

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

COMPANY APPLICATION NO.752 OF 2018

IN

COMPANY PETITION NO.1066 OF 2015

Milestone Holdings & Infrastructure Pvt. Ltd.)....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 and Mr.Shehzd A.K.Najama-es-sani I/by Manksha and Sethna for the applicant.

Ms.Gauri Memon I/by M/s.Nankani and Associates for petitioner.

Mr.T.N.Tripathi for Official Liquidator.

Mr.Suhas Sawant-Dy.Official Liquidator present.

CORAM : K.R.SHRIRAM,J

DATE : 6.6.2019

P.C.:-

1. Mr.Sakseria for applicant tendered draft amendment which is taken on record and marked 'X' for identification.

2. Mr.Sakseria states that the Company Application listed today is identical to Company Applications disposed on 31.10.2018. Leave to amend as per the draft tendered be granted. Mr.Sakseria states that affidavit to support the amendment is ready and will be

lodged in the Registry within one week. Statement accepted.

3. Leave to amend the Company Application granted. Amendment to be carried out and amended Company Application for completion of record be handed over to the Advocate for Official Liquidator within one week. Re-verification dispensed with.

4. Mr.Tripathi for the Official Liquidator submits that when the company is in liquidation or where Official Liquidator of this Court has been appointed as provisional liquidator of a company, a suit for specific performance is not maintainable and, therefore, Court should not grant leave as prayed for.

5. Mr.Sakseria submits that the suit that will be filed as could be seen from the amended prayer clause, is for specific performance of the agreement mentioned in the Company Application, order and direction for performance of statutory provisions of “MOFA” and “RERA” and in the alternative to claim for damages. The suit that will be filed will also be having prayers to claim damages in addition to specific performance. Mr.Sakseria submits that since the suit that is going to be filed is for specific performance and in addition/alternative for damages, the Court should not reject this Application but Court

should grant the relief prayed for and could also put the applicant in such terms or conditions as may be deemed fit. Mr.Sakseria on instructions states that applicant will also put the provisional liquidator in funds to defend the suit proposed to be filed and if in the suit applicant succeeds, applicant will press for cost which would include the cost paid to the Official Liquidator and if the Court grant such cost, applicant along with decree, will file a claim for cost as well, with the Official Liquidator.

6. In view of the statement made by Mr.Sakseria, application is allowed in terms of prayer clause-(a). For the moment, applicant shall deposit sum of Rs.1 lakh with the Official Liquidator and if the amount is exhausted, the Official Liquidator may communicate to applicant and applicant shall put the Official Liquidator in such funds as called for within four weeks of receiving a communication from the Official Liquidator.

7. It will be open to 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)