

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

OFFICIAL LIQUIDATOR'S REPORT NO.11 OF 2021

IN

CONTEMPT PETITION NO.299 OF 1994

In the matter of Companies Act I of 1956

And

In the matter of Sumeet Machines Ltd. (In
Liquidation)

Varkey Overseas Trading Company Pvt. Ltd.

.. Petitioner

ALONG WITH

INTERIM APPLICATION NO.2045 OF 2019

IN

CONTEMPT PETITION NO.299 OF 1994

Siddika Solanki

.. Applicant

In the matter between

Varkey Overseas Trading Co. Pvt. Ltd.

.. Petitioner

V/s.

The Official Liquidator and Ors.

.. Respondents

Mr. Kamal Khata, with Mr. Yatin R. Shah and Ms. Divya Telwani, for the Petitioner.

Mr. Shanay Shah for the Official Liquidator.

Mr. Prasad Rao for Respondent Nos.2 to 4.

CORAM : A. K. MENON, J.

DATE : 20TH JUNE, 2022.

P.C. :

1. The Liquidator has filed this report seeking an order declaring a Deed of Assignment, purportedly executed on 1st October 2008, as null and void and bad in law in view of Section 536(2) of the Companies Act, 1956. It also seeks certain directions to Sumeet Appliances to file an affidavit-of-disclosure. An order has

already been passed on 13th June 2022 granting relief in terms of prayer clause (b) of the Liquidator's report. Time for complying with that order will have to be fixed. Today, the Liquidator's report is taken up for disposal in view of the fact that on 13th June 2022, a new document was sought to be tendered in support of the submissions of Mr. Rao that the trademark in question had already been assigned in 1993. An additional affidavit has been filed by Mr. Rao in Interim Application No.2045 of 2019.

2. Interim Application No.2045 of 2019 is an application filed by a shareholder seeking that this court be pleased to take steps to cancel the Deed of Assignment forming subject matter of the Official Liquidator's report and to direct M/s. Sumeet Appliances Pvt. Ltd., through respondent no.4 – one Kavita Mathur, to account for all income derived. In effect, the Liquidator's report will encompass all reliefs that are sought in IA/2045/2019. The additional affidavit filed in Interim Application No.2045 of 2019 and on which Mr. Rao has placed reliance is filed by one Ajay Prakash Mathur, former director of Sumeet Machines Ltd. – a company in liquidation. In that affidavit, it is stated that the trademark "SUMEET" was in fact assigned and transferred vide Assignment Deed dated 10th September 1993 in favour of one Sumeet Appliances Ltd. in its earlier name of Sumeet Hire Purchase Pvt. Ltd. and for a total consideration of Rs.7 lakhs, which was received by the assignor. It is further contended in the affidavit that several disputes had arisen in the family and the parties managing the companies and the Deed of Assignment was executed in ignorance of the Sale Deed of the trademark. A copy of the Sale Deed dated 10th September 1993 is annexed to this affidavit and is said to have been executed before

a notary public. The original is sought to be produced in the court. The office of the Official Liquidator has since been offered inspection of the same and Mr. Shah appearing for the Liquidator has submitted that, as set out in the additional affidavit dated 20th June 2022, it is obvious that a new case is being set up on the basis of a got up document to circumvent the consequences of having executed a Deed of Assignment, which is clearly now non est.

3. The statement on behalf of the respondent in the Liquidator's report and made through Mr. Rao on 13th June 2022 is to the effect that the agreement at Exhibit-B to the report meaning Deed of Assignment dated 1st October 2018 is non est since it has no legal effect. Mr. Rao has today clarified that this statement should be read in the light of the fact that his clients have now submitted that the Sale Deed having been discovered the Deed of Assignment could have no legal effect by virtue of the Sale Deed. Prima facie, it is clear that the Liquidator's report must be allowed merely on that statement.

4. In the course of hearing today, I have called upon Mr. Rao to demonstrate as to whether so called sale deed, subject matter of the application of the trademark register, was to record transfer and assignment of the trademark, to which Mr. Rao states he has no instructions as on date. In any event, considering the fact that Exhibit-A to the OLR is admittedly said to have no legal effect, the report will have to be allowed.

5. In the meantime, it is pointed out by Mr. Khata, learned counsel on behalf of

the applicant in the IA, that in the affidavit-in-rejoinder filed on behalf of the applicant in the present IA, the deponent has disclosed that a separate MOU appears to have been executed on 11th October 2014 between Sumeet Appliances Pvt. Ltd. and one Pandurang Shetty, copy of which is annexed at Exhibit-A to the rejoinder affidavit dated 20th February 2020, and it is contended that the contention that the agreement impugned in the Liquidator's report has not been acted upon is incorrect. In any event that is something that the Liquidator will also investigate and take appropriate steps. Mr. Rao states that the said Memorandum of Understanding does not pertain to the trademark at hand and forming subject matter of the Liquidator's report.

6. In view of the above, the Liquidator's report is disposed by passing following order :-

- (i) Official Liquidator's report is made absolute in terms of prayer clauses (a) and (b).
- (ii) Time to comply with prayer clause (b) is fixed at two weeks from today.
- (iii) Liquidator's report is disposed in the above terms.
- (iv) In view of disposal of the Liquidator's report, Interim Application No.2045 of 2019 also stands disposed with liberty to the Liquidator to apply in terms of prayer clause (c) of the report, as and when advised.

(A.K. MENON, J.)