

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.351 OF 2017
WITH
COMPANY APPLICATION NO.440 OF 2017
WITH
OFFICIAL LIQUIDATOR'S REPORT NO.4 OF 2019
WITH
OFFICIAL LIQUIDATOR'S REPORT NO.19 OF 2019
IN
COMPANY PETITION NO.433 OF 2013**

Edelweiss Asset Reconstruction Company LimitedApplicant

Vs.

Rubin Tolaram Malkani and Ors.Respondents

Mr. Prakash Shinde I/b. MDP and Partners for applicant in both applications.

Mr. Ashutosh Kaushik a/w. Ms. Prangana Barua I/b. M. K. Ambalal and Company for original petitioner.

Mr. Shashikant C. Gaikwad I/b. Ms. Parinit Saratkar for respondent no.6 in CA/351/2017 and for respondent no.7 in CA/440/2017.

Ms. Suvarna Joshi for respondent no.7 in CA/351/2017 and for respondent no.8 in CA/440/2017.

Mr. Shanay Shah for Official Liquidator.

Mr. Mahendhar Aithe, Company Prosecutor present.

CORAM : K.R.SHRIRAM, J.

DATE : 31st JULY 2019

P.C.:

COMPANY APPLICATION NO.440 OF 2017

1 This is an application filed by Edelweiss Asset Reconstruction Company Limited claiming to be the assignees of rights of secured creditors seeking the direction to the Official Liquidator to take possession of the immovable properties of the company (in liquidation) at Satara and sell the same. Applicant is also seeking similar relief for movable properties, some

machineries lying in Germany and to direct Official Liquidator to initiate criminal proceedings against the ex-directors and promoters of the company.

2 So far as the machineries lying in Germany, Mr. Shah states that in view of the order passed by this Court on 17th July 2019, that prayer does not survive. So far as prayer clause – (d) is concerned, Mr. Shah states that Official Liquidator will consider the affidavits filed by the Enforcement Directorate and take further steps as advised. As regards prayer for sale of the immovable properties in Satara, Official Liquidator has also filed an Official Liquidator's Report No.19 of 2019. The Official Liquidator's Report came to be filed in view of a letter dated 9th January 2019 received by the Official Liquidator from the Directorate of Enforcement, Government of India. The Directorate of Enforcement has filed an affidavit in reply to the company application and also an additional affidavit in reply. Though in the affidavit in reply the Enforcement Directorate is seeking dismissal of the company application, in the additional affidavit in reply filed by the Officer Vikas Gadpayle, Assistant Director, affirmed on 12th February 2019, in paragraph 6 (b) the Enforcement Directorate is also seeking a direction to the Official Liquidator to take possession of the properties of the company (in liquidation) as attached by the Enforcement Directorate and that is the

Satara property, sell the same and of course is seeking deposit of the sale proceeds with the PMLA, Special Court.

3 Therefore, one thing is clear that applicant, Official Liquidator and Enforcement Directorate all want the Satara property to be sold. The Enforcement Directorate is silent about the movable property and I do not have the benefit of any advocate representing the Enforcement Directorate today. The said Vikas Gadpayle also is absent.

4 Therefore, Official Liquidator shall immediately take physical possession of the immovable properties of the company (in liquidation) including Satara property, appoint Valuer, have the property valued and place an Official Liquidator's Report for further directions. Whether the amount should be retained with the Official Liquidator or should be deposited in PMLA, Special Court, it is too premature to decide because Mr. Shah, counsel for Official Liquidator states that the Enforcement Directorate is only taking action based on the complaint received from various investors in the forms of FD's and ICD's. Those persons, who have given FD's or ICD's to the company (in liquidation), would fall in the category of unsecured creditors and the Court should not direct the Official Liquidator to deposit any sale proceeds with the PMLA, Special Court.

5 Mr. Shah states that whoever has given FD's or ICD's may lodge the affidavit of proof of debt with the Official Liquidator and Official Liquidator will adjudicate each such application in accordance with law.

6 Company application no.440 of 2017 and Official Liquidator's Report No.19 of 2019 accordingly stand disposed.

COMPANY APPLICATION NO.351 OF 2017

7 Stand over to 7th August 2019.

(K.R. SHRIRAM, J.)