

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

COMPANY APPLICATION (L) NO.184 OF 2019

IN

COMPANY APPLICATION (L) NO.145 OF 2019

IN

COMPANY PETITION NO.244 of 2012

Asset Reconstruction Company (I) Ltd.Applicant/Petitioner

V/s.

The OL of Sun Earth Ceramics Ltd. (In Liqn.)....Respondents

Mr.Faisal Sayyed I/by M/s.Manilal Kher Ambalal and Company for the applicant.

Mr.C.G.Gavnekar I/by Mr.Suhas Deokar for respondent.

Mr.Kalpesh Patil a/w Mr.P.P.Raut for Deputy Sarpanch.

Mr.Vilas Mhatre-Deputy Sarpanch, Group Gram Panchayat, Sreegaon present.

Mr.V.R.Patil, Mr.S.B.Kakde, Mr.F.A.Shah and Mr.S.G.Rohakale present in person.

[Mr.Mahendhar Aithe-Company prosecutor present].

CORAM : K.R.SHRIRAM,J

DATE : 12.6.2019

P.C.:-

COMPANY APPLICATION (L) NO.184 OF 2019

1. Heard Mr.Sayyed for applicant and also Mr.Gavnekar for respondent. Also heard Mr.Kalpesh Patil appearing for Deputy Sarpanch Vilas Mhatre who is not added as a respondent.

2. Considering the matter, in my view, Mr.Vilas Mhatre should also be added as respondent to this application. The said Mr.Vilas Mhatre is also present in Court and identified by Advocate Kailash Patil.

3. Mr.Gavnekar and Mr.Patil admit that respondents entered the premises which is in the custody of this court through the Official Liquidator, and the possession of which with the ARCIL with the permission of the court, cut various assets from within the premises, removed them and sold it as scrap.

4. Therefore, in effect what the respondents have done is illegally removed, and I would add stolen, the property which were in the custody of the court and disposed the same. Mr.Gavnekar on instructions states that the assets removed were sold for scrap for Rs.1,75,000/-. Perhaps that is because the parts were cut open and sold as scrap. If they were intact, they would be worth a lot more. Therefore, this application has to be allowed and the same is allowed in terms of prayer clause-(a) except the portion bracketed in red ink in the schedule to the Company Application. No consequential amendments permitted. Prayer clause-(a) reads as under :-

“(a) That this Hon'ble Court be pleased to permit/grant amendment in the Company Application (Lodg.) No.145 of 2019 as per the Schedule “A” annexed hereto”

5. What the respondents did effectively amounts contempt and interference with administration of justice. Respondents have taken law into their hands and blatantly defied the court. Respondents are therefore jointly and severally directed to deposit a sum of Rs.5 lakhs with the Official Liquidator under advice to applicant's advocates and this amount shall be deposited within 4 weeks from today. Until this amount is deposited, respondents shall not deal with or dispose of or create any 3rd party rights or encumber any of the assets that respondents have in their sole name or jointly with other persons or their family members. This amount is only indicated as an adhoc amount and it will be open to ARCIL to prove that the goods removed were probably much more, at which time court will consider the application of the ARCIL. If this amount is not so deposited, liberty to applicant to apply for necessary orders and respondents shall remain present in Court on the date that may be notified by applicant.

If the amount is less, the sum to that extent will be refunded to 5 respondents.

6. The undertakings of these 5 respondents that they shall not even go any way near the premises of the company and they shall in any event stay at least 200 meters away from the premises of the company is accepted as an undertaking to this court. Deputy Sarpanch Vilas Mhatre further states that he shall indicate to the Sarpanch and all other villagers about this order. If Gram panchayat has any claim, Gram panchayat shall submit its affidavit of proof of debt to Liquidator within 4 weeks from today and the Liquidator shall consider the same in accordance with law.

7. In view of these undertakings as given by respondents, at this point of time, I am not directing the police to lodge any FIR against these respondents. At the same time, I am not preventing any party from approaching the police including ARCIL and police shall act in accordance with law.

Application accordingly disposed.

COMPANY APPLICATION (L) NO.145 OF 2019

8. This application to be amended and amended application to be served within 3 weeks. Affidavit in reply to be filed within two weeks of receiving the amended application. Rejoinder if any, to be

filed within 2 weeks thereafter. Application be listed for hearing on 7.8.2019.

Within 3 weeks all office objections to be removed and application be numbered finally failing which the application shall stand dismissed without further reference to the court.

(K.R.SHRIRAM,J)