

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

COMPANY APPLICATION NO.87 OF 2019

IN

COMPANY PETITION NO.1066 OF 2015

Sukumar Properties Private Limited)....Applicant

IN THE MATTER BETWEEN :

Action Barter Private Limited)....Petitioner

V/s.

Shree Ram Urban Infrastructure Limited)....Respondent

WITH

COMPANY APPLICATION NO.89 OF 2019

IN

COMPANY PETITION NO.1066 OF 2015

KMV Realtors Private Limited)....Applicant

IN THE MATTER BETWEEN :

Action Barter Private Limited)....Petitioner

V/s.

Shree Ram Urban Infrastructure Limited)....Respondent

Mr.Prateek Sakseria a/w Mr.Mohit Arora, Mr.Shehzd A.K.Najam-es-sani I/by Maneksha and Sethna for applicants.

Mr.T.N.Tripathi a/w Ms.Kalyani Wagle I/by T.N.Tripathi and Co. for Official Liquidator.

[Mr.Suhas Sawant-Deputy Official Liquidator present].

CORAM : K.R.SHRIRAM,J

DATE : 17.7.2019

P.C.:-

1. Mr.Sakseria for applicants states that Company applications listed today are identical to Company application which was disposed on 31.8.2018 and the Company application that was disposed on 6.6.2019.

2. Mr.Sakseria submits that the suit that will be filed is not only for specific performance of the agreement mentioned in the Company application, order and directions for performance of statutory provisions of MOFA and RERA but in the alternative, applicants are also going to claim for damages. The suit that will be filed, Mr.Sakseria states will have prayers to claim damages in addition to specific performance.

3. Mr.Tripathi for Official Liquidator states that suit for specific performance cannot lie against Official Liquidator because the Official Liquidator is appointed only to wind up the company and distribute the assets after paying admissible liabilities.

4. Mr.Sakseria submits that since the suit will also have claim for damages as an alternative claim, if the Court which hears the suit rejects the claim for specific performance then certainly Court may consider the alternative claim for damages. Therefore, Court should not reject this applications but should grant relief as prayed for and could also put applicants on such terms and conditions as may be deemed fit.

5. Deputy Official Liquidator states that Liquidator has no funds to defend the suit and if tomorrow plaintiff fails in suit, Liquidator would have incurred costs. Mr.Tripathi submits that applicants should be directed to put Liquidator in funds to defend proposed suit to be filed and applicants may press for cost if applicants succeed, and if Court grants, applicants may claim that amount together with decretal amount in the affidavit of proof of debt which Liquidator will consider and dispose in accordance with Law. Mr.Sakseria is agreeable to this.

6. In the circumstances, application is allowed in terms of prayer clause-(a). For the moment, applicants shall deposit sum of Rs.1 lakh with the Official Liquidator and if amount is exhausted, Official Liquidator may communicate to applicants and applicants shall

put the Liquidator in such further funds within 4 weeks of receiving the communication from the Official Liquidator. The amount so paid by applicants to Liquidator, if applicants succeeds in the suit, applicants may press for cost which would include the cost paid to the Official Liquidator and if the Court grants such cost, applicants along with decree may file a claim for cost as well with the Official Liquidator who shall consider the application in accordance with Law.

7. It will be open for the Official Liquidator to raise all such defences as permissible in law in the suit proposed to be filed.

8. Application disposed.

(K.R.SHRIRAM,J)