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

**COMPANY APPLICATION NO. 545 OF 2018
IN
COMPANY PETITION NO. 606 OF 1998**

Posh Infrastructure Pvt. Ltd.

A Company registered under the Companies Act, 1956, having office at Flat No. 503, Kohinoor Heights Co-op. Hsg. Society Ltd., Plot No.4/4A, Sector – 8E, Kalamoli, Navi Mumbai – 410 218.

... Applicant

In the matter between :-

M/s. Metal Tubes and Rolling Mills,
Marol Maroshi Road, Andheri (East),
Mumbai – 400 059.

... Petitioner

Versus

1. The Official Liquidator,
Liquidator of Transpower Engineering Ltd. (In Liqn.) having his office at 5th Floor, Bank of India Bldg., M.G. Road, Fort, Mumbai – 400 001.
2. The Regional Officer, MIDC,
MIDC Office Building, 3rd Floor, Behind Lokmat Press, Thane Belapur Road, Post Kopar Khairane, Navi Mumbai – 400 710.

... Respondents

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Mr. Prathamesh Kamat along with Mr. C. N. Mehta i/by M/s. MMK Law Associates, Advocate for the Applicant.

Mr. Shanay Shah, Advocate for the Official Liquidator.

Mr. Prashant Chawan along with Ms. Chaitali Kandare, Mr. Aditya Marwal i/by M/s. Navdeep Vora Associates, Advocate for the Respondent No.2.

Mr.Suhas Sawant, Deputy Official Liquidator present.

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CORAM : R.D. DHANUKA, J.

RESERVED ON : 3rd MARCH, 2020

PRONOUNCED ON : 21st AUGUST, 2020

JUDGMENT :

. By this Company Application, the applicant seeks an order and direction against the respondent no.2 i.e. the Regional Officer, MIDC to transfer the immovable property being Plot No.B-16, MIDC, Taloja, Panvel Dist. Raigad admeasuring 4050 sq. meters in the name of the applicant being the purchaser of the said property and payment on standard transfer charges and also seeks an order and direction to extend the time for building completion by two years from the date of transfer of the said plot in the name of the applicant and for other reliefs. Some of the relevant facts for the purpose of deciding this Company Application are as under :-

2. On 28th January, 1978 under a Partnership Deed, the firm namely M/s. Transpower Corporation was constituted. On 7th March, 1980 vide an agreement executed between MIDC and the said M/s. Transpower Corporation, the said Plot bearing No. B-16 situated within Taloja Industrial Area of MIDC, Taluka Panvel, Raigad District (hereinafter referred to as “the said plot”) was allotted to M/s. Transpower Corporation on the terms and conditions set out therein. On 7th March, 1980, the MIDC handed over the possession of the said plot to the said M/s. Transpower Corporation. On 4th May, 1980, the said M/s. Transpower Corporation was converted into a private limited company in the name “Transpower Engineering Private Limited”.

3. On 31st December, 1980, the said partnership firm M/s. Transpower Corporation was dissolved. On 27th September, 1991, the said

M/s.Transpower Engineering Private Limited was converted into a limited company, being the company in liquidation, vide special resolution dated 27th September, 1991. Form No. 23 was also filed in that regard by Transpower Engineering Private Limited with the Registrar of Companies. Sometime in the year 1998, M/s. Metal Tubes and Rolling Mills filed a winding up petition against the respondent company (in liquidation) in this Court. By an order dated 22nd January, 2008, the respondent company was ordered to be wound up by this Court.

4. It is the case of the official liquidator that on 31st March, 2010 Shri Shantaram Hari Bhoir who is worker of the respondent company addressed a letter to the official liquidator and informed that the said plot belonged to the respondent company in liquidation. Similar letter was also addressed by the said Shri Shantaram Hari Bhoir on 23rd November, 2010 on behalf of himself and other workers of the respondent company.

5. On 20th December, 2010, the official liquidator convened a meeting of the creditors and workers. It was decided to take possession of the said plot. The official liquidator accordingly addressed a letter dated 4th January, 2011 to all concerned informing that the possession of the said plot will be taken on 29th January, 2011. On 29th January, 2011, the official liquidator took possession of the said plot. On 15th March, 2011, the official liquidator received a letter addressed by Adv. C. N. Kumar on behalf of the workmen of the respondent company in liquidation giving details of the properties belonging to the said company in liquidation including the said plot.

6. On 23rd January, 2012, the official liquidator invited claims from workers/creditors under Rule 148 of the Companies (Court) Rules, 1959. The last date of filing of the claims was 10th February, 2012. The official liquidator received 285 claims. On 4th July, 2012, the official liquidator filed Official Liquidator's Report No. 261 of 2012 *inter-alia* praying for direction

to permit the official liquidator to sell the said plot. On 21st June, 2012, this Court directed the official liquidator to sell the said plot on “as is where is and whatever there is” basis and as per the terms and conditions of sale. The official liquidator published a sale notice in two newspapers on 21st July, 2012 for inviting the bids in respect of the said plot. M/s. Attar Buildcon Pvt. Ltd. submitted a bid for Rs.5,50,00,000/- to the official liquidator.

7. This Court by order dated 9th August, 2012 accepted the said offer made by the said M/s. Attar Buildcon Pvt. Ltd. in the sum of Rs.5,50,00,000/-. This Court directed the official liquidator to execute the necessary documents in favour of the said M/s. Attar Buildcon Pvt. Ltd. and/or their nominees and handover the said property to M/s. Attar Buildcon Pvt. Ltd. The said M/s. Attar Buildcon Pvt. Ltd. deposited the entire payment of Rs.5,50,00,000/- towards the sale price with the official liquidator. The official liquidator handed over the possession of the said plot of land along with factory building to the said M/s. Attar Buildcon Pvt. Ltd. on 28th August, 2012.

8. On 6th February, 2014, the official liquidator executed Deed of Assignment which was duly registered in favour of the applicant on the said plot being the nominee of M/s. Attar Buildcon Pvt. Ltd. The applicant addressed a letter to official liquidator on 24th March, 2015, seeking issuance of an NOC in respect of the Water Dues for the said plot. It is the case of the official liquidator that it was in the record of the official liquidator that a water bill was issued by the MIDC dated 11th March, 2015 in the name of Transpower Engineering Private Limited for an amount of Rs.4,78,508/-. The said water connection however was disconnected.

9. On 25th June, 2014, the applicant addressed a letter to MIDC and informed about the execution of Deed of Assignment in favour of the applicant and requested to transfer the said plot in the name of the applicant.

The MIDC by its letter dated 13th August, 2014 requested the applicant to produce various documents. The applicant by letter dated 3rd October, 2014 to MIDC submitted all the documents demanded by the MIDC and once again requested the MIDC to transfer the said plot in the name of the applicant. The MIDC by letter dated 13th March, 2015 addressed to the official liquidator confirmed that MIDC had received a request from the applicant for transfer of the said plot in favour of the applicant. The MIDC requested the official liquidator to provide the documents on which basis the official liquidator had confirmed the ownership of the said plot in favour of the M/s. Transpower Engineering Private Limited as the plot was leased out to M/s. Transpower Corporation vide Lease Deed dated 20th December, 1979. There was no response from the official liquidator to the said letter addressed by the MIDC.

10. The MIDC by its letter dated 30th September, 2016 addressed to the applicant informed that the MIDC vide circular dated 23rd October, 2015 had issued guidelines to grant special extension in time limit as a last opportunity i.e. Amnesty Scheme 2015 for those industrial plot holders in whose case the development period had expired on or before 31st August, 2013 and not had approached MIDC for grant of extension in building completion certificate and requested the applicant to avail the said scheme.

11. It is the case of the applicant that applicant fulfilled all the obligations for transfer of the said plot in its name. The MIDC however did not transfer the said plot on the ground that time limit as per that circular dated 23rd October, 2015 had expired on or before 31st August, 2013. The applicant had not approached the MIDC for grant of extension in building completion certificate. The MIDC by circular dated 6th September, 2016 extended the time limit for building completion certificate from 1st September, 2015 to 31st August, 2017. The applicant thus filed this Company Application on 31st August, 2018 for various reliefs.

12. Mr. Kamat, learned counsel for the applicant invited my attention to various documents annexed to various affidavits filed by the parties and also relied upon various judgments during the course of his argument. He also invited my attention to the contentions raised by the respondent no.2 MIDC in the affidavit in reply and also the additional affidavit in reply filed by the respondent no.2 in this application and in the affidavit in reply filed by the Official Liquidator in this application. It is submitted by the learned counsel that on 10th October, 1979, the respondent no.2 had allotted a plot no. B-16 to Transpower Corporation. The possession of the said plot was handed over to Transpower Corporation on 7th March, 1980. The order of allotment was issued by the Area Manager of respondent no.2. He also relied upon the possession receipt dated 7th March, 1980 issued by the respondent no.2 in respect of plot no.B-16.

13. It is submitted by the learned counsel that the said plot no. B-16 was amalgamated with plot nos.B-25, 26 and 27 on 8th August, 1980 for the proposed construction of a factory building. The respondent no.2 MIDC issued a letter dated 8th August, 1980 and communicated the grant of permission for amalgamation of plot to the said Transpower Corporation which was a partnership firm. He submits that on 23rd February, 1981, the Executive Engineer of the respondent no.2 approved the building plans for the proposed factory building for the plot nos. B-25, 26, 27 and also the said plot bearing no. B-16. He invited my attention to a copy of the said approval dated 23rd February, 1981. He submits that on 27th May, 1981, CIDCO had issued occupancy certificate for the plots B-25, 26 and 27 post amalgamation of the plots.

14. It is submitted that since the said plots bearing no. B-16 was amalgamated and occupation certificate was issued by CIDCO post amalgamation, the said occupation certificate dated 27th May, 1981 would

also apply for the whole plot including plot no. B-16. He submits that the conditions imposed by the CIDCO for obtaining building completion certificate and occupation certificate for the entire amalgamated plot was satisfied. The respondent no.2 was thus not entitled to charge any differential premium. He submits that the respondent no.2 did not communicate the order of amalgamation to CIDCO who is the planning authority and thus the occupation certificate did not specifically mention the name of plot no.B-16.

15. It is submitted by the learned counsel that there was certain structure existing on the said plot bearing no.B-16. The said structure was ordered to be demolished by this court by an order dated 9th August, 2012 in Company Application (L) No.483 of 2012. The respondent no.2 thus cannot be allowed to allege that there was no construction on the said plot bearing no.B-16. He submits that in any event since the said plot bearing no. B-16 was a part of amalgamated plot, the respondent no.2 cannot be allowed to now contend that the predecessor in title of the applicant had failed to obtain building completion certificate or to carry out construction within the time prescribed insofar plot no.B-16 is concerned.

16. Learned counsel invited my attention to the affidavit in reply filed by the respondent no.2 and would submit that the respondent no.2 has pleaded ignorance as to how and when the plot no.16 became the property of the company in liquidation and how the said property was sold to the applicant. He invited my attention to the letter dated 8th November, 1991 addressed by the respondent no.2 to the Transpower Engineering Private Limited (predecessor of the company in liquidation) informing that it had taken note in the name of the Transpower Engineering Private Limited carrying on business as the proprietor under the name and style of M/s. Transpower Corporation. He submits that it is thus clear that in the record of the respondent no.2, the company now in liquidation was the owner/proprietor

of Transpower Corporation.

17. Learned counsel for the applicant also invited my attention to the letter dated 29th January, 1992 addressed to the company in liquidation by the respondent no.2 informing that it had noted the change in the name of the company in liquidation from Transpower Engineering Private Limited to Transpower Engineering Limited. He submits that it is thus clear that as far back as in 1992, the company in liquidation was the lessee of the amalgamated plot in the records of the respondent no.2. Learned counsel also placed reliance on a Tripartite Agreement dated 7th March, 1980 between the respondent no.2, Maharashtra State Financial Corporation and Transpower Corporation (predecessor of the company now in liquidation) permitting the Transpower Corporation to create a mortgage on the plot bearing no.B-16.

18. It is submitted that the applicant is thus not required to pay any extension charges as claimed by the respondent no.2 nor is required to pay any differential premium as claimed by the respondent no.2. The applicant is only required to pay standard transfer charges as per the circulars of respondent no.2. It is submitted by the learned counsel that this company application has been filed by the applicant under section 446 of the Companies Act, 1956 for seeking various directions. He relied upon section 446 and also section 456 of the Companies Act, 1956 and would submit that on an order of winding up, the assets of the company in liquidation vests in the Company Court through the Official Liquidator. He also placed reliance on section 446 (2) of the Companies Act, 1956 and would submit that any question of law and fact which relates to or arises in the course of winding up of the company in liquidation, can be decided by the court ordering winding up of the company.

19. It is submitted that the Company Court has been clothed with the power to decide any question whatsoever whether of fact or of law which arises during the course of winding up. He submits that the Company Court thus has jurisdiction to issue necessary directions to one and all in respect of matters interlinked with the disposal of the property of the company in liquidation by the Official Liquidator with the sanction of the Company Court. He submits that since the issue pertains to the sale of asset of company in liquidation raised in this company application, the Company Court has necessary jurisdiction to pass orders pertaining to the reliefs sought in the company application. In support of this submission, learned counsel placed reliance on the judgment of this court in case of ***M/s.Transpower Engineering Limited (In liquidation) in Official Liquidator Report No.466 of 2016 in Company Petition No.606 of 1998*** delivered on 26th July, 2018 and more particularly paragraphs 1, 14 to 23 of the said judgment.

20. Insofar as the premium demanded by the respondent no.2 for the first transfer from the partnership firm to the company in liquidation is concerned, learned counsel for the applicant submits that applicant is not liable to pay any such premium to the respondent no.2. He submits that the basis of such demand made by the respondent no.2 is that the respondent no.2 did not have in its records the name of the company in liquidation as the allottee/lessee of the said plot. It is the case of the MIDC that there is a transfer from the partnership firm to the company in liquidation attracting differential premium. It is submitted that on amalgamation of these four plots, there became one plot. He relied upon the document at page 135 of the further affidavit and would submit that it is clear that the amalgamation of the plot was sanctioned by the respondent no.2 subject to the conditions mentioned therein. He also relied upon page 136 of the further affidavit and would submit that it is also clear that the MIDC had granted approval on 23rd February, 1981. He also relied upon the document at page 132 and would

submit that the said document would also clearly indicate that all four plots were treated as one plot in the plan.

21. It is submitted by the learned counsel that the contention of the respondent no.2 that it was not aware of the transfer of the said plot from the partnership firm to the company in liquidation is *ex-facie* false. He invited my attention to the documents at pages 150 and 151 of the further affidavit filed by the applicant dated 22nd July, 2019 and would submit that those documents would clearly indicate that the respondent no.2 had infact written a letter to the company in liquidation that they have made a note of change of the name of the company in liquidation from the partnership firm into the company in liquidation in its record. He submits that though those letters do not mention plot no.B-16, the same need not be mentioned as the amalgamation of the said plot had already taken place as far back as in the year 1981 whereas those letters were issued by the respondent no.2 only in the month of November 1991 and January 1992. He submits that the name of the company in liquidation in respect of the said plot already stands as allottee/lessee in the records of respondent no.2.

22. In his alternate arguments, it is submitted by the learned counsel that the purported first transfer took place prior to the leasehold rights of plot being assigned by the Official Liquidator to the applicant. The liability of the differential premium for the period prior to the assignment in favour of the applicant thus could not be demanded from the applicant. If the respondent no.2 is entitled to recover any such premium in respect of the said plot, the respondent no.2 can lodge its claim with the Official Liquidator who can on adjudication pay the respondent no.2 as per the provisions of sections 529A and 530 of the Companies Act, 1956.

23. Insofar as differential premium demanded by the respondent no.2 on the second transfer i.e. from the company in liquidation to the applicant

herein is concerned, it is submitted by the learned counsel for the applicant that the reference to the two circulars issued by the respondent no.2 i.e. on 12th May, 1998 and 12th December, 2011 would be necessary. He invited my attention to those circulars and would submit that those circulars would clearly indicate that the sale by a Company Court of any asset of the company in liquidation is not a voluntary transfer. The circulars issued by the respondent no.2 are very wide in nature. All involuntary transfers which are made pursuant to the orders of the competent court thus shall be permitted on payment of standard transfer charges and not differential premium as demanded by the MIDC.

24. It is submitted by the learned counsel that the sale conducted by the Official Liquidator pursuant to an order passed by the Company Court cannot be compared with the sale conducted in BIFR proceedings. In BIFR proceedings, endeavours are made to restructure a company. The Official Liquidator on the other hand is an official appointed to liquidate the assets of the company in liquidation so as to pay and distribute the same amongst the creditors in accordance with law. Such transfers effected pursuant to a Company Court are compulsory in nature and are not done voluntarily.

25. Learned counsel for the applicant submits that even otherwise the said circular dated 12th December, 2011 issued by the MIDC clearly indicates that the sale conducted by the Official Liquidator cannot be treated as a sale between a willing buyer and a willing seller. It was a compulsory act where the Company Court was disposing off the assets by selling the same. Such a sale is a formal sale or an involuntary sale which does not attract payment of differential premium. In support of this submission, Mr.Kamat, learned counsel for the applicant placed reliance on the judgment of this court in case of ***M/s.Transpower Engineering Limited (In liquidation) in Official Liquidator's Report No.466 of 2016 in Company Petition No.606 of 1998*** delivered on 26th July, 2018 and in particular

paragraph nos. 25 to 31 and 36 to 41 and would submit that since the sale in the present case of the leasehold rights in favour of the applicant was conducted by the Company Court, the said sale of the leasehold rights would be categorized as a formal oral involuntary sale not attracting differential premium. The applicant is thus liable to pay only the standard transfer charges and not differential premium for transfer of the plot in the name of the applicant.

26. Insofar as extension charges demanded by the respondent no.2 is concerned, it is submitted by the learned counsel for the applicant that the respondent no.2 has demanded the extension charges on the ground that the company in liquidation or its predecessor in title i.e. the said partnership firm was not able to complete construction on the said plot and to obtain building completion certificate in accordance with the terms and conditions of the said allotment. He submits that in any event since the extension charges demanded by the respondent no.2 pertains to an act of company in liquidation or its predecessor in title prior to the purchase of the said property by the applicant, the respondent no.2 can always lodge its claim before the Official Liquidator who on adjudication can make payment as per the provisions of the Companies Act, 1956.

27. It is submitted by the learned counsel that on 26th May, 1981, CIDCO, i.e. the planning authority at the relevant case had already issued an occupation certificate for plot nos. B-25, B-26 and B-27 which were amalgamated with plot no.B-16. The said occupation certificate for plot nos.B-25, B-26 and B-27 would also be applicable for plot no.B-16. The predecessor of the company in liquidation thus had already complied with the conditions of MIDC for completing construction. No demand thus can be made by the respondent no.2 towards extension charges. Respondent no.2 was not the planning authority and became a planning authority much later around 1998.

28. It is submitted that the respondent no.2 has not shown a separate requirement that under the General Development Control Regulations of CIDCO where in addition to an occupation certificate, a building completion certificate was mandatory. He submits that the entire purpose under which the said respondent no.2 was incorporated was to ensure that the plot allotted by the respondent no.2 was not kept idle and that an industry is established and kept running. He submits that since in this case the building was constructed on the amalgamated plot and occupation certificate was granted, the construction on the amalgamated plot was complete and the permission by CIDCO, the then planning authority to occupy and carry on the business from the said structure was permitted by issuance of occupation certificate.

29. It is submitted by the learned counsel that unless it is shown that CIDCO separately issues building completing certificate after further compliance as required under their General Development Control Regulations, the respondent no.2 cannot claim its entitlement for extension charges. He submits that without prejudice to the said submission, respondent no.2 at the highest can lodge its claim with the Official Liquidator and claim such extension charges in accordance with law. His client is a *bonafide* purchaser for value without notice and thus cannot be asked to pay such charges on the plot in question. The auction took place and until the company application was preferred, the respondent no.2 had not indicated any claim pertaining to extension charges. The respondent no.2 did not oppose the auction or to challenge the said auction conducted by the Company Court till date.

30. It is submitted by the learned counsel for the applicant that though the agreement between MIDC and the said partnership firm was nomenclatured as an agreement to lease, for all practical purposes, the same was a lease and not a licence. He submits that the exclusive possession of the said plot

bearing no.B-16 was handed over to the company in liquidation and/or its predecessor in title. The said plot was allowed to be amalgamated with the other plots. The company in liquidation and/or its predecessor in title were not given a mere right to use but were allowed possession, enjoyment of property and construction on the said plot. The company in liquidation and/or its predecessor in title were allowed to raise finance by mortgaging a the rights allotted to them. Learned counsel placed reliance on the agreement dated 7th March, 1993 entered into between the respondent no.2 and the said partnership firm annexed at page 152 of the company application. He submits that it was thus clear that an interest was allowed to be created for raising finance by permitting to create mortgage of the said plot. He submits that nomenclature of an agreement is irrelevant and what is relevant is reading the document in whole along with surrounding circumstances, intention of parties and conduct of the parties.

31. It is submitted that in this case, the conduct and intention of the parties would clearly indicate that the agreement to lease did not merely create a licence as sought to be argued but has created substantial rights in favour of the said partnership firm and thereafter in favour of the company in liquidation. He submits that the said agreement to lease though styled as an agreement to lease, is infact assignment of lease. What was remained to be done was only a ministerial act of executing a formal lease deed. In this case, on completion of construction on the plot and obtaining of the occupation certificate, the essential conditions of the lease deeds were fully satisfied. Learned counsel for the applicant placed reliance on the judgment of Supreme Court in case of **Smt.Rajbir Kaur and Another vs. M/s. S.Chokesiri and Company (1989) 2 SCC 19** and in particular paragraphs 19 to 22, 24 to 26, 28 and 32 to 34 in support of the submission that merely because an agreement has a clause that no tenancy is to be created will not itself preclude the instrument from creating a lease. The court has to see intention of parties and the surrounding circumstances including the

conduct.

32. Learned counsel for the applicant placed reliance on the judgment of Delhi High Court in case of ***Municipal Corporation of Delhi vs. Pradip Oil Corporation and Another, 100(2002) Delhi Law Times 442 (Full Bench)*** and in particular paragraphs 37, 38, 40 to 44 and 50 in support of the submission that the substance of the document must be preferred to the form. The real test is the intention of the parties i.e. as to whether they intended to create a lease or a licence. If the document creates an interest in the property, it is a lease but if only permits another to use of the property, or which the legal possession continues with the owner, it is a licence. If a party gets an exclusive use of the property under such document, he is considered to be a tenant but the circumstances may be established which negative the intention to create a lease. He submits that mere reading of the clauses of the agreement is not sufficient. The context has to be read and understood in the context followed by the intention of the parties along with the conduct of the parties.

33. Mr.Shah, learned counsel for the Official Liquidator on the other hand submits that the company in liquidation was ordered to be wound up by an order dated 22nd January, 2008 passed by this court in Company Petition No.606 of 1998. There are four secured creditors of the company in liquidation. The Official Liquidator had already taken possession of the three assets of the said company in liquidation including the plot nos. B-16 and B-17 situated at Taloja, MIDC, Taluka Panvel, District Raigad. The possession of the plot nos. B-16 and B-17 has been taken by the Official Liquidator on 29th January, 2011. It is submitted that the Official Liquidator has sold the said plot no.B-16 pursuant to an order dated 9th August, 2012 passed by this court to Attar Buildcorn Private Limited for Rs.5,50,00,000/-. As regards plot no.B-17 situated at Taloja, MIDC, Taluka Panvel, District Raigad is concerned, it was understood from the records of the MIDC that

the said plot does not belong to the company in liquidation.

34. It is submitted that pursuant to the orders passed by the Company Court on 13th January,2012, the Official Liquidator had invited claims from the workers/creditors of the company under Rule 148 of the Company (Court) Rules, 1959 by giving advertisement in the newspapers Free Press Journal (English) and in Navshakti (Marathi) published from Mumbai and in Lokmat (Marathi) published from Nagpur on 23rd January,2012. The last date of filing the claims with the Official Liquidator was on 10th February, 2012. Pursuant to the said advertisement issued by the Official Liquidator, Official Liquidator received 285 claims against the company in liquidation. The respondent no.2 did not make any claim to the Official Liquidator in respect of the plot in question.

35. It is submitted by the learned counsel that out of 285 claims, the Official Liquidator has already admitted large number of claims so far. The Official Liquidator has already declared the dividend to the workers in the sum of Rs.7,02,53,995/- so far. This court has also condoned delay of five workers in filing their claim with the Official Liquidator. The Official Liquidator has admitted claims in respect of two of the workers in the sum of Rs.5,30,542/- and Rs.5,40,350/- out of those five additional claims so far. It is submitted that pursuant to the request made by the respondent no.2, the Official Liquidator has provided various documents to the respondent no.2. He submits that pursuant to the order dated 9th August, 2012 passed by this Court in Official Liquidator's Report No.261 of 2012, the Official Liquidator has already sold the said plot bearing no.B-16 to M/s.Attar Buildcorn Private Limited for Rs.5,50,00,000/- who has nominated M/s.Posh Infrastructure Private Limited, the applicant herein.

36. It is submitted that the Official Liquidator has already executed a sale deed dated 7th February,2014 in respect of the said plot bearing no.B-16 in

favour of M/s.Posh Infrastructure Private Limited. He submits that the Transpower Corporation, a partnership firm was converted into M/s.Transpower Engineering Private Limited and was later converted to M/s.Transpower Engineering Limited. He relied upon a copy of Form 8 registered with the Registrar of Companies, Maharashtra showing that M/s. Transpower Corporation was converted to Transpower Engineering Private Limited. He submits that the said plot no.B-16 thus belonged to the said company in liquidation. He also relied upon the extract of the Memorandum of Association of the company in liquidation which showed the conversion of the partnership firm into the Transpower Engineering Private Limited.

37. Learned counsel for the Official Liquidator placed reliance on clause 13 of the terms and conditions of sale and would submit that the purchaser has to pay taxes, charges, fees and outgoings in respect of the immoveable and moveable assets from the date of confirmation of sale in their favour. Any earlier taxes, charges, fees and outgoings will be paid out of the sale proceeds in accordance with the provisions of the Companies Act, 1956 read with Companies (Court) Rules, 1959. He submits that the applicant has to pay all charges in respect of the transfer. He submits that the respondent no.2 has not raised any demand on the official liquidator or on the applicant in respect of the transfer charges/ extension charges/differential premium alleged to be payable on behalf of the company in liquidation. He submits that the respondent no.2 has also not challenged the order passed by this Court on 9th August, 2012 allowing the sale of the said plot bearing no. B-16 in favour of M/s. Attar Buildcon Private Limited for the sum of Rs.5.50 crores. The respondent no.2 also did not raise any issue from the year 1980 till the date of filing of this company application in respect of the said property and more particularly the issue that the property was not on lease in favour of the company in liquidation.

38. It is submitted by the learned counsel that the official liquidator was informed by Mr. Santaram H. Bhoir a worker of the company in liquidation by letters dated 31st March, 2010 and 23rd November, 2010 that the said plot bearing no. B-16 belong to the company in liquidation. The official liquidator accordingly convened a meeting with the creditors and workers on 20th December, 2010 and decided to take possession of the properties, details whereof were provided by the said Mr. Bhoir through the official liquidator. On 4th January, 2011, the official liquidator addressed a letter to all concerned informing them that possession of the said plot bearing no. B-16 would be taken on 29th January, 2011 and accordingly took possession thereof on the said date fixed in the said letter. It is submitted that respondent no.2 has already recognized the company in liquidation as its lessee in the respect of the said plot bearing no. B-16. The applicant had addressed a letter on 24th March, 2015 to the official liquidator seeking issuance of an NOC in respect of the water dues for the said plot.

39. It is submitted that the official liquidator found in its record a water bill issued by MIDC dated 11th March, 2015 in the name of Transpower Engineering Private Limited for an amount of Rs.4,78,508/-. The meter status for the said plot shows as disconnected. He submits that the respondent no.2 thus has already noted the change of constitution of the partnership firm into a private limited company. The local authority otherwise would not have issued a water bill in the name of the Transpower Engineering Private Limited. He submits that the said order dated 19th August, 2012 thus passed by this Court thereby directing the official liquidator to sell the said plot bearing no. B-16 is final and binding on respondent no.2 also. Respondent no.2 thus cannot be allowed to agitate its alleged claim in absence of any challenge to the said order dated 19th August, 2012.

40. Learned counsel submits that the official liquidator has complied with its duty under Section 456 of the Companies Act, 1956 by taking possession and charge of the said property. The official liquidator had intimated the respondent no.2 in respect of the order of winding up passed by this Court and requested to demarcate the said property. He submits that the respondent no.2 had infact agreed to demarcate the said property and had submitted a plan showing the plot with demarcation on the basis of the surveyor's report. The name of the allottee of the said property in the said report was shown as the partners of M/s. Transpower Corporation. He submits that even at that stage of demarcation in the year 2012, the respondent no.2 did not raise any issue contending that the said property being a licence in favour of the company in liquidation and not a lease as sought to be now contended before this Court at this belated stage. The official liquidator has already sold the lease hold rights in the said property for valuable consideration to the successful bidder and has already executed the requisite documents in favour of the applicant who was nominated by the said successful bidder in respect of the suit property. The claim thus now made by the MIDC is an after thought.

41. It is submitted by the learned counsel for the official liquidator that the said partnership firm was converted into a private limited company on 4th May, 1980. The said firm as an entity stood dissolved on 31st December, 1980. Subsequently, the private limited company was converted into a limited company vide special resolution dated 27th September, 1991. Form 23 was also filed in that regard with the Registrar of Companies. There has been vesting of properties firstly in the name of the private limited company and thereafter in the name of the limited company. There was no conveyance of the property executable in favour of the limited company. He submits that all the properties of the firm vest in the limited company on the firm being created as a company under the provisions of the Companies Act, 1956 but that vesting is not a consequent or incidental to a transfer but would amount

to a statutory vesting of properties in the company as per the provisions of the Companies Act, 1956. From 4th May, 1980 the said firm stood replaced by the cloak of a private limited company i.e. Transpower Engineering Private Limited and from 27th September, 1991, the private limited company was converted into a limited company being the company in liquidation.

42. Learned counsel for the official liquidator placed reliance on the judgment of this Court in case of **Commissioner of Income Tax, Mumbai v/s. Texspin Engineering and Manufacturing Works, Mumbai, 2003 (5) Mah. Gen. 507** in which this Court had dealt with an issue in respect of levy of capital gain tax under Section 45(1) and 45(4) of the Income Tax Act, viz-*a-viz* its applicability to a conversion under Part IX of the Companies Act, 1956. He relied upon paragraphs 5 and 6 of the said judgment and would submit that once there is a vesting of asset from a firm to a private limited company and where the constitution of the firm itself had not changed, the properties are considered to be vested in the company, as they exist. This *ipso facto* does not amount to a transfer of asset. The contention of the respondent no.2 that transfer charges are leviable on the basis that there was a transfer of an asset from a firm to a private limited company is *ex-facie* erroneous.

43. Learned counsel for the official liquidator placed reliance on the circular dated 12th May, 1998 issued by MIDC annexed at page 97 of the affidavit in rejoinder filed by the applicant. He submits that based on the condition no.3 set out in the said circular, the transfer in this case would be a formal transfer i.e. transfer from promoter of the proposed private limited company to private limited company promoted by him. He also placed reliance on the judgment of the Division Bench of this Court in Writ Petition No. 4191 of 2015 delivered on 5th February, 2020 and more particularly on paragraphs 29 to 41 holding that the said circular dated 12th May, 1998 does not mention that formal transfer can only be between the original allottee

and transferee. He submits that the Division Bench of this Court interpreted the said circular and held that a transfer from a promoter of a proposed private limited company to a private limited company incorporated by the same promoter simply amounts to a transfer and such transfer would fall within the fourth category of a formal transfer.

44. Learned counsel for the official liquidator placed reliance on the Memorandum of Association of the private limited company and would submit that even the said Memorandum of Association would make it clear that the object of the company in liquidation was to continue the business carried on by the erstwhile partners in the firm M/s. Transpower Corporation. The private limited company was formed by the partners of the firm and thus this case also would squarely fall within the fourth category of the said circular. He submits that the demand thus made by the respondent no.2 for 30% differential premium will not be attracted in view of the fact that the said transfer was a formal transfer in terms of the fourth category of the said circular.

45. It is submitted by the learned counsel that in any event since the respondent no.2 seeks to apply the said circular dated 12th May, 1998 with retrospective effect to the company in liquidation, the demand made by the respondent no.2 at this stage is also barred by law of limitation. This submission is made by the learned counsel without prejudice to the submission that no such differential premium is liable to be paid. He submits that the respondent no.2 now seeks to levy transfer charges with retrospective effect from the year 1980 on the basis of the said circular. He submits that under the old guidelines, such transfers were considered as formal transfers. The respondent no.2 was fully aware about the change in the constitution of the firm to that of the private limited company. The MIDC had provided the said water bill to the applicant when the applicant had requested for an NOC in respect of the water dues for the said property

in the month of March 2015. It is thus clear that the MIDC had verified its record and thereafter had issued the water bill.

46. Learned counsel for the official liquidator placed reliance on the judgment of Supreme Court in case of ***Andhra Pradesh Power Co-ordination Committee v/s. Lanco Kindapalli Power Limited and Ors., (2016) 3 SCC 468*** in the context of the dues to be recovered by statutory authorities. It is held by the Supreme Court in the said judgment that the test to be applied in absence of a period of limitation for recovery prescribed under the statute is whether the claims, if legally not found to be recoverable in a civil suit, or in any other regular proceedings, on account of limitation, than such claims cannot be entertained. The Supreme Court laid down those principles on the touchstone of Article 14 of the Constitution of India, in order to avoid injustice and discrimination. It is held by the Supreme Court that if the nature of a statute is to enable speedy recovery of dues, than it would be ironic to permit the creditor to recover dues beyond the period of limitation.

47. It is submitted by the learned counsel that it is trite law that any statutory body is required to raise demand within the prescribed period of limitation from the date of cause of action and thus respondent no.2 having failed to raise any demand till date is now estopped from demanding any amount either from the applicant or the official liquidator on the ground of the claims being barred by law of limitation. He submits that in any event it is not even the case of the respondent no.2 that they have raised a demand on the applicant or the official liquidator. Since, more than 40 years have passed from the date of the conversion of the firm into the private limited company in 1980 and more than 29 years from the date of conversion from private limited company to limited company in 1991, the claims of respondent no.2 are hopelessly barred by law of limitation.

48. Without prejudice to the aforesaid submissions, learned counsel for the official liquidator submits that if this Court is of the view that respondent no.2 may have a claim against the company in liquidation, namely transfer charges, differential premium and extension charges, than this Court may consider directing MIDC to lodge its claim with the official liquidator and in that even the official liquidator shall decide and adjudicate the claim in accordance with law and on its own merits.

49. Mr. Chawan, learned counsel appearing for the respondent no.2 on the other hand invited my attention to various averments made by the respondent no.2 in the affidavits filed in this company application, documents forming part of compilation of the documents filed before this court by his client including various circulars issued by the MIDC from time to time. After completion of his arguments, he also filed written arguments for consideration of this court. It is submitted by the learned counsel that in the records of the respondent no.2, there is only an agreement to lease dated 17th March, 1980 in favour of the Transpower Corporation, a partnership firm who had been described as a licensee in the said agreement to lease. He relied upon clauses 1, 2, 3(a), 3(d), 3(l) and 5 to 8 of the said document.

50. It is submitted that the said agreement clearly provided that only after the construction of the factory building within the specified time and obtaining building completion certificate from Executive Engineer of respondent no.2, a lease for 95 years would be executed. He submits that the extension of benefit of concession/waiver/restriction on transfer charges as well as extension charges in respect of the said plot can not be granted to the auction purchaser of the plot in possession of the company in liquidation who was only a licensee of the said plot. He submits that the applicant had no transferable interest in the said plot and such concession would not be just and legal, as it would deprive the respondent no.2 of the funds which would have been utilized for creating/augmenting industrial infrastructure in

the State of Maharashtra. He submits that if the prayers in the company application are granted, it would result in utilization of public funds for the benefit of private entity.

51. It is submitted by the learned counsel that Maharashtra Industrial Development Act, 1961 is a special Act enacted by the State Legislature and is a complete code in respect of various issues and aspects about lands and their disposal in notified industrial areas of MIDC. The said Act had received the assent of the Hon'ble President of India under Article 254 (2) of the Constitution of India on 20th February, 1962. The respondent no.2 has more than 250 industrial areas and estates throughout the State of Maharashtra. He submits that in respect of the Taloja industrial area of the respondent no.2, the lands have been acquired under the said MID Act, 1961. The said area is a notified industrial area under section 2(g) of the said MID Act. The respondent no.2 has been established by the State Government in exercise of powers under section 3 of the MID Act.

52. Section 15 of the MID Act empowers the respondent no.2 to acquire and hold the properties both moveable and immoveable as well as to lease, sale and exchange or otherwise transfer any property held by it on such conditions as may be deemed proper by the MIDC. Section 43-1A of the said MID Act cast an obligation on the MIDC to deal with the lands which are developed by or under the control and supervision of the Corporation in accordance with the regulations made in that behalf. Learned counsel placed reliance on sections 64 and 67 of the said MID Act and would submit that section 64 empowers MIDC to frame the regulations in consultation with the State Government in respect of various matters enumerated therein. Section 67 is a non-obstante clause which states that the provisions of the said MID Act shall have effect notwithstanding anything inconsistent therewith contained in any other law.

53. Learned counsel strongly placed reliance on the judgment of Supreme Court in case of ***Shri Ramtanu Co-operative Housing Society Limited and Another vs.State of Maharashtra, 1970 (3) SCC 323*** and in particulars paragraphs 3, 4, 5, 9, 11, 15 and 21. He submits that in exercise of powers under section 64 of MID Act, 1961, the MIDC has framed MIDC Disposal of Land Regulations, 1975 which regulations are statutory in nature and deal with the terms and conditions for disposal of lands. He relied upon regulation 1(c), 4.4, 4.5, 6, 13 and 18 thereof in support of his submission. He submits that the said regulations applied to all the lands transferred to or placed at the disposal of the MIDC by the State Government and lands purchased or otherwise acquired or held by the MIDC. He relied upon the definitions of the 'building completion certificate' and 'building regulations' and submits that the MIDC is empowered to dispose of the plots of land by public auction or by entertaining individual applications. The said plots can be allotted on rental basis or on premium lease basis or partly on rental basis and partly on premium basis. The plot in question had been allotted on the basis of the application received from the partners of the erstwhile Transpower Corporation.

54. It is submitted by the learned counsel that only after payment of premium or security deposit as the case may be, the allottee shall execute an agreement to lease in Form C provided in the said regulations in accordance with regulation 13. He submits that under regulation 18, on production of 'Building Completion Certificate' the allottee shall be entitled to execution of a lease in their favour in Form 'D' appended to the said regulation. Only after building completion certificate is obtained by the allottee, a lease would be executed in favour of the allottee under regulation 18. It is submitted that in this case, as far as plot no.B-16 is concerned, an agreement to lease dated 7th March, 1980 was executed between partners of Transpower Corporation and the MIDC. The said partners were referred to as the licencees. Clause 1 of the said agreement itself provided that the licensee

shall have licence and authority only to enter upon the piece of plot for the purpose of building and executing works on the said plot.

55. Learned counsel relied upon clause 2 of the said agreement and would submit that the said agreement was not to be construed as a demise in law of the said plot of land or any part thereof to the licensee of any legal interest. The said agreement provided that construction of building and obtaining building completion certificate has to be completed within a period of two years. Under clause 3 of the said agreement, the licensee was required to observe and perform various stipulations and more particularly that such licensee will not directly or indirectly transfer, assign, sale, encumber or part with his/their/its interest under or the benefit of the said agreement or any part thereof in any manner whatsoever without the previous consent in writing of the Chief Executive Officer and it shall be open to the Chief Executive Officer to refuse such consent or grant the same subject to such conditions including the condition for payment of additional premium as he may in his absolute discretion think fit. He submits that in view of the said clause, the licensee could not have directly or indirectly transfer, assign or sell or part with its interest under or the benefit of the said agreement or any part thereof in any manner without a previous consent of MIDC.

56. Learned counsel placed reliance on clause 7 of the said agreement and would submit that the licensee was entitled to the execution of lease deed for a period of 95 years only after the Executive Engineer would have certified that the factory building and the work had been erected in accordance with the terms of the said agreement and if the licensee would have observed all the stipulations and the conditions mentioned in the said agreement and not otherwise. He submit that since the said agreement to lease dated 7th March, 1980 was only a licence as contemplated under regulation 13 of the MIDC Disposal of Land Regulations, 1975 and since the

said Transpower Corporation did not construct a factory building on the said plot bearing no.B-16 and did not submit any building completion certificate, no lease contemplated under clauses 7 and 8 read with regulation 18 was executed. The said Transpower Corporation continued to be the licensee of plot no.B-16.

57. It is submitted that the company in liquidation was in possession of plot no.B-16 only as a licensee as the said company joined the said Transpower Corporation as a partner. He submits that the said plot thus could have never become the property of the company in liquidation and thus the Official Liquidator could not have auctioned the said licence in respect of plot no.B-16. In support of his submission that such an agreement to lease can never be termed as lease, he relied upon the judgment of Supreme Court in case of **ICICI vs. State of Maharashtra (1999) 5 SCC 708** and in particular paragraphs 1 to 4, 6 and 8. He also placed reliance on the judgment of this court in case of **State of Maharashtra vs. Jasubhai Business Services Private Limited, 2019 SCC OnLine Bom 4414** and in particular paragraphs 4, 5, 8, 16 to 19, 25 and 32.

58. It is submitted by the learned counsel that since the MIDC being a statutory corporation governed by the provisions of the said MID Act and the Land Disposal Regulations in respect of allotment of plots in MIDC Industrial Area, the said allotment has to be strictly in accordance with the procedure and the format prescribed under the said MIDC Disposal of Land Regulations, 1975. Any deviation made by the licensee would not be binding on the MIDC and would not create any rights in favour of such allottee.

59. It is submitted that the issuance of the building completion certificate by the authority is not an empty formality but it ensures that the construction/structure made by the allottee is legal, lawful and in accordance

with sanction plan and in conformity with the law. He placed reliance on the judgment of this court in case of ***M/s.Emtex Industries (India) Limited and Another vs. Maharashtra Industrial Development Corporation and Another, 2004(4) All M.R. 185*** and in particular paragraphs 29 and 30. He submits that any action of the allottee or the officials of MIDC contrary to the regulation would not create any right in favour of the company in liquidation or convert the agreement to lease dated 7th March, 1980 into a lease as contemplated under regulation 18 read with clauses 7 and 8 of the said agreement to lease. He submits that the regulations framed by the MIDC are in exercise of statutory power provided under the provisions of MID Act and are in the nature of subordinate legislation and became part of the said statute. Any action thus contrary to such regulations would render such action as bad in law and would not create any right in favour of any person.

60. Learned counsel placed reliance on the judgment of Supreme Court in case of ***Pepsu Road Transport Corporation, Patiala vs.Mangal Singh and Others, (2011) 11 SCC 702*** and in particular paragraphs 27 and 29. He submits that the reliance placed by the applicant and the learned counsel for the Official Liquidator on the water bills issued to the company in liquidation or letter in respect of extension charges issued to the applicant or permission to mortgage or execution of tripartite agreement dated 7th March, 1980 amongst MIDC, applicant and Maharashtra State Financial Corporation in respect of the loan would not convert the agreement to lease entered into in accordance with regulation 13 unless there is compliance of regulation 18 read with clauses 7 and 8 of the said agreement to lease and a separate lease has been executed. He distinguished the judgment of Supreme Court in case of ***Smt.Rajbir Kaur and Another*** (supra) and judgment of Delhi High Court in case of ***Municipal Corporation of Delhi*** (supra) relied upon by the learned counsel for the applicant and would submit that none of these judgments would assist the case of the applicant

for the aforesaid reasons.

61. Learned counsel for the respondent no.2 submits that the company in liquidation in this case was incorporated on 4th May, 1980. He relied upon the provisions of the Memorandum of Association of the company in liquidation and would submit that the main object of company was to enter into partnership in the business carried out by the firm Transpower Corporation. There is thus no conversion of partnership firm into company as sought to be canvassed by the Official Liquidator in the affidavit in reply filed by him. He submits that in another proceeding of the said company in liquidation, the liquidator had taken a stand that the company in liquidation was incorporated with the object of joining as a partner in Transpower Corporation. The said stand taken by the Official Liquidator is recorded by this court in its order dated 10th October, 2018 in ***Company Application No.577 of 2016 in Company Petition No.606 of 1998*** filed by ***Transpower Corporation vs. The Official Liquidator of Transpower Engineering Limited and Others***. He distinguished the judgment of this court in case of ***Commissioner of Income Tax, Mumbai vs. Texspin Engineering and Manufacturing Works Mumbai, 2003 (5) MLJ 507*** (supra) on the aforesaid ground and would submit that the said judgment would not assist the case of the Official Liquidator.

62. It is submitted by the learned counsel that the said order dated 10th October, 2018 passed by this court would also clearly indicate that the said partnership firm Transpower Corporation was dissolved on 31st December, 1980 which fact was not communicated to MIDC. The said company in liquidation continued in occupation of plot no.B-16 without paying transfer charges or without getting lease of the said property. The correspondence between the parties i.e. between MIDC and the Transpower Corporation revealed that in the year 1980 MIDC by letter dated 9th April, 1980 had called upon the partners of Transpower Corporation to submit building plans

in respect of plot no.B-16 on or before 7th September,1980 and to complete the construction on or before 7th March, 1982. He submits that on 3rd October, 1986, the MIDC had once again called upon the Transpower Corporation to obtain building completion certificate as the allottee had started occupying the premises without obtaining building completion certificate.

63. Learned counsel for the respondent no.2 relied upon the letter dated 20th October, 1986 addressed by the said Transpower Corporation to the MIDC thereby submitting that they wanted to construct a small shed on plot no.B-16 but due to shortage of funds could not construct the said structure. The MIDC vide letter dated 27th February, 1987 replied that since they had voluntarily submitted to the condition for construction, they should construct on the said premises. He submits that even as per the admission of the said licensee, there is no construction on the said plot no.B-16 as per the plans and therefore there was no question of any building completion certificate and consequently lease in respect of the said plot which continued to be a licence in the hands of the company in liquidation.

64. Learned counsel for the respondent no.2 placed reliance on the judgment of the Supreme Court in case of ***M/s.Parasram Harnand Rao vs. M/s.Shantiprasad Narinder Kumar Jain and Another, (1980) 3 SCC 565*** and in particular paragraphs 2 and 6. He submits that the Official Liquidator merely steps into the shoes of the company in liquidation and thus sale by the Official Liquidator under the orders of court is on behalf of the company in liquidation. Such a sale by the Official Liquidator thus would be a voluntary sale. He submits that in this case only an agreement to lease dated 7th March, 1980 between the MIDC and the partners of Transpower Corporation was executed. The said agreement was purely a licence with a provision for execution of lease deed in future upon completion of the factory building within the stipulated time and after submitting the building

completion certificate issued by the Executive Engineer of MIDC in accordance with provisions of MIDC Disposal of Land Regulations, 1975.

65. It is submitted by the learned counsel that the official liquidator had thus when stepped into the shoes of the company in liquidation, was only as a licensee of the said plot bearing no.B-16. The Official Liquidator thus could not have validly and legally transferred the licence in respect of the said plot granted in favour of Transpower Corporation by conducting an auction. He submits that the Official Liquidator has misrepresented the nature or character of the document viz. agreement to sale and agreement to lease before the Company Court. The Company Court relied upon the said representation and directed the auction of the alleged leasehold rights of the company in liquidation. Such representation goes to the root of the matter and vitiates the entire action. He submits that the respondent ought to have brought this fact to the notice of the Company Court in a parallel proceedings initiated by the auction purchaser.

66. It is submitted that the Company Court will have to consider whether the Official Liquidator could have validly transferred the licence by misrepresenting the character of such licence as lease to the Company Court. It is submitted that since the licence is auctioned by the liquidator by misrepresentation and without the permission of the MIDC the entire auction stood vitiated. The auction purchaser does not get any rights under the said auction. He submits that the Official Liquidator after taking possession of the plot ought to have considered the true nature of agreement to lease.

67. It is submitted that the applicant also has not conducted the due diligence about the nature of the said title document while acquiring the rights under the auction on 'as is where is basis and whatever there is basis'. The applicant also ought to have ascertained whether the agreement to lease dated 7th March, 1980 was a lease or licence. The bear reading of the said

agreement itself would have made it clear that it is only a licence and not lease. He submits that the auction purchaser thus would not get any rights to the said plot no. B-16 without the consent of MIDC. He distinguished the judgment of this Court in case of **Milind Agnihotri** (supra) relied upon by the learned counsel for the applicant on this ground and would submit that the said judgment would not assist the case of the applicant. The said judgment deals with *inter-se* dispute between the creditors as to who had better right over the property which was sold to the auction purchaser. There is was no dispute about the title or the nature of the property raised by the owner of the said property.

68. Insofar as the reliance placed by the applicant on the letter dated 8th August, 1980 from MIDC allegedly sanctioning the amalgamation of plot nos. B-25, B-26, B-27 and B-16 is concerned, it is submitted by the learned counsel that the said sanction letter dated 8th August, 180 itself had imposed two conditions i.e. 1) that this permission is exclusively for the purpose of construction of factory building and 2) that for all other purposes including payment of annual rent all the plots will be treated as separate one. He submits that the said sanction letter was only for construction purpose and for all other purpose the plots are treated as separate including the nature of document namely lease or licence. He submits that at the relevant time in respect of plot no. B-16, there was only a licence to enter upon the plot and to construct a factory building.

69. The sanctioning of plans by communication dated 23rd February, 1981 would also not alter the nature of the said licence in respect of plot no. B-16 because only after construction as per the sanction plans and obtaining the building completion certificate, a lease in respect of the said plot bearing no. B-16 could have been executed. He relied upon clause 21 of the said sanction letter dated 23rd February, 1981 and would submit that even the said clause clearly obliges the allottee to obtain building completion certificate

from the executive engineer before occupying the building. He submits that the said occupation certificate dated 27th May, 1981 issued by CIDCO in respect of plot no. B-25, B-26 and B-27 only would not alter the requirement of the building completion certificate for plot no. B-16 under the agreement to lease dated 7th March, 1980 read with the Regulation 18 of the MIDC Disposal of Land Regulation, 1975.

70. Learned counsel for the respondent no.2 submits that without prejudice to all the submissions recorded aforesaid made by the respondent no.2, considering the peculiar facts and circumstances of the present case and without treating this as a precedent, respondent no.2 had extended an offer to the applicant described in paragraph 17 of the additional affidavit dated July 2019 filed by the area manager of MIDC. He submits that in the said without prejudice offer, it was clearly provided that the MIDC may consider recognizing the applicant as licensee in respect of the said plot no. B-16, if the differential premium is paid to MIDC in respect of the said transfer in favour of the applicant and if the applicant obtains extension of time for completing factory premises by paying extension charges to MIDC. It is submitted that after the said payment is made, MIDC would issue necessary transfer order and grant fresh extension to the applicant for completing the building on the said plot. Only after the factory building is constructed in accordance with the sanction plan and building completion certificate is obtained by the applicant, the lease can be executed in favour of the applicant. He submits that during the course of the arguments the applicant has refused to accept the said without prejudice offer made by the respondent no.2 considering the facts and circumstances of this case.

71. Learned counsel for respondent no.2 placed reliance on Section 15 of the MID Act and would submit that the said provision prescribes the powers of the MIDC. Under the said provision, the MIDC may lease, sale, exchange or otherwise transfer any property held by it on such conditions as it may

deem proper. He also placed reliance on Section 64 of the MID Act and would submit that the regulations framed by MIDC by exercising powers under Section 64 i.e. MIDC Disposal of Land Regulations, 1975 are statutory in nature and deal with the terms and conditions for disposal of lands. He relied upon Regulation 29 and would submit that in exercise of the said power under Section 15A read with Regulation 29, the MIDC has issued various circulars from time to time taking into consideration the requirement of industrial areas, the policy of State Government and the aims and object of the MIDC i.e. for securing the orderly establishment in industrial areas and industrial estates of industries in the State of Maharashtra and to assist generally in the organisation thereof.

72. It is submitted that the MIDC has issued 5 circulars which deal with transfer charges as well as extension charges, dated 12th May, 1998, 14th August, 1998, 12th December, 2011, 10th June, 2013 and 29th April, 2014. He submits that in this case the agreement to lease has been executed between the parties on 7th March, 1980. He relied upon clause 1 and clause 3(a) and (d) and would submit that those clauses cast obligation on the licensee i.e. the Transpower Corporation to complete factory building in accordance with the sanctioned plans within two years and to obtain building completion certificate to that effect. Clause 3(l) prohibits any direct or indirect transfer, assignment, sale of the interest or benefit under the agreement without prior permission of MIDC. Clause 5(b)(i) empowers MIDC to enter upon the plot for failure to observe any of the terms and conditions of the agreement to lease and also empowers it to terminate the same.

73. Learned counsel placed reliance on clause 5(b)(ii) and would submit that the said clause provides that MIDC may permit the licensee occupation of the demised premises on payment of such additional premium as may be decided by MIDC. Clause 7 deals with grant of lease after completion of factory building and obtaining building completion certificate from

executive engineer, MIDC. He submits that for any transfer prior permission of MIDC is required and if the licensee fail to construct factory building and wants to continue on the premises/plot than the licensee has to pay the extension charges to MIDC. The agreement to lease between the parties read with the Regulations of 1975 are binding on the allottee and now on the official liquidator having stepped in the shoes of the company in liquidation. The official liquidator thus could not have any better rights under the said agreement to lease than the allottee itself. The official liquidator is bound by the terms and conditions of the agreement to lease read with the Regulations 1975. The entire action of the official liquidator of auctioning the licence premises is thus vitiated. He relied upon the clause 8 of the circular dated 10th June, 2013 and would submit that the said clause specifically provides that where the period of development of plot had expired than transfer should not be permitted without payment of extension charges for development of plot.

74. It is submitted by the learned counsel that since Transpower corporation has failed to construct the building by 7th March, 1982 and to obtain the building completion certificate within the time prescribed, if the applicant wants to retain the plot, applicant will have to pay extension charges as required under clause 4(b)(ii) of the agreement to lease dated 7th March, 1980. The official liquidator ought to have obtained the extension by paying extension charges before conducting an auction on the said plot. The payment of extension charges is thus binding on the official liquidator and the applicant. Extension of time for development of the plot is possible only upon actual payment either by the liquidator or by the applicant which is pre-requisite for getting extension. The applicant or the official liquidator cannot ask the MIDC to waive off the extension charges when the applicant as well as the official liquidator are merely licensees having no better title in the property except as provided in the agreement to lease dated 7th March, 1980.

75. It is submitted by the learned counsel that merely because official liquidator has been appointed of the assets of the company in liquidation, it cannot be a fetter on the liability to pay extension charges under the agreement to lease as failure to pay the extension charges brings the agreement to lease to an end. The liquidator or the applicant cannot request this Court to re-write the contract between the MIDC and the said Transpower Corporation to waive off or restrict the extension charges. This Court has no power under Section 446(2) or Section 457 of the Companies Act, 1956 to re-write the contract.

76. It is submitted by the learned counsel for the MIDC that extension charges are the charges for retaining the plot which otherwise would have gone back to the MIDC on determination of agreement to lease for failure to complete the construction within the stipulated time. The extension charges is a pre-requisite for holding over the plot on behalf of the company in liquidation as liquidator has merely stepped into the shoes of the company in liquidation. The transfer of licence by liquidator would not convert it to lease at the hands of the applicant. The applicant will have to pay the extension charges to retain the plot as admittedly there is no building completion certificate and consequential lease between MIDC and the allottee.

77. It is submitted by the learned counsel that the judgment of this Court delivered on 26th July, 2018 in the matter of **M/s. Metal Tubes and Rolling Mills** would not assist the case of the applicant or the liquidator. He submits that in the said matter there was a lease between MIDC and the company in liquidation. The official liquidator had auctioned the lease hold rights of the plot. However in this case, it is only a licence and not a lease. The licence would not create any property rights in the allottee which could be transferred in an auction. No permission of MIDC was admittedly obtained before auctioning the rights under the agreement to lease. There is the

fundamental difference between the matter in hand and the facts before this Court in the matter of *M/s. Metal Tubes and Rolling Mills*.

78. It is submitted by the learned counsel for the MIDC that MID Act, 1961 had received assent of the Hon'ble President of India on 28th February, 1962 under Article 254(2) of the Constitution of India. Section 67 of the MID Act is a non-obstante clause which states the provisions of the MID Act shall have effect notwithstanding anything inconsistent therewith contained in any other law. The lands in MIDC industrial area under MID Act, 1961 which is a complete code notwithstanding inconsistency with Transfer of Property Act if any, the transfer of property excluding agricultural land falls under entry 6 of the concurrent list. The provisions of MID Act and Regulations framed under the said Act would thus prevail and the agreement to lease dated 7th March, 1980 can only be converted to lease in accordance with the provisions of MIDC Disposal of Land Regulations, 1975. Learned counsel submits that the Company Applicant thus filed by the applicant deserves to be dismissed with exemplary cost.

79. Mr. Kamat, learned counsel for the applicant in rejoinder reiterated the submissions made by him in his initial arguments. He distinguished the judgment of Supreme Court in case of *Shri Ramtanu Co-operative Housing Society Limited* (supra) relied upon Mr. Chawan, learned counsel for the respondent no.2 on the ground that the said judgment was dealing with the challenge to the constitutional validity of the MID Act. The principle applied in this case was doctrine of pith and substance. It was nobody's case that the legislature whilst enacting MID Act has trenched upon a different entry in the concurrent list. He submits that in any event, the presidential assent under Article 254 of the Constitution of India, is of no assistance as it has no application qua the Companies Act, 1956 which is in list I and in the concurrent list. The said judgment thus would not assist the case of the respondent no.2 and is distinguishable in the facts of this case.

80. Learned counsel for the applicant distinguished the judgment of this Court in case of *M/s. Emtex Industries (India) Limited and Another* (supra) on the ground that in the said judgment there was a challenge to a demand notice issued by MIDC. There is no such demand notice issued by MIDC in this case either on the official liquidator or anybody else. The said judgment was dealing with the case where the petitioner claimed that MIDC was refusing to accept the building completion certificate issued by the area manager of MIDC and that MIDC was illegally demanding penal rate for water charges. The division bench was not dealing with the case where occupation certificate was issued and that penal charges were being levied because building completion certificate was not obtained. He submits that the said judgment would not assist the case of the respondent no.2 at all.

81. It is submitted that in any event the said judgment was delivered at a time when MIDC was the planning authority and therefore MIDC could have issued a building completion certificate on satisfaction of the condition as per their rules and regulations. The same need not be the case with the CIDCO which has its own GDCR. He also relied upon paragraph 31 of the said judgment and would submit that the said paragraph makes it very clear that the building completion certificate was not granted on account of unauthorized construction at the behest of the petitioner. However, that is not the case in the present case. In this case the construction was completed and occupation certificate was granted.

82. Learned counsel for the applicant distinguished the judgment of Supreme Court in case of *ICICI vs. State of Maharashtra* (supra) relied upon by the learned counsel for the respondent no.2 on the ground that in the said judgment provisions of Bombay Stamp Act dealing with the definition of lease was considered which definition is totally different. In context of Stamp Act, the Government is concerned with the collection of the Stamp

Duty. The collector has to look only at the nomenclature of the document without getting into the aspect of intention of the parties and the conduct of the parties. In this case, the possession was handed over to the licensee in the said judgment only for the purpose of erecting the building for housing of the officers and no other purpose until grant of the lease.

83. Learned counsel also relied upon paragraph 8 of the said judgment and would submit that the possession and control of the property in the facts of that case was that of the owner. In the present case, the exclusive possession was of the company in liquidation. MIDC had permitted amalgamation of the plot. The other three plots bearing nos. B-25, B-26 and B-27 were leasehold plots in respect of which lease deeds were already executed. No landlord would permit amalgamation of a licenced plot with the leased plot. MIDC had also permitted creation of mortgage of the plot no. B-16 admittedly which would also show that the intention was to treat the agreement of lease as a lease itself and not the licence. The said judgment is thus clearly distinguishable in the facts of this case.

84. Learned counsel for the applicant distinguished the judgment of this Court in case of ***State of Maharashtra vs. Jasubhai Business Services Private Limited*** (supra) relied upon by the learned counsel for the respondent no.2 on the ground that the said judgment is not at all relevant for this case. He invited my attention to paragraphs 8, 9, 24 and 28 of the said judgment and would submit that the definition of the lease for the purpose of Stamp Act is different. In case of licence there is no transfer of interest in favour of the licensee. No permission could have been accorded for mortgaging the said plot since it was only a licence. There is a distinction between a lease under the Bombay Stamp Act and otherwise.

85. It is submitted by the learned counsel that loan was obtained by the company in liquidation with permission of MIDC. This admitted fact itself

would clearly indicate that rights were created in the said plot of land by the MIDC in favour of the company in liquidation. The financial institution who had given loan to the company in liquidation had also allowed the leasehold rights to be sold. It is submitted by the learned counsel that the circulars relied upon by the respondent no.2 would assist the case of the applicant and not the respondent no.2. The applicant has already paid the entire consideration amount. The learned counsel for the respondent no.2 has not dealt with the issue of limitation raised by the official liquidator in his argument across the bar or even in the written arguments.

86. Mr. Shah, learned counsel for the official liquidator in rejoinder submits that if this Court comes to the conclusion that the MIDC is entitled to recover any amount on transfer of the said plot in question to the applicant under an order passed by this Court, MIDC be directed to lodge its claim before the official liquidator which claim would be considered on its own merits.

REASONS AND CONCLUSIONS

87. The applicant has prayed for an order and direction against the MIDC for transfer of immovable property in prayer clause (a) in the name of the applicant on payment of standard transfer charges and seeks extension of time for building completion by two years from the date of transfer of Plot No.B-16 in the name of the applicant. The applicant has also prayed for an order and direction to supply water on Plot No.B-16 on payment of water charges from the date of confirmation of sale.

88. This Court shall first consider whether this Court is empowered to grant reliefs as prayed by the applicant under Section 446(2) of the Companies Act, 1956 or not. A perusal of the record indicates that on 28th January 1978 Transpower Corporation, a Partnership Firm was constituted.

On 7th March, 1980 a plot bearing No.B-16 was allotted by MIDC vide agreement executed between MIDC and said Transpower Corporation. On 7th March, 1982 MIDC handed over possession of the said plot to the said Transpower Corporation. On 04th May, 1980, Transpower Corporation was converted into Private Limited Company under the name of Transpower Engineering Pvt. Ltd. On 27th November, 1991, the said Transpower Engineering was converted into a Limited Company which company came to be wound up subsequently (hereinafter referred to as the Company in Liquidation). The Form No.23 was filed with the Registrar of Companies in that regard.

89. It is not in dispute that M/s. Metal Tubes and Rolling Mills had filed a Company Petition against the said company seeking winding up of the said company in the year 1998. The said company was ordered to be wound up by this Court by an order dated 22nd January, 2008. On 29th January, 2011, the Official Liquidator took possession of the said Plot bearing No.B-16. The Official Liquidator was informed about the said plot by some of the workers of the said company in liquidation in the month of November/December 2010.

90. On 13rd January, 2012, the Official Liquidator invited claims against the said company in liquidation under Rule 148 of the Companies (Court) Rules 1959 pursuant to which the Official Liquidator received 285 claims. The Official Liquidator thereafter filed a report (OLR 261/12) for seeking possession to sell the said plot. The Official Liquidator published a sale notice for the said plot in the newspapers and also displayed the said notice on the board of this Court, Ministry of Corporate Affairs and the Official Liquidator.

91. On 9th August, 2012, this Court passed an order allowing the said OLR 261/12 permitting the Official Liquidator to sell the said plot to Attar

Buildcon Pvt. Ltd. On 25th June, 2014, the Official Liquidator handed over the possession of the said plot to the said successful bidder. The Official Liquidator has already executed and registered a Deed of Assignment in favour of the applicant, on 6th February, 2014 in respect of said plot being the nominee of the said successful bidder Attar Buildcon Pvt. Ltd.

92. It is not in dispute that till date the MIDC has not raised any demand for payment of any differential premium or any other charges arising out of the transfer of the said plot in favour of the Transpower Engineering Pvt. Ltd. or Transpower Engineering Limited or either Attar Buildcon Pvt. Ltd. or even the applicant from Official Liquidator.

93. It is not in dispute that the Official Liquidator had sold the rights in the said plot in favour of the company in liquidation pursuant to an order dated 9th August, 2012 passed by the Company Court under the provisions of the Companies Act, 1956 and handed over possession of the said plot to the successful bidder and thereafter executed a Deed of Assignment on 13th August, 2014 in name of the applicant being nominee of the said successful bidder.

94. In case of *M/s. Metal Tubes and Rolling Mills* in the same Company Petition No.606 of 1998 in Official Liquidator Report No.466 of 2016, this court has considered the powers of Company Court under Section 446(2)(d) of the Companies Act, 1956 and several other issues which are raised by the MIDC in its affidavit and reply, written arguments and across the bar. This Court in the said Judgment has construed Section 446(2)(d) of the Companies Act and has held that the powers under Section 446 bestowed on this Court are so wide that the Court has power “to decide any other question whatsoever”, “whether of law or fact” “which may relate to or arise in course of the winding up of the company”. The expression “any other question whatsoever” as well as the expression “which may relate to or arise

in the course of winding of the company” are words of wide import, clothes the company Court with the power to decide any question whatsoever that may arise whether of law or fact, which may relate to or arise in course of the winding up of the company. It is held that the power as given under Section 446(2)(1)(d) therefore could include the power to grant a declaration as prayed for in the said Official Liquidator Report.

95. After construing Section 456(1) of the Companies Act, 1956, this Court held that power of Company Court is vast. The leasehold rights of the company are an asset of the company which is capable of sale through the process of liquidation. The Official Liquidator has power to take possession even MIDC property given on lease and to sell the subsisting leasehold rights during the the Court of winding up. Under Section 457(1)(c) of the Companies Act, 1956, the Official Liquidator in winding up by the Court shall have power with the sanction of Court to sell the immovable property by public auction or private contract with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels. This Court considered the Judgment of this Court in case of ***Maharashtra Industrial Development Corporation & Ors. Vs Mahendra G.Wadhwani*** dated 23rd November, 1995, ***MANU/MH/0086/1995*** in which it was held that the Company Court has jurisdiction to issue necessary directions to one and all in respect of matter interlinked with the disposal of the property of the company under liquidation by the official liquidator with the sanction of Court.

96. It is held by this Court that the issue as to whether MIDC is entitled to any of the charges viz, differential premium or extension charges and whether transfer is normal transfer or non-formal transfer certainly relates to and arises in the course of the winding up of the company. Though the property has been leased to the company in liquidation, the leasehold rights of the property belonged to the company and therefore, it is in the custody of

the company in liquidation, who had in fact taken possession. Under Section 457, the Official Liquidator in the winding up by the Court has power of course with the sanction of the Court to sell the leasehold rights. Since this relates to an asset of the company viz. the leasehold rights, is certainly relates to and arises in the course of the winding up of the company. This Court has jurisdiction to decide the prayers sought in the Liquidator's Report and thus, the Official Liquidator is not required to go to Civil Court or file Writ Petition under Article 226 of the Constitution of India.

97. This Court is of the view that the issue as to whether MIDC is entitled to recover any premium on the transfer of the property sold by sanction of the Company Court in respect of assets of the company in liquidation is an issue incidental and arise in the course of the winding up of the company and thus, can be tried by the Company Court under Section 446(2) of the Companies Act, 1956. The principles laid down by this Court in this company petition in the judgment dated 26th July, 2018 squarely applies to the facts of this case. This Court does not propose to take any different view in the matter on this issue.

98. This Court shall now decide the issue whether the MIDC is entitled to recover the differential premium in respect of the said property sold pursuant an order passed by the Company Court for the first transfer of the partnership firm i.e. M/s. Transpower Corporation in favour of the Company in Liquidation as claimed or otherwise, the differential premium for the second transfer i.e. from company in liquidation to the applicant as demanded during the course of the argument or is entitled to recover only standard transfer charges or not? Learned Counsel for the applicant, for the Official Liquidator and for MIDC made several submissions on this issue before this Court and relied upon whether provisions of the Companies Act, 1956, MID Act and various regulations framed by MIDC under the said

MID Act and also various judgments delivered by the Supreme Court and this Court in support of their rival contentions.

99. It was vehemently contended by Mr. Chawan, learned counsel for the MIDC that according to the records of MIDC, there is an agreement of lease dated 17th March, 1980 in favour of the M/s. Transpower Corporation, a partnership firm who had been described as licensee in the said agreement to lease. The MIDC could have executed a lease deed for 95 years only after the construction of the factory building within specified time and obtaining Building Completion Certificate by the licensee from the Executive Engineer of MIDC under various clauses of the said Agreement to Lease. It is also vehemently urged by the learned Counsel for the MIDC that the MIDC being a statutory Corporation is governed by the MID Act and land disposal regulations in respect of the allotment of plot in MIDC Industrial Area and thus, the said allotment has to be strictly in accordance with the procedure and the format provided under the MIDC Disposal of Land Regulations Act, 1975.

100. A perusal of the Agreement to Lease dated 7th March, 1980 between MIDC and the partners of M/s. Transpower Corporation indicates that the MIDC had accorded necessary permission to create mortgage of the licensee/ licensee's rights in aforesaid land in favour of the lender subject to the terms and conditions contained therein. It was further provided that the lender or the Financial Institution or either of them may sell the licensee's rights in all over the said plot of land to realize the amount subject to certain payment of premium to the MIDC. Pursuant to the said order, possession of the said plot No.B-16 was handed over to Transpower Corporation by MIDC.

101. The mortgage was created in respect of the said plot by the said Transpower Corporation. A perusal of clauses (a), (c) and (d) and clauses 1

to 1(3), 3(b) and 3(d) clearly indicates that the interest is allowed to be created for raising finance by the MIDC in favour of the said Transpower Corporation by creating mortgage on the said plot and gave power to the lender to sell the said plot for recovering its dues. The said Transpower Corporation was also given possession of the plot by the MIDC even for the purpose of carrying out construction thereon. Supreme Court in case of **Smt.Rajbir Kaur and Another** (supra) has held that the question whether a transaction is a lease or a licence “turns on the operative intention of the parties” and there is no single, simple litmus test to distinguish one from the other. The twin principles test by which a lease is distinguishable from a licence are (i) the right to exclusive possession involving the transfer of an interest in the property and (ii) the rent stipulated by way of consideration for the grant.

102. Delhi High Court in case of **Municipal Corporation of Delhi** (supra) has held that (a) to ascertain whether a document creates a licensee or lease, the substance of the document must be preferred to the form, (b) that real test is the intention of the parties whether they intended to create a lease or a licence, (c) if the document creates an interest in the property, it is a lease but if only permits another to use of the property, of which the legal possession continues with the owner, it is a licence (d) if under the document a party gets exclusive possession of the property, *prima facie*, he is considered to be a tenant, but the circumstances may be established which negative the intention to create a lease.

103. The lender who was mortgagee in respect of the said plot also construed the said mortgage transaction by accepting the leasehold rights of the said Transpower Corporation in the said plot as and by way of security. This Court also while granting permission to sell the rights of the Company in Liquidation by order dated 21st June, 2012 also considered the rights in favour of the company in liquidation of the said plot as the leasehold rights.

The MIDC has not challenged the said order passed by the Company Court directing the Official Liquidator to sell the leasehold rights in the said plot till date though the said order was passed as far back as on 21st June, 2012. The principle of law laid down by Supreme Court in case of ***Smt.Rajbir Kaur and another*** (supra) and Delhi High Court in case of ***Municipal Corporation of Delhi*** (supra) apply to the facts of this case. I am respectfully bound by the principles of law laid down by the Supreme Court in ***Smt.Rajbir Kaur and another*** (supra). I am in agreement with the views expressed by the Delhi High Court in case of ***Municipal Corporation of Delhi*** (supra). This Court is thus, of the view that the intention of the parties in the Agreement dated 7th March, 1980 was that tenancy was created in favour of Transpower Corporation in the said land with right to create mortgage for availing finance thereon.

104. The next question that arises for consideration of this Court is whether any of the transfer of the said property of the said plot was a formal transfer or non-formal transfer or whether such transfer was voluntarily or involuntarily. This Court shall also consider whether the MIDC is entitled to recover any differential premium under any of the circular issued by MIDC from the applicant or from the Official liquidator or recover only standard transfer charges.

105. A perusal of the record indicates that the said partnership Transpower Corporation was converted into Transpower Engineering Pvt. Ltd. On 4th May, 1980 and the said Private Limited Company was subsequently converted into a Limited Company on 27th September, 1991 which is now in liquidation. A copy of the Form No.8 was also filed with the Registrar of Companies, Maharashtra, Mumbai which is also placed on record. There is thus no substance in this submission made by the learned Counsel for MIDC. The MIDC was fully aware of conversion of the partnership firm Transpower Corporation into the Transpower Engineering

Pvt. Ltd. and thereafter, by Transpower Engineering Pvt.Ltd. in favour of Transpower Engineering Limited i.e. the Company (in liquidation). In the further, affidavit dated 23rd July, 2019 filed by the applicant, the applicant has annexed the copy of the letter dated 4th November, 1991 which is not disputed by the MIDC. The said letter indicates that the said letter was addressed to the said M/s. Transpower Engineering Pvt. Ltd. informing that the MIDC had taken a note about the change in the name of Transpower Engineering Pvt. Ltd. There is no substance in the submission of learned Counsel for the MIDC that MIDC was not aware of conversion of said Transpower Corporation in Transpower Engineering Pvt. Ltd. and thereafter by the Transpower Engineering Pvt. Ltd. to Transpower Engineering Limited.

106. On perusal of the letter dated 29th January, 1992 annexed at page 151 of the pleadings, it is clear that on the basis of fresh incorporation certificate, the MIDC had noted the change in its records, in name of Transpower Engineering Ltd. MIDC informed that further correspondence would be in the name of Transpower Engineering Limited. Though both these letters had not referred to Plot No.B-16, MIDC did not dispute before this Court that plot No.B-16 was amalgamated with plot Nos.B-25, B-26 and B-27. Be that as it may, the factum of change in the name of M/s. Transpower Engineering Pvt. Ltd. to M/s. Transpower Engineering Limited on the basis of fresh Certificate of incorporation is not disputed by the MIDC. The amalgamation of Plot No.B-16 had taken place with the Plot Nos.B-25, B-26 and B-27 in the year 1981.

107. Though the factum of change from Transpower Corporation to M/s. Transpower Engineering Pvt. Ltd. and thereafter, in the name of M/s. Transpower Engineering Ltd. was to the knowledge of MIDC as far back atleast on 29th January, 1992, no claim of any nature whatsoever was made by the MIDC against Transpower Corporation or thereafter against the M/s.

Transpower Engineering Pvt. Ltd. or M/s. Transpower Engineering Ltd. till date or against the Official Liquidator after an order of winding up is passed on the 22nd January, 2008 by this Court till date.

108. A perusal of the record further indicates that by letter dated 24th March, 2015 the applicant had made a request to the Official Liquidator for seeking issuance of NOC in respect of the water dues for the said plot. The Official Liquidator in his record found a water bill issued by MIDC in the name of M/s. Transpower Engineering Pvt. Ltd. in respect of the said Plot No. B-16 for the month of February 2015. The MIDC vide its letter dated 23rd August, 2014 in response to the application made by the applicant for transfer of the said plot in its favour demanded various documents including the request letter of Official Liquidator for transfer of plot in favour of the applicant through this Court, certified Copy of Deed of Assignment executed by the Official Liquidator and transferee copy of the order passed by this Court dated 24th December, 2018 allowing to execute the said Deed in favour of the applicant and no dues certificate from the Dy. **Engineer, SPA & WS**, Sub-Division, MIDC Taloja.

109. In case of **Andhra Pradesh Power Coordination Committee** (supra) , the Supreme Court has held that the test to be applied in absence of a period of limitation for recovery prescribed under the statute is whether the claims, if legally not found to be recoverable in a civil suit, or in any other regular proceedings, on account of limitation, than such claims cannot be entertained. Such principles are laid down in order to avoid injustice and discrimination to a party. In view of the provisions of MID Act or the Regulations framed by MID under the provisions of the said Act, no period of limitation is prescribed for recovery of differential premium or any other payment from the lease holder of any of its plot. The test to be applied by the Courts thus is that whether such dues if any, could be recovered in a Civil Court in the recovery proceeding or any other proceedings or not. Mr.

Chawan, learned Counsel for the MIDC did not deal with this crucial aspect of the issue of limitation raised by the learned Counsel for the Official Liquidator.

110. Insofar as the recovery of differential premium from the first transfer is concerned, more than 40 years have been passed from the date of conversion of the firm i.e. Transpower Corporation into M/s. Transpower Engineering Pvt. Ltd. and more than 29 years from the date of conversion from the Transpower Engineering Pvt. Ltd. to the Transpower Engineering Ltd. The respondent No.2 was fully aware of such transfer at least more than 40 years from the date of conversion of partnership into the Private Limited Company i.e. in the year 1980 and for more than 29 years from the conversion of Private Limited Company into a Limited Company in 1981. The claim if any, of the MIDC for differential premium on the first transfer is thus ex-facie, barred by law of limitation.

111. There is no dispute about the proposition of law raised by Mr. Chawan learned Counsel for MIDC that MIDC is a Statutory Authority constituted under the provisions of MID Act, 1961 or that the provision of MIDC for disposal of Rent Regulation Act, 1975 are statutory in nature and deal with the terms and conditions of the disposal of a lands of MIDC. Such statutory powers vested in MIDC however does not empower the MIDC to recover time barred claims towards differential premium or any other payment form licensee or transferee of any plot given on lease or licence.

112. There is no merit in the submission of Mr. Chawan, learned Counsel for the MIDC that the Transpower Corporation was only a licensee in respect of said plot of land and no lease was created in its favour by MIDC by agreement dated 17th September, 1980. A perusal of various agreements which have to be read with the subsequent correspondence exchanged between the parties and their conduct required to ascertain the intention of

the parties as to whether any interest was created in the said plot in favour of said Transpower Corporation by MIDC or not clearly indicates the creation of lease in favour of the Transpower Corporation. Insofar as the reliance placed by the learned Counsel for the MIDC on the Judgment of Supreme Court in the case of **Shri Ramtanu Co-operative Housing Society Ltd.** (supra) is concerned, a perusal of the said Judgment clearly indicates that the Supreme Court has considered the challenge to the constitutional validity of the MID Act in the said Judgment. It was not the case of the MIDC that the legislature whilst enacting the MID Act had trenched upon the different entries in the concurrent list.

113. Mr. Kamat, learned Counsel for the applicant is right in his submission that the presidential assent of the Article 254 of the Constitution of India is of no assistance to MIDC as it has no application qua the Companies Act which is in list-I and not in the concurrent list. The Judgment of Supreme Court in **Shri Ramtanu Co-operative Housing Society Ltd.** (supra) is clearly distinguishable in the facts of this case. Insofar as the Judgment of Division Bench of this Court in case of **M/s. Emtex Industries (India) Ltd. & Anr.** (supra) relied upon by the learned Counsel for the MIDC is concerned, this Court in the said Judgment had considered the situation where there was a challenge to the demand notice issued by the MIDC. The Petitioner before this Court in the said matter had challenged a demand notice issued by MIDC. MIDC was refusing to accept the building completion certificate issued by Area Manager of MIDC and that MIDC was illegally demanding penal rent for water charges. The Division Bench of this Court in the said Judgment was not dealing with the case where the occupation certificate was issued and the penal charges were levied because building completion certificate was not obtained. The said Judgment of this Court in the case **M/s. Emtex Industries (India) Ltd. & Anr.** (supra) would thus not assist the case of the MIDC and is clearly distinguishable in the facts of this case.

114. Insofar as the Judgment in the case of **ICICI** (supra) relied upon by the learned Counsel for the MIDC is concerned, the Supreme Court was dealing with the definition of lease under the provision of Bombay Stamp Act. In the said Judgment the definition of lease was considered in the context of Stamp Act for the purpose of collection of stamp duty. The Supreme Court accordingly held that the Collector has to look at the nomenclature of the document without getting into the intention of the parties and the conduct of the parties. In this case the possession of the property was handed over by MIDC to Transpower Corporation. The exclusive possession of the said plot was with the Transpower Corporation and thereafter with the Transpower Engineering Private Ltd and thereafter with Transpower Engineering Ltd. The Judgment of Supreme Court in the case of **ICICI** (supra) is clearly distinguishable in the facts of this case and does not assist the case of Respondent No.2. Similarly the Judgment in the case of **State of Maharashtra & Ors. Vs. Jasubhai Business Services Pvt. Ltd. & Anr.** (supra) is also clearly distinguishable in the facts of this case and would not assist the case of respondent no.2 on the ground that definition of “lease” for the purpose of Stamp Act is different. Mr. Kamat, learned Counsel for the applicant is right in his submission that if only a license would have been created in favour of the Transpower Corporation in respect of suit plot, the MIDC would not have accorded permission for mortgage of the said plot in favour of the said Transpower Corporation.

115. A perusal of the letter dated 8th November, 1991 from MIDC to Transpower Engineering Pvt. Ltd. indicates that MIDC had taken a note in the name of M/s. Transpower Engineering Pvt. Ltd. carrying out the business under the name and style of M/s. Transpower Corporation. Though there was a reference to Plot Nos. B-25, B-26 and B-27 in the said letter, fact remains that it was to the knowledge of MIDC that M/s. Transpower

Engineering Pvt. Ltd. was carrying on business as a Proprietor under the name and style of M/s. Transpower Corporation. It is the case of MIDC itself that the said Transpower Corporation was subsequently dissolved in the year 1980. Similarly letter dated 29th January, 1992 from MIDC to M/s. Transpower Engineering Pvt. Ltd. also clearly indicates that the MIDC has taken cognizance of a fresh certificate of incorporation and noted in its record the change from the name of M/s. Transpower Engineering Pvt. Ltd. to M/s. Transpower Engineering Ltd. and accordingly informed M/s. Transpower Engineering Ltd. that further correspondence would be made in the name of M/s. Transpower Engineering Ltd. It is not in dispute that the said M/s. Transpower Engineering Ltd. was subsequently ordered to be wound up by this Court in Company Petition filed by M/s. Metal Tubes and Rolling Mills (in Company Petition No. 606 of 1998).

116. Mr. Chawan, learned counsel for the MIDC strongly placed reliance on communication dated 8th August, 1988 and Occupancy Certificate dated 27th August, 1981 granted by CIDCO and would submit that in the said communication dated 8th August, 1988 about amalgamation, it was clearly clarified that the said amalgamation was only for the purpose of construction of factory building and all other purposes of the plots would be treated as separate. The said Occupancy Certificate was only in respect of Plot B-25, B-26 and B-27 by CIDCO. Learned Counsel vehemently contended that on the basis of building completion certificate issued by Executive Engineer of MIDC, the MIDC has executed a lease deed dated 20th December, 1979 in respect of Plot Nos. B-25, B-26 & B-27. No such lease deed was executed in respect of plot No. B-16 by MIDC either in favour of Transpower Corporation or Transpower Engineering Pvt. Ltd. or in the name of Transpower Engineering Ltd. This Court is of the view that since the interest in the said plot was already created by MIDC in favour of M/s. Transpower Corporation by agreement dated 7th March, 1980 execution of lease deed was merely the ministerial act required to be carried out in

favour of the said M/s. Transpower Corporation and MIDC or thereafter between Transpower Engineering Pvt. Ltd. and MIDC.

117. There is no substance in the submission of Mr.Chawan, learned Counsel for Respondent No.2 that the said M/s. Transpower Corporation was only a licensee and thus even if the rights of Transpower Corporation as licensee would be considered as transferred in favour of M/s. Transpower Engineering Pvt. Ltd. or thereafter in favour of M/s. Transpower Engineering Ltd., the Official Liquidator could not auction the said alleged license treating as property of the company in liquidation without consent of MIDC and without getting lease deed of the said plot in favour of the Official Liquidator. There is also no merit in the said submission that the said plot was not the property of company in liquidation and was only a licence. The fact remains that the MIDC has not challenged the transfer of the said plot firstly by M/s. Transpower Corporation in the name of M/s. Transpower Engineering Pvt. Ltd. and thereafter in the name of M/s. Transpower Engineering Ltd. though it had taken cognizance of said changes as far back as in the year 1991-92.

118. There is no dispute about the proposition of law canvassed by Shri Chawan, learned Counsel for the MIDC that the Official Liquidator stepped into the shoes of the company in liquidation and thus the Official Liquidator cannot claim any right, title or interest superior to the right, title or interest of the company in liquidation in respect of land in question or any other asset of the said company. However, since the MIDC has not challenged the transfer of the said plot till date and also has not challenged the order passed by the Company Court permitting the Official Liquidator to sell the right, title or interest of the company in liquidation by a public auction and the said sale having been confirmed by the Company Court, this application cannot go into the validity and legality of the order passed by the Company Court granting permission in favour of the Official Liquidator to sell the right, title

or interest of the company in liquidation in the said plot in these proceedings.

119. This Court in case of ***M/s. Transpower Engineering Limited (In liquidation) in Official Liquidator Report No.466 of 2016 in Company Petition No.606 of 1998*** filed by M/s. Metal Tubes and Rolling Mills in its Judgment dated 26th July, 1980 also construed various circulars issued by MIDC permitting the MIDC to demand differential premium and other charges whilst disposing of the plots of MIDC in favour of third party. This Court also considered the right of MIDC to recover premium from the transfer on certain categories of transfer under circulars dated 12th May, 1998 and 12th December, 2011. This Court adverted to an unreported Judgment of Division Bench of this Court in the case of ***M/s. Colour Tech Coating (I) Ltd. Vs. Maharashtra Industrial Development Corporation & Ors.*** in Writ Petition No. 2288 of 2014 delivered on 4th February, 2015 on the issue whether the transfer of the land which was subject matter of the said proceeding was a voluntary transfer or was an involuntary transfer. The said Judgment of Division Bench was pressed in service by the learned Counsel for the MIDC in support of his contention that the transfer in question in the matter was involuntary and thus the MIDC was entitled to collect 30% differential premium for the transfer.

120. A learned Single Judge of this Court in the said Judgment dated 26th July, 1980 in Official Liquidator's Report No. 466 of 2016 distinguished the said Judgment of Division Bench of this Court in the case of ***M/s. Colour Tech Coating (I) Ltd. Vs. Maharashtra Industrial Development Corporation & Ors.*** (*supra*) and held that the said Judgment was not applicable to the facts and circumstances of the case. The Division Bench of this Court in the said Judgment had considered the sale of the property put to auction in execution of a recovery certificate issued by Debt Recovery Tribunal on the Application filed by a secured creditor. The Debt Recovery

Tribunal had directed that the sale proceeds of the said property would go to the mortgagor or the creditor of the company.

121. In the facts of this case the original Petitioner had filed Company Petition *inter alia* praying for winding up of the company in liquidation. The sale proceeds of the leasehold rights in the said plot would not go to the Petitioner exclusively but would be distributed to all the creditors of the company in liquidation in accordance with the provisions of Companies Act, 1956. The Judgment of the Division Bench of this Court in ***M/s. Colour Tech Coating (I) Ltd. Vs. Maharashtra Industrial Development Corporation & Ors.*** (*supra*) thus would not assist the case of MIDC. After distinguishing the Judgment of Division Bench in the case of ***M/s. Colour Tech Coating (I) Ltd. Vs. Maharashtra Industrial Development Corporation & Ors.*** (*supra*) this Court held that such sale or transfer of the property by liquidator pursuant to an order of Company Court is certainly an involuntary transfer. After interpreting the said circular dated 12th May, 1998 this Court held that on all involuntary transfers pursuant to any order of Competent Court, MIDC shall be permitted to recover standard transfer charges and not differential premium.

122. Mr. Chawan, learned Counsel for the MIDC could not explain before this Court in the said matter as well as in this matter as to how such transfer of the said plot in favour of the successful bidder pursuant to an order passed by Company Court in the process of recovering and realising the asset of company in liquidation for the benefit of all the creditors including workman could be called as voluntary transfer attracting the payment of differential premium under any of the circular issued by MIDC. Be that as it may in the facts of this case since this court is of the opinion that the transfer of the leasehold rights in the said plot in the name of M/s. Transpower Engineering Pvt. Ltd. by M/s. Transpower Corporation in whose favour the initial agreement was entered into by virtue of the said M/s. Transpower

Engineering Pvt. Ltd. taking over M/s. Transpower Corporation as its proprietor being already barred by law of limitation, no recovery can be made by MIDC in respect of first transfer towards differential premium or under any other head.

123. A Division Bench of this Court in an unreported Judgment in the case of **Tarapur Industries Pvt. Ltd. & Anr. Vs. Maharashtra Industrial Development Corporation & Ors.** delivered on 5th February, 2020 in Writ Petition No. 4191 of 2015 considered the situation where promoter of the proposed private company had proposed to transfer the land to a private limited company. The MIDC had demanded 30% differential premium on such transfer to the promoter of the private limited company who was the original lessee. This Court construed Clause 5 of the Circular dated 12th May, 1998 and held that the transfer by a promoter of a private limited company in favour of private limited company would simply be a transfer from the promoter of a company incorporated by the promoter and would fall in the 4th category i.e. “formal transfers” and therefore MIDC could not claim 30% differential premium. In the facts of this case also the partners of M/s. Transpower Corporation had promoted the said Transpower Engineering Pvt. Ltd.

124. The Memorandum of Association of the said Transpower Engineering Pvt. Ltd. clearly indicated that the said company was incorporated to enter into partnership business carried out by the partners of Transpower Corporation under the partnership deed dated 28th January, 1972. Similar were the objects stated in the Memorandum of Association of Transpower Engineering Ltd. The Judgment of Division Bench of this Court in case of **Tarapur Industries Pvt. Ltd. & Anr. Vs. Maharashtra Industrial Development Corporation & Ors.** (supra) would apply to the facts of this Court. I am respectively bound by the said Judgment. However, since this Court is of the view that the demand made by the MIDC

in this proceeding towards differential premium for the first transfer between Transpower Corporation and Transpower Engineering Pvt. Ltd. itself barred by law of limitation, the MIDC would not be thus entitled to recover even standard transfer charges in respect of transfer of plot in favour of Transpower Engineering Pvt. Ltd.

125. The next question arises for consideration of this court is whether MIDC is entitled to recover differential premium on the transfer of the said land by Transpower Engineering Pvt. Ltd. to Transpower Engineering Ltd. or not or can recover only standard transfer charges. It is not in dispute that the leasehold rights of the said company in liquidation in the said plot were directed to be sold by the company. The MIDC has not challenged the said order passed by this Court till date. Pursuant to the said order the Official Liquidator after following the requisite procedure has already effected sale of the leasehold rights of the company in liquidation which was an asset of the said company. The Official Liquidator has also invited claims from the creditors of the same company in liquidation by issuing a requisite notice. The Official Liquidator had received various claims from several of the creditors of the company in liquidation, MIDC however did not choose to make any claim with the Official Liquidator towards differential premium or any other charges arising out of transfer of leasehold rights in favour of Transpower Engineering Ltd.

126. This court is of the view that such transfer of the leasehold rights of the company in liquidation in favour of the successful bidder pursuant to an order passed by the Company Court would not be a voluntary transfer but would be an involuntary transfer and would attract the payment of standard transfer charges only. It is not in dispute that this Court has already permitted the execution of the deed of assignment in favour of the Applicant in respect of said leasehold right as a nominee of the successful bidder. The Applicant has already paid the entire consideration amount to the Official

Liquidator and is already put in physical possession thereof. The Official Liquidator has also settled the claims of various creditors or has distributed dividend out of the said sale proceeds.

127. Next question arises for consideration of this Court is whether MIDC can raise demand for payment of extension charges for allegedly not carrying out development of the said plot by Transpower Corporation or thereafter by Transpower Engineering Pvt. Ltd. within the time prescribed or not. In this regard learned Counsel for both the parties invited attention of this Court to various correspondence entered into between the parties. On one hand it was the case of the applicant that the Occupancy Certificate for Plot No. B-16 which was already allowed to be amalgamated with other three plots was issued. The applicant also relied upon the Occupation Certificate granted by the authority in respect of those three plots in support of contention that the requisite construction was already carried out on the amalgamated plot including Plot No. B-16. Per contra, learned Counsel for the Respondent No.2 invited the attention of this Court to various letters addressed by Transpower Corporation seeking extension of time to carry out construction on the said plot expressing its inability to complete the construction within the time prescribed on ground of financial difficulty.

128. I am inclined to accept the submission of Mr. Chawan, learned Counsel for the MIDC that the predecessor-in-title of the Applicant expressed its inability by letter dated 20th October, 1986 to construct a small shed of 50 square meters for model assembly work on the said plot due to shortage of cement and due to shortage of funds. In the said letter it was also contended by said Transpower Corporation that they wanted to construct the said shed on the said plot but could continue without any such shed as their requirement was only for open plot and not built up area for the said purpose. The MIDC vide its letter dated 27th February, 1987 had made it clear that the said Transpower Corporation will have to use the space for

the purpose for which the space has been given and the conditions agreed upon by the said Transpower Corporation.

129. A perusal of the prayer Clause (b) of the Company Application also indicates that the Applicant itself seeks direction against Respondent No.2 to extend the time for completing a building by two years from the date of transfer in the plot No.B-16 in the name of Applicant. The Applicant is thus liable to pay such extension charges as contemplated in various circulars issued by MIDC. It is not the case of the Applicant that the Applicant is not liable to pay any extension charges to the Respondent No.2. This Court in the Official Liquidator's Report No. 466 of 2016 in Company Petition No. 606 of 1998 has held that the MIDC has to lodge its claim with the Official Liquidator insofar as the claim of extension charges. This Court accordingly directed the Official Liquidator to consider the payment of extension charges while adjudicating the affidavit of proof of debt and decide the quantum of extension charges, if any, payable and for that period whether up to the date of winding up or any earlier period or it is continuing.

130. MIDC is therefore at liberty to file its affidavit of proof of debt for claiming quantum of extension charges as well as for payment of standard transfer charges for transfer of leasehold rights by the company in liquidation in favour of the successful bidder/its nominee as it deems fit with the Official Liquidator within four weeks from today. The Official Liquidator shall decide such claim for payment of extension charges and standard transfer charges in accordance with law and on its own merit including issue of limitation, if any. The observations made by this Court in this Judgment in respect of payment of extension charges are *prima facie*. If there is any delay on the part of MIDC in filing affidavit of proof of debt for claiming extension charges or standard transfer charges till date or till the date of making such application, MIDC would be at liberty to file an application for condonation of delay in filing of proof of debt for claiming

such charges. If any such application is filed, this Court may consider such application for condonation of delay on its own merit.

131. Insofar as the payment of differential premium now demanded by MIDC on the transfer of the leasehold right from the company in liquidation to the successful bidder or its nominee is concerned, this Court is already of the view that the MIDC would be entitled to demand only standard transfer charges and not differential premium @ 30%. Such quantification in respect of standard transfer charges to be decided by the Official Liquidator subject to the issue of limitation. The Official Liquidator is directed to decide both these claims i.e. for payment of extension charges and standard transfer charges within a period of 12 weeks from the date of Respondent No.2 filing an affidavit of proof of debt if found within the period of limitation or if there is any delay in filing, within 3 months from the date of condonation of delay, if any, by this Court.

132. I, therefore, pass the following order:

- (i) Company Application No. 545 of 2018 is made absolute in terms of prayer clauses (a) & (c).
- (ii) Quantification of standard transfer charges payable on transfer of Plot No.B-16 on transfer of the leasehold rights in Plot No.B-16 from Transpower Engineering Ltd. (in liquidation) and extension charges shall be decided by the Official Liquidator within the time prescribed in para 131 aforesaid. Such payment of standard transfer charges and extension charges shall be paid by the Applicant within 4 weeks from the date of such adjudication by the Official Liquidator.

(iii) Insofar as prayer clause (b) is concerned, Respondent No.2 is directed to extend the time for completing the building by two years from the date of transfer of plot No.B-16 in the name of the Applicant in the record of Respondent No.2 on payment of extension charges as may be decided by the Official Liquidator.

(iv) Company Application No. 545 of 2018 is disposed of in the aforesaid terms.

(v) Parties as well as Official Liquidator shall act on the authenticated copy of this order.

(R.D. DHANUKA, J.)