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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO. 344 OF 2017
IN
OFFICIAL LIQUIDATOR'S REPORT NO. 181 OF 2016

Invent Assets Securitisation & Reconstruction Pvt Ltd …Applicant

Versus

Mantri Realty Ltd (In Prov. Liqn.) …Respondent

Mr Rohaan Cama, *with Sapna Rachure & Kalyani Wagle, i/b TN Tripathi & Co, for the Applicant.*
Mr H Dhoklawala, *for Official Liquidator.*

CORAM: G.S. PATEL, J
DATED: 9th January 2019

PC:-

1. On 21st November 2018, I noted that the Bombay Mercantile Cooperative Bank Limited (**"the Bank"**) had an equitable mortgage over the registered office of the company, Mantri Realty Ltd (**"MRL"**) at New Marine Lines, Mumbai. I was told that the Bank had assigned its claim to the present Applicant, Invent Assets Securitisation & Reconstruction Pvt Ltd (**"Invent"**).

2. The Company Application by Invent seeks a direction to the Provisional Liquidator appointed of MRL to deliver possession of the secured property. Paragraph 13 of my order dated 16th June 2016 *inter alia* required the Bank to deposit the title deeds of the mortgaged property with the Provisional Liquidator. This was done. On that day, Mr Cama for Invent submitted, in my view quite correctly, that Invent was entitled to stand outside any liquidation proceeding and to invoke its rights and remedies *inter alia* under the SARFAESI Act. It has chosen to do so. I noted the question that was then raised, whether the mortgagee, Invent, as an assignee from the Bank, could enforce the mortgage by sale of the property or whether the appointment of the provisional liquidator requires this to be stayed. Mr Cama also pointed out that Invent was unable to get the assignment of the mortgage in its name registered with the records of the Registrar of Companies only in view of the appointment of the provisional liquidator.

3. I called for a Further Affidavit. This is now before me. It is affirmed by one Swati Gopalani, an authorized representative of Invent. In paragraph 5 she mentions the assignment agreement dated 31st March 2017 and then states clearly that Invent is unable to register the modification of the charge to show Invent's name in place of the Bank because of the appointment of the provisional liquidator.

4. At this point, I will note that the appointment is as yet only of the provisional liquidator. A final order on winding up has not yet been made. Thus while the provisional liquidator is safeguarding the assets of the company, the actual process of dissolution and winding up of MRL is not yet in hand.

5. There is an also Affidavit in Reply by SB Patil, the Official Liquidator attached to this Court. While that reply is comprehensive only paragraphs 7 and 8 are of immediate relevance. It is true that the Liquidator's Office has been diligently following up on various projects and properties and that it has received claims from workmen. But this cannot come in the way of Invent's enforcement of its rights and remedies under a special statute. At best, all that can be done is to request the DRT to ensure that should there be a surplus on sale of the mortgaged premises, that surplus should be specifically directed to be returned to the provisional liquidator of MRL and not to the company itself as the original mortgagor. Beyond this I do not see how it is possible in law to prevent Invent from enforcing the mortgage of which it is presently an assignee.

6. The Company Application will thus have to be allowed. The provisional liquidator will deliver the title deeds deposited with him to the learned Advocate on record for Invent. These title deeds are listed at page 101 of the Further Affidavit filed on behalf of Invent on 3rd August 2018. This is to be done in three weeks from today.

7. The Provisional Liquidator will also deliver vacant possession of the premises Office GA-1, ground and mezzanine floor, Court Chambers, 35, New Marine Lines, Mumbai 400 020 to Invent within four weeks from today. The provisional liquidator will ensure that all company records, computers etc are properly preserved, especially as these may be required for the affairs of the company. Other movable items will be inventoried and the provisional liquidator will make a report with that inventory attached seeking directions for sale or other disposal of the other movable items.

8. The Provisional Liquidator will retain a photocopy of the title deeds for his record.

9. Should any of the movables be under a hypothecation or charge to Invent, these will have to be separately identified and Invent will be at liberty to place the necessary material before the provisional liquidator establishing its claim to those movables. If the Provisional Liquidator is satisfied, he will deliver these items to Invent.

10. The Company Application is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)