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

INTERIM APPLICATION NO.1630 OF 2020
WITH
OFFICIAL LIQUIDATOR'S REPORT NO.26 OF 2020
IN
COMPANY PETITION NO.244 OF 2012

Vinod Gurbux Motwani ....Applicant (Ex-Director)

In the matter between :

Asset Reconstruction Company (India) Ltd. ….Petitioner
V/s.
The Official Liquidator, Bombay High Court,
Liquidator of M/s Sunearth Ceramics Ltd. ….Respondents

Mr. Jamshed Ansari for applicant.
Mr. Mahendhar Aithe, Company Prosecutor present.

CORAM : K.R.SHRIRAM, J.
DATED : 23rd FEBRUARY 2021

P.C. :

1 No case for ad-interim is made out. First of all, the application is for modifying an order dated 7th February 2020. After that, applicant has not moved for any ad-interim but he says that there is an urgency now because Official Liquidator has issued auction notice dated 1st February 2021, fixing 2nd March 2021, inviting bid for auction of assets of the company (in liquidation).

2 According to Mr. Ansari the properties sought to be auctioned are subject matter of attachment by Special MPID Court under the provisions of Maharashtra Protection of Interest of Depositors (In Financial Establishments Act) 1999 and therefore, the properties sought to be

auctioned by the Official Liquidator, is subject matter of *custodia legis*. Mr. Ansari states that this legal position is confirmed by DRT, Pune. But in the bargain, what is forgotten is the MPID Act also is created for protection of depositors who have given deposit to the company (in liquidation). To prevent the company from disposing of the assets and defeat the rights of the depositors, the Act was created. Ofcourse a noble act. At the same time, the MPID Court, despite passing the order on 19th August 2006, has not sold the assets. Therefore, the Official Liquidator taking steps to dispose of the assets of the company would also be beneficial to the interest of those who have sought protection under the MPID Act. The sale proceeds will naturally come into the office of the Official Liquidator at which time the Official Liquidator will place a report to decide the priorities. To sum up, this sale will only benefit all the creditors including fixed deposit holders who have approached the Special MPID Court. I find support for this view in the matter of ***Aryarup Tourism Club Resorts P. Ltd. (In Liquidation), In re***[1]. Paragraphs 118, 119 and 120 of the said judgment read as under :

> *118. I am not inclined to accept the submission of the learned A.G.P. that the competent authority appointed under the MPID Act has power to deal with the properties of the financial establishment i.e. the companies in liquidation in these matters under the provisions of the said MPID Act and to distribute the sale proceeds of the companies in liquidation amongst the investors. There is no merit in the submission of the learned A.G.P. that the only such competent authority is empowered to administer the monies and properties in the interest of the depositors under Rule 5(1) of the said rules by attaching and selling the properties standing in the name of the companies in liquidation who were financial establishment under the provisions of the said MPID Act.*
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> *119. In my view, the Official Liquidator acts as trustee and custodian of all such properties and assets of companies in*

1. [2017] 203 Comp Cas 220 (Bom)

> *liquidation and is empowered to deal with such properties of the companies in liquidation for the purpose of distribution of the proceeds of those properties amongst the creditors in accordance with the provisions of the Companies Act, 1956 and under supervision of this court. There is no merit in the submission of the learned A.G.P. that in view of section 6(1) of the MPID Act, no other court than the designated court shall have jurisdiction in respect of the properties of the financial establishment though such financial establishment are already wound up under the provisions of the Companies Act, 1956 or that the Official Liquidator cannot seek any direction in respect of the properties attached by the competent authority as prayed in the report filed by the Official Liquidator.*
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> *120. In my view since there is no conflict between the Companies Act, 1956 and the MPID Act and both operates indifferent field, the Judgment of Supreme Court in case of Central Bank of India Vs. State of Kerala and others(supra) relied upon by the learned A.G.P. would not assist his case.*

3 In the circumstances, the question of granting any relief in this application, let alone an ad-interim or interim relief, does not arise.

4 Interim application stands dismissed.

5 Mr. Aithe states that despite the directions given in paragraph 8 of the order dated 21st April 2017, in which also the request of the ex-directors for two weeks extension to file statement of affairs was granted, the statement of affairs has not been filed till date.

6 The Official Liquidator is directed to commence appropriate proceedings under Section 454 of the Companies Act, 1956 against the ex-directors forthwith.

(K.R. SHRIRAM, J.)