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

OFFICIAL LIQUIDATOR'S REPORT NO.136 OF 2017
IN
COMPANY PETITION NO.220 OF 2007

In the matter of the Companies Act, I of 1956

And

In the matter of Martol Petroproducts Private Limited (In Liqn.)

VVF Limited ....Petitioner

Mr. P. Atchuta Ramaiah, Official Liquidator present.
Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator present.
Mr. G.S. Bhat, ex-director of respondent company.
Mr. M.S. Topkar a/w. Ms. Vaishali Bhilare for respondent.

CORAM : K.R.SHRIRAM, J.
DATE : 25th JULY, 2018

P.C.:

1 This Official Liquidator's Report is filed to declare the sale of the property of the company in liquidation situated at B-4, Chandralok, Ground Floor, Plot No.1045, New Nanepada, Mulund (East), Mumbai 400 081 (the said flat) as null and void in terms of the provisions of Section 536 (2) and 537 (1) (b) of the Companies Act, 1956.

2 Mr. Aithe, Company Prosecutor for Official Liquidator states that he is restricting his submissions only with regard to provisions of Section 536 (2) of the Companies Act, 1956.

3 The said flat was an asset of the company in liquidation. Company Petition No.220 of 2007 was lodged on 8th November 2001. The petition came to be admitted on 26th November 2007 and the company was ordered to be wound up on 10th January 2011.

4 The said flat came to be sold by the company in liquidation during the pendency of the petition. The flat was sold pursuant to an Agreement dated 3rd November 2005 executed between the company and one Mr. Solomon Paul Salvis and Smt. Annie Solomon Salvis. The flat is admeasuring about 519.75 sq. ft. built up. The consideration paid was Rs.9,80,000/-. The purchasers of the said flat are not represented today because they sold the said flat to Mr. Topkar's clients pursuant to a Sale Deed dated 29th December 2010. The second sale happened after the petition was admitted and before the company was ordered to be wound up. Therefore, Official Liquidator has taken out this Official Liquidator's Report on the grounds that under Section 441 of the Companies Act, 1956, the winding up of the company by the Court shall be deemed to have commenced at the time of presentation of the petition for winding up and as this petition was presented on 8th November 2001, the first sale and also the second sale happened after the winding up commenced and hence the purchasers not having sought leave of the Court, the sale should be declared void.

5 The provision of Section 536 of the Companies Act, 1956 is in place because the law makers felt that after the petition for winding up commences there could be a situation when the company tries to dispose of its assets to defeat the claims of all the creditors. At the same time, they also felt that there could be a situation where there was genuine transactions like the one in this case. Therefore, the law makers were careful to provide in Section 536 (2) that any disposition of the property of the company made after the commencement of the winding up shall, unless the Court otherwise orders, be void. Therefore, all disposition will not be void and the Court had discretion to declare certain transactions not to be void. This is one such case where I am going to declare that disposition of the property shall not be void. The reason for that could be found in the Agreement for Sale dated 3rd November 2005 between the company in liquidation and the purchasers of the said flat.

6 Mr. Aithe states that the fact that the sale consideration of Rs.9,80,000/- was paid directly to Cosmos Co-operative Bank Limited account at its Mulund Branch is not disputed. Therefore, admittedly the money has been paid not to the company in liquidation or to ex-directors or anyone else but to Cosmos Co-operative Bank Limited. Why was the money paid to Cosmos Co-operative Bank Limited could be found in the recitals. In the recitals of the said Agreement, it is mentioned that the company in

liquidation had committed default in making repayment of the loan and hence Cosmos Co-operative Bank Limited initiated recovery proceedings against the company and its guarantors under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (SARFAESI Act) and rules made there under. The General Manger of Cosmos Co-operative Bank Limited was appointed as authorised officer under the provisions of SARFAESI Act, who took possession of the said flat to dispose the same either by public auction or by inviting tenders and private treaty to recover the company's dues. It is mentioned that Cosmos Co-operative Bank Limited had issued notice under Section 13 (2) of the SARFAESI Act and demanded from the company in liquidation the dues to be paid within 60 days and the company and its directors having failed to make the payment, the authorised officer took possession of the said flat under Section 13 (4) of the SARFAESI Act on 16th September 2005. Thereafter, the company in liquidation approached Cosmos Co-operative Bank Limited for its no objection to sell the flat to transferee which was granted subject to condition that the entire sale proceeds of the said flat be deposited in the loan account of the transferor, viz., the company in liquidation. As noted above, the entire sale consideration has been deposited in the loan account of Cosmos Co-operative Bank Limited.

7 Therefore, the transaction for sale of the asset of the company in liquidation was pursuant to steps taken by Cosmos Co-operative Bank Limited to recover its dues. The sale proceeds has been paid entirely to Cosmos Co-operative Bank Limited. Mr. Aithe states that under Rule 8 (8) of the Security Interest (Enforcement) Rules, 2002 sale by any method other than public auction or public tender, shall be on such terms between the secured creditor and the proposed purchaser in writing. Mr. Aithe states that SARFAESI Act and rule is a code by itself and if the sale is under the SARFAESI Act, there will be a sale certificate and not sale deed. Mr. Aithe was unable to show as to whether there is any bar in entering into such an agreement as relied upon by Mr. Topkar. Secondly, if at all any one had a grievance, it would be Cosmos Co-operative Bank Limited and admittedly the money has been paid to Cosmos Co-operative Bank Limited.

8 Mr. Topkar states that he is the second purchaser. Mr. Topkar states that in any event, the amount of Rs.9,80,000/- has been paid directly to Cosmos Co-operative Bank Limited. Mr. Topkar further states that if the bank had not entered into an agreement, which he does not have, the bank would not have handed over the share certificates to the transferee, who bought it from the company in liquidation and brings to the attention of the Court, page 187 and 188, in which the Society has endorsed the transfer to Mr. Solomon Paul Salvis and Smt. Annie Solomon Salvis on 15th January

2006 and to Mr. Topkar's clients on 24th July 2011. Moreover, any person, who can raise grievance under Rule 8 (8) in any sale can only be the secured creditor and not Official Liquidator.

9 In these circumstances, I am not inclined to hold that the sale by the company in liquidation to Mr. Solomon Paul Salvis and Smt. Annie Solomon Salvis on 3rd November 2005 and the subsequent sale to Mr. Topkar's clients by Mr. Solomon Paul Salvis and Smt. Annie Solomon Salvis on 29th December 2010 be declared void.

10 Official Liquidator's Report accordingly stands disposed.

(K.R. SHRIRAM, J.)