IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

OFFICIAL LIQUIDATOR REPORT NO. 53 OF 2020
IN
COMPANY PETITION NO. 438 OF 2013
WITH
COMPANY PETITION NO. 554 OF 2013
WITH
COMPANY PETITION NO. 621 OF 2013
WITH
COMPANY PETITION NO. 62 OF 2014

In the matter of Companies Act
1 of 1956
And
In the matter of Brandhouse
Oviesse Limited (In Liquidation)

Blue Star Limited
Empire Mall Pvt. Ltd.
Focus Housing & Fixtures Pvt. Ltd.
Kuchne + Nagel Pvt.Ltd. ...Petitioner

ALONGWITH

INTERIM APPLICATION (L) NO. 9929 OF 2020
IN
COMPANY PETITION NO. 62 OF 2014

Kuchne + Nagel Pvt. Ltd. ...Applicant

In the Matter Between

Kuchne + Nagel Pvt. Ltd. ...Petitioner
V/s.
Brandhouse Oviesse Ltd.
(In Liquidation) ...Respondent

Mr. Prathamesh Kamat a/w Ms. Siddhi Narvekar i/b A. Mehta Laljee and Co. for Applicant in IAL No.9929/2020.
Mr. Mahendhar Aithe, Company Prosecutor present.

CORAM : K.R.SHRIRAM, J.
DATED : 9th MARCH 2021.

P.C. :

1. There is an Interim Application also listed today. Therefore, this Official Liquidator's Report and Interim Application are taken up together.

2. Interim Application is taken out by the company in whose godown the goods belonging to the company in liquidation has been stored since 2014. Applicant is also a petitioning creditor. These goods were lying in another godown of applicant and sometime in 2019 the goods were moved to the space where they are currently stored. As per the valuation report of M/s. Shetgiri & Associates received on 12th October, 2019 which the Official Liquidator had kept in a sealed envelope, these goods mainly consist of mixed clothes and at the most in their estimate fetch about Rs.2,43,632/-. Applicant is seeking directions to the liquidator to remove the goods urgently or in the alternative permit applicant to dispose the goods at the best price it can fetch and to pay applicant a sum of Rs.10,80,000/- for utilization of the warehouse for storage of the goods. Prayer clause (i), (ii), (iii) and (iv) of the application reads as under :

> *(i) That this Hon'ble Court be pleased to direct the Official Liquidator to urgently remove the goods belonging to the Company (In Liqn.) from the warehouse leased by the Applicant ;*
> *(ii) In the alternative to (i) above, this Hon'ble Court be pleased to permit the Applicant to dispose of the goods belonging to the Company (In Liqn.) by depositing in this Hon'ble Court such amount as may be fetched ;*
> *(iii) Directions to the Official Liquidator to dispose off by*

private treaty or otherwise the said goods belonging to the Company (In Liqn.) at the earliest ;
(iv) That the Respondent Official Liquidator be directed to pay the Applicant a sum of Rs.10,80,000/- for utilization of the warehouse of the Applicant for storage of the goods belonging to the Company (In Liqn.) as liquidation cost ;

3. The liquidator's report seeks leave to prosecute the Ex-directors of the company under Section 454 of the Companies Act, 1956. OLR also seeks ratification of payment of M/s. Shetgiri & Associates, valuer, pay valuer fees and for sell of these goods which are stored in applicant's warehouse.

4. Certainly, in view of non-filing of statement of affairs, prayer clause (a) and (b) of the Official Liquidator's Report has to be granted and is hereby granted.

5. Since M/s. Shetgiri & Associates have done the valuation and submitted report as mentioned earlier, prayer clause (c) of Official Liquidator's Report is also granted.

6. As regards the sale of the goods which the applicant as well as OLR is seeking, the 18 months old valuation report of M/s. Shetgiri & Associates does not inspire any confidence in me that the goods will fetch any money if sold. The cost of advertising for sale of the goods, inviting bids and conducting auction will be itself will be higher than the value of the goods. Relying on the valuation report of M/s. Shetgiri & Associates, I

asked Mr. Kamat, counsel appearing for applicant as to whether applicant would take responsibility of disposing the goods as it deemed fit and whether it would drop the claim for storage charges which it is claiming in prayer clause (iv) of paragraph no.27 of the Interim Application. Mr. Kamat on instructions agreed not to press for the storage charges of Rs.10,80,000/- provided applicant is permitted to dispose the goods and appropriate the sale proceeds to itself. Mr. Kamat also states that if applicant deems fit it may even give clothes to some charity. At the same time, applicant will keep the official liquidator posted of what it had done with the goods and if sold, how much it has received.

7. Mr. Aithe submits that if applicant sells the goods and if they fetch more price than in the valuation report, applicant should pay over that surplus to the liquidator.

8. Mr. Kamat agreed and stated that in all probability the amount fetched will be much lesser than what is indicated in the valuation report because the valuation report is almost 18 months old. Moreover, Mr.Kamat is rightl in submitting that since they are waiving off additional storage charges as claimed in the Interim Application and further charges will have to be incurred till the goods are sold or removed, Mr. Aithe's request is not justified. I agree with Mr. Kamat.

9. In the circumstances, Official Liquidator Report and Interim Application on the subject of disposal/dealing with the goods is disposed as under :

(a) Statement of applicant to waive off further service charges as claimed in the Interim Application is accepted.

(b) Applicant is at liberty to dispose/deal with the goods as they deem fit whether by sale or donating it to charity. If sold, applicant may appropriate the sale proceeds to itself in view of it not pressing for prayer clause (iv) of the application. At the same time, applicant shall keep the liquidator advised on the action taken within two weeks of taking any action.

(c) Official Liquidator's Report and Interim Application accordingly disposed.

(K.R. SHRIRAM, J.)