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

COMPANY APPLICATION NO.342 OF 2013
IN
COMPANY PETITION NO.385 OF 2002

AND
COMPANY APPLICATION NO.244 OF 2017
IN
COMPANY APPLICATION NO.342 OF 2013
IN
COMPANY PETITION NO.385 OF 2002

AND
COMPANY APPLICATION (LODGING) NO.202 OF 2018
IN
COMPANY APPLICATION NO.342 OF 2013
IN
COMPANY PETITION NO.385 OF 2002

WITH
COMPANY APPLICATION NO.34 OF 2019
IN
COMPANY PETITION NO.1068 OF 1997

WITH
OFFICIAL LIQUIDATOR'S REPORT NO.484 OF 2013
WITH
OFFICIAL LIQUIDATOR'S REPORT NO.154 OF 2013
WITH
OFFICIAL LIQUIDATOR'S REPORT NO.188 OF 2013
WITH
OFFICIAL LIQUIDATOR'S REPORT NO.103 OF 2019

Kaushik Dave & Ors.

...Applicants

IN THE MATTER BETWEEN :

B.I.F.R.

...Petitioner

V/s.

The Official Liquidator of
M/s.Swadeshi Mills Co. Ltd. (In Liquidation)

...Respondent

Mr.Deepak Shukla with Ms.Jainy Rughani i/b M/s.Vinod Mistry & Co.
for the Applicant in CA No.342 of 2013 and CA No.244 of 2017.

Ms.Madhavi Nalluri with Mr.Zaid Ansari i/b Mr.Nikhil Mengde for the Applicant in CA (Ldg.) No.202 of 2018.

Mr.Bipin Bagadia for the Applicant in CA No.34 of 2019.

Mr.Simil Purohit with Mr.Amol Bavare and Mr.Krishna Bauah i/b M/s.Pragnya Legal for the Respondent No.2.

Mr.Cyrus Ardeshir with Ms.Radhika M. i/b Mr.Amir Arsiwala for the Respondent No.3.

Mr.P.G. Lad with Ms.Sayli Apte and Ms.Priyanka Naik for MHADA.

Mr.Himanshu Takke, Assistant Government Pleader for the State.

Mr.Sagar Patil for the Municipal Corporation – Respondent.

Mr.Mahendhar Aithe, Company Prosecutor for the Official Liquidator present.

CORAM : R.D. DHANUKA, J.
DATE : 2ND JANUARY, 2020.

P.C. :-

1. By this company application, the applicants seek an order and direction against the Official Liquidator to sell and/or transfer the property described in prayer clause (a) of the company application and also seek an order against the Official Liquidator to execute and sign the Deed of Conveyance and other documents set out in prayer clause (b) of the company application.

2. Heard learned counsel appearing for the applicant and Mr.Ardeshir, learned counsel appearing for the respondent no.3 and other parties. Mr.Ardeshir, learned counsel for the respondent no.3 invited my attention to the order passed by this Court on 1st July, 2016 in this application and in particular paragraphs 3, 7, 9 and 13 and would submit that the applicants through their learned counsel had agreed that as and when the property is sold by public auction,

the applicants who were financed by the developer shall be allowed to participate in the public auction. This Court by the said order had issued various directions in respect of the valuation as well as for carrying out survey.

3. Learned counsel also invited my attention to the order passed in the interim application filed by the applicants before the Supreme Court in Special Leave Petition (Civil) No.1387 of 2014 and in particular prayer clauses (c) and (d). By the said application, the applicants had prayed for an order and direction against the Official Liquidator and / or Municipal Corporation, Greater Mumbai to permit them to carry out the repair work as necessary in the building named as Tata Nagar in C.T.S. No. 474, Taluka Kurla, Mumbai so as to safeguard the lives and livelihood of the applicants during the pendency of the application. He also invited my attention to the order dated 29th August, 2014 passed by the Supreme Court in the said Interim Application No.2 of 2014 filed by the applicants and would submit that the Supreme Court had only permitted the applicants to carry out necessary minor repairs to their respective premises and also give due intimation to the Municipal Corporation of any such repairs that they wish to carry out. He submits that the said interim application was subsequently disposed of.

4. Learned counsel invited my attention to the order dated 6th March, 2019 passed by Shri Justice S.J. Kathawalla taking cognizance of the order passed by the Supreme Court on 29th

August, 2019 and permitting the applicants to carry out minor repairs to the building and also observing that the applicants had not carried out any repairs till date. This Court by the said order clarified that the residents / mill workers occupying the building shall be at liberty even at this stage to carry out the repairs as permitted by the Supreme Court. By an order dated 10th April, 2019, this Court appointed Mr.Amol Shetgiri of M/s.Shetgiri & Associates, Architect & Valuers to inspect the condition of the said building and to submit a report and to set out the steps that can be taken to repair /reinforce the same.

5. Learned counsel for the respondent no.3 submits that pursuant to the said order dated 10th April, 2019, M/s.Shetgiri & Associates, Architect & Valuers submitted a report and has noted that the building occupied by the mill workers cannot be repaired and are in dilapidated condition. Learned counsel submits that nothing thus survives in this company application. The order passed by Shri Justice G.S. Patel has attained finality.

6. It is lastly submitted that even otherwise when the said order was passed by Shri Justice G.S. Patel on 1st July, 2016, the provisions of Regulation 58 of D.C. Regulation 1991 was considered insofar as the possibility of any development on the mill land is concerned. He submits that in view of D.C. Regulation 2034 now in place providing various new provisions regarding mill lands, the property cannot be disposed of at this stage without complying with the provisions of D.C. Regulation 2034.

7. Learned counsel for the applicant on the other hand invited my attention to the order dated 12th June, 2014 passed by Shri Justice S.J. Kathawalla directing the applicants to seek intervention in the pending proceedings before the Supreme Court. He submits that only pursuant to the said order dated 12th June, 2014, the applicants had filed said interim application before the Supreme Court.

8. At this stage the learned counsel for the applicants prays that the matter may be adjourned to enable the applicants to engage a senior advocate in this matter. The application for adjournment is vehemently opposed by the learned counsel for the respondent no.3.

9. Mr.Lad, learned counsel appearing for MHADA states that before passing any further orders by this Court for sale of the mill lands, various provisions of D.C. Regulation 2034 made for allotment of part of the plot to MHADA will have to be considered by this Court. He submits that no reliefs can be granted in this application as the same has become infructuous.

10. After hearing the parties at length, I am not inclined to grant any adjournment to the applicants. A perusal of paragraph 13 of the order passed by Shri Justice G.S. Patel indicates that after issuing further directions by this Court regarding valuation and survey, this company application was kept pending by making it clear

that the said order was not an order of adjudicated upon on merits of the company application.

11. However, considering the earlier and subsequent events including completion of survey by the surveyor and valuation report and considering the fact that the effect of D.C. Regulation 2034 will have to be considered, in my view, nothing survives in this company application. The company application is accordingly disposed of as infructuous.

12. The Official Liquidator is directed to submit a report after considering the subsequent events and after considering the effect of the provisions of D.C. Regulation 2034 and shall seek further directions from this Court about the mode and manner of disposal of the mill land. The Official Liquidator is directed to file the report within three months months from today. A copy thereof shall be served upon the applicants as well as the secured creditors and MHADA. Further directions would be issued by this Court after hearing all the parties.

13. In view of this order, all pending Official Liquidator's Reports and the applications stand disposed of. There shall be no order as to costs.

(R.D. DHANUKA, J.)