properties.

20 Shri Jagtiani submitted that it was for the purchasers to plead that they had purchased the property at market price, either by filing reply or by an application and since this has not taken place, there is no basis to validate the transaction in respect of Guntur properties before this Court.

21 The procedure laid down under Section 536 of the Companies Act, 1995 is only in respect of disposition of properties of the company or the assets of the company after presentation of the company petition. The Debt Recovery Tribunal by its order dated 4th November 2009 had concluded that the Guntur properties had been sold by the company to Y. Narsimha Reddy on 12th August 1995 and it belonged to Y. Narsimha Reddy and not the company. This order attained finality as SVC Bank to which it was charged accepted that conclusion. The Provisional Liquidator also accepted it by not challenging the order and by not filing any Liquidator's report challenging the same. Even otherwise, the market value and certificates as on the relevant date has been filed and such certificates issued by the competent authority amply show that the price for which the Guntur properties were sold to Y. Narsimha Reddy was far more than the market vlaue. In addition, Y. Narsimha Reddy also paid Rs.60 lakhs to SVC Bank which was effectively a debt of the company and discharged the liabilities of the company to SVC Bank.

22 None of the judgments relied by Shri Narichania and Shri Jagtiani have any bearing on the controversy in the present case as Guntur properties were not in possession of the company at the time of the commencement of winding up. It is settled law that once a winding up order is passed, the undertaking and the assets of the company comes under the control of the Liquidator whose statutory duty is to realize them and to pay its creditors from out of the sale proceeds. No new rights can thereafter be created and no uncompleted rights can be completed and doing so would be contrary to the creditors' right to have the proceeds of the assets distributed among them pari passu. It is also settled law that any bona fide transaction carried out and completed in ordinary course of current business can be sanctioned by the Court. On the other hand, it will not allow the assets to be disposed of at the mere pleasure of the company and because the fundamental principle of equality amongst creditors cannot be violated. Even if a disposition of the property was before the order of winding up, the Court has to come to the conclusion that the transaction was in the best interest of the company. One of the grounds to come to a conclusion as to whether the transaction was in the best interest of the company is whether the transaction was arrived at on the basis of the prevailing market value. In *Modi Stone Limited (Supra)* the Court observed that even an oral application for validation of the transaction before the Company Court under Section 536 (2) of the Companies Act, 1956 can be considered.

23 The position in this case is that the Debt Recovery Tribunal in its order dated 4th November 2009 has come to a conclusion that the Guntur properties belonged to Y. Narsimha Reddy. Paragraph 4 of the said order reads as under :

4. In view of above discussion, I am of the opinion that the agreement for sale was executed on 12.08.1995 followed by the final deed of conveyance dated 18.12.1997. Later on the stamp duty of Rs.1,65,250/- inclusive of registration fees was also paid through challan and the certification had also been obtained in respect of the same, which is mentioned on the reverse side of deed of conveyance. Under Section 5-A of Andhra Pradesh Pattadar Pass Book, the sale transaction is regularized and the encumbrance certificate had also been issued to that effect. Though the final agreement was conveyed on 18.12.1997 and stamp duty was paid later on, but sale transaction was regularised under Section 5-A of Andhra Pradesh Pattadar Pass Books Act, 1971. In view of the same, the registration of documents is compulsory and is ineffective until registered, but when registered it would operate from the date of its execution and not from the date of its registration. The Official Liquidator was appointed on 18.12.1997 and the mortgage was created on 16.04.1996 in favour of Shamrao Vithal Co-operative Bank. However, the agreement for sale was executed on 12.08.1995 which is much prior to the date of the appointment of Official Liquidator and mortgage created in favour of Shamrao Vithal Co-operative Bank. Hence, the provisions of Companies Act relied upon by the Shamrao Vithal Co-operative Bank are not applicable to the sale transaction between the intervener and the applicant. In view of the observation made above, I am convinced that the said property belong to the intervener.

.....

24 Shri Narichania submitted that the Debt Recovery Tribunal had no authority to direct Provisional Liquidator to hand over the Guntur properties to Y. Narsimha Reddy. It was also Shri Jagtiani's submission that Debt Recovery Tribunal could not have granted prayer clause (a) whereby directing Official Liquidator, High Court, Bombay to forthwith release and/or handover possession of Guntur properties to Y. Narsimha Reddy.

The fact is that the order has been accepted as final and binding by the Assignors of applicant and Official Liquidator as correct because nobody challenged the said order. The Debt Recovery Tribunal has categorically held that Guntur properties belonged to Y. Narsimha Reddy and not the company and therefore, it could not have been the subject matter for sale in execution of Recovery Certificate. It is evident from the status report filed by Official Liquidator that Official Liquidator acted as an official for the purpose of sale assets and continued to obtain orders from the Tribunal from time to time. Therefore, Debt Recovery Tribunal never appointed any private receiver nor did it relieve Official Liquidator and prayer (a) is a consequential direction given to the person in charge of the properties before the Debt Recovery Tribunal and not to Official Liquidator of this Court. It is evident from Official Liquidator's report, including the latest report dated 30th July 2018 and as fairly conceded by Shri Jagtiani, that the Guntur properties were not shown in 7/12 extract or the like, in the company's name. The possession of Guntur properties was with Y. Narsimha Reddy and thereafter, it has been in possession of respondent nos.2 and 3 and later with purchasers from these respondent nos.2 and 3. The Apex Court in *State of Kerala V/s. M.K. Kunhikannan Nambiar Manjeri (Supra)* held that even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations and such an order will, in fact be effective inter parties until it is successfully avoided or

challenged in higher forum. In the case, *Janardhan Reddy V/s. State of Hyderabad*²³, the Apex Court held that it is well settled that if a Court acts without jurisdiction, its decision can be challenged in the same way as it would have been challenged if it had acted with jurisdiction, i.e., an appeal would lie to the Court to which it would lie if its order was with jurisdiction. In any event, there is no discussion as regards Liquidator's possession in the entire order of Debt Recovery Tribunal. In the operative part, the Debt Recovery Tribunal has said application disposed in terms of prayer clauses – (a) and (b) but when one reads the entire order holistically, the Debt Recovery Tribunal has not ousted the powers of the Court as submitted by Shri Narichania but only come to the conclusion that the Guntur properties belonged to Y. Narsimha Reddy and not the company. It has to be noted, at the cost of repetition, HSBC and SVC Bank, who were assignors of the present applicant and Official Liquidator have been parties to the said order. The order will naturally be binding on applicant. Moreover, applicant was all the time aware about the said order and in the Deed of Assignment, SVC Bank has expressly referred to this order and expressly excluded the Guntur properties in the assignment and therefore, it was bounden duty of applicant to disclose all these things in the affidavit in support of the application. This was a very valid and important point that should have been brought to the forefront. In my view, applicant is guilty of suppressing

23. AIR 1951 SC 217

this very relevant fact from the Court. It has to be also noted that the Deeds of Assignment were not produced by applicant but they were made available only when respondents requested this Court to direct applicant to provide the same and only pursuant to orders passed by this Court, applicant brought forth copies of the Deeds of Assignment. In my view, on this ground alone this application has to be dismissed.

25 The Debt Recovery Tribunal has come to a conclusion and it was an appropriate and correct forum in which Y. Narsimha Reddy had filed an application because SVC Bank had filed an affidavit in the recovery proceedings in the Debt Recovery Tribunal and had taken over the said Guntur properties and the Debt Recovery Tribunal came to a conclusion that Guntur properties belonged to Y. Narsimha Reddy. Moreover, Official Liquidator has not brought on record any document to indicate that the Guntur properties was forming part of the asset of the company when the petition was presented. Official Liquidator is only relying upon the Agreements entered into between the company and Y. Narsimha Reddy. Official Liquidator has not even challenged the findings of the Debt Recovery Tribunal and in any of the Official Liquidator's Reports filed upto this application was taken out, Official Liquidator has not questioned the transaction between the company and Y. Narsimha Reddy. Therefore, Official Liquidator has also accepted the fact that the Guntur properties actually belonged to Y. Narsimha Reddy. Therefore, the question of this

Court validating the sale between the company and Y. Narsimha Reddy does not arise.

26 Further, if the sale was in the best interest of the company, the Court can validate the sale. It is nobody's case that the ex-directors disposed the Guntur properties to defeat the rights of the creditors. In my view, the transaction was in the best interest of the company. We have to keep in mind that the Agreement for Sale was entered into on 12th August 1995. The consideration agreed was Rs.12,75,000/- against the market price of under Rs.10 lakhs. Moreover, on 12th August 1995, Y. Narsimha Reddy had paid Rs.3 lakhs to the company and on 4th September 1995 the company again received another Rs.3 lakhs from Y. Narsimha Reddy. The balance of Rs.6,75,000/- was received by the company on 18th December 1997. On the same day, the Deed of Conveyance was entered into at Hyderabad. It is nobody's case that the ex-directors knew about the appointment of Provisional Liquidator on 18th December 1997 and hurriedly entered into the Deed of Conveyance on the same date at Hyderabad. On that date, the entire consideration has been paid and the same is higher than the market value. The stamp duty of Rs.1,65,250/- was also paid on 18th November 2002. The Guntur properties were also mutated by the revenue authorities in favour of Y. Narsimha Reddy on 26th April 2006. The Conveyance Deeds have also been registered. Further Y. Narsimha Reddy has paid further sum of Rs.60,00,000/- to SVC Bank and thereby discharged the liability of the

company to SVC Bank. Therefore, the company has effectively received Rs.72,75,000/- with respect to the Guntur properties whose value was less than Rs.10 lakhs on the date of sale. To that extent, certainly the creditors had only benefited. If Y. Narsimha Reddy had not paid this Rs.60,00,000/- to SVC Bank, the liability of the company to SVC Bank would have been much much higher today and that would have certainly eaten into the dividend that other creditors might have received.

Therefore, I have no doubt that the company has only benefited by the sale.

27 In the circumstances, the application is dismissed with costs. Applicant to pay within four weeks from today a sum of Rs.3 lakhs as costs to respondent no.2, Rs.1 lakh as costs to respondent no.3 and Rs.2 lakhs as costs to Official Liquidator.

28 So far as other prayers, which were not argued, liberty to applicant to take out fresh application.

29 Mr. Kamat seeks stay. Stay refused.

(K.R. SHRIRAM, J.)