



THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

COMPANY APPLICATION (CAL) NO. 02 OF 2019

M/S. RAHUL AND COMPANY, PROPRIETARY CONCERN, THR. SOLE PROP. SHRI AJAYJI KAYAN, KOLKATA

...VERSUS...

THE OFFICIAL LIQUIDATOR, NAGPUR AND ANR.

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.O.Ahmed, Advocate for applicant.

Ms. S. S. Wandile, Advocate for respondent no. 1.

Shri R.A. Jain, Advocate for respondent no. 2.

CORAM : SMT. M. S. JAWALKAR,J.

DATE : 29th NOVEMBER, 2023

Heard learned counsel for respective parties.

2. The present Application is filed by the M/s. Rahul and Company for the appropriate directions to the Respondent/ Official Liquidator to hand over the possession of units no. 4 and 8 at 2nd floor, Runwal Centre, Gowandi Chembur, Bombay, which was taken from the Applicant by the Respondent/Official liquidator on 01/11/2002.

3. It is stated in the application that this Court vide its order dated 07/10/1997 passed in Company Petition No.1/1997 order for winding up of M/s Mid India Oils and Exports Ltd and this Hon'ble Court also appoint Official Liquidator with a direction to take necessary steps in the behalf.

4. It is further stated that prior to the said winding up order M/s. Mid India Oils and Exports Limited have executed an agreement dated 12/03/1992 with M/s Subodh Constructions Private Limited Bombay for purchase of Office premises no. 4 and 8 situated on the 2nd floor, Runwal Centre, Gowandi Chembur, Bombay. M/s Mid India and Exports Limited being not in a position to pay the sum of Rs.43 Lakh offered to the applicant to transfer and/or assign its title and interest in respect of said office premises no.4 and 8 situated on 2nd floor, Runwal Centre, Gowandi, Chembur, Bombay.

5. The applicant further submits that accordingly on 14/08/1995, M/s. Mid India Oils and Exports Ltd., irrevocably nominated the applicant M/s Rahul and Company to acquire the building so purchased i.e. office Nos. 4 and 8 at Runwal Chamber, Chembur Mumbai for the consideration mentioned therein and thereby assigned and/or transferred all its rights under the said original agreement, dated 12/03/1992 in favour of the applicant.

6. It is alleged by the Applicant that in pursuance of the said agreement dated 14/08/1995, M/s Mid Indian Oils and exports Limited have handed over vacant peaceful possession in respect of said office nos. 4 and 8 Runwal Chamber, Chembur, Mumbai in favour of the applicant and accordingly placed the applicant in physical possession of the office premises nos. 4 and 8.

7. The Respondent being appointed as Official Liquidator by this Court in the matter of M/s. Mid India Oils and Exports Limited started taking necessary steps of taking into custody the assets of the said M/s Mid India Oils and Exports Limited. The Respondent initially made queries with the Applicant in regard to its rights against office premises Nos. 4 and 8 situated at Chembur in Mumbai. All these queries of the respondent were duly replied to by the applicant but despite considering the claim and contentions raised by the applicant to its utter shock and surprise, had received letter dated 17/06/1999, in which it was stated that the representative of the Official Liquidator Mr. Chande Senior Assistant is hereby authorized to take over possession of the aforesaid office premises at Runwal Centre, Gowandi Railway Station Road, Deonar, Mumbai on 28/06/1999.

8. Applicant alleged that during the pendency of the aforesaid matter before this Court, the minutes of the order came to be filed in which it was agreed that the applicant would hand over the possession of office premises no. 4 and 8 situated on 2nd floor, Runwal Centre, Gowandi, Chembur, Bombay to the Official Liquidator and that the Official Liquidator shall hold the property as receiver of this Court and would not transfer or alienates the same without the order of the Court.

9. The Applicant further submits that to the utter shock and surprise the applicant had thereafter received copy of

application along with Annexure dated 09/04/2003 filed by the O.L. asking the possession of the entries second floor comprising of units No.1 to 8 at 2nd floor, Runwal Centre, Gowandi, Chembur, Bombay.

10. The Applicant submits that the Hon'ble Company Judge vide its order dated 03/10/2008 passed in Comp. Appl. No. 27/1999 appointed Commissioner to decide the issue of entitlement of the office premises No.1 to 8 at 2nd floor, Runwal Centre, Gowandi, Chembur, Bombay between the parties.

11. Order dated 03/10/2008 passed by the Hon'ble Company Judge was challenged by the applicant by filing the Company Appeal No. 4/2009 and the Hon'ble Division Bench vide its order dated 11/06/2009 had set aside the order dated 03/10/2008 passed by the Hon'ble Company Judge holding that the O.L. is not permitted to take over the possession of the 8 units i.e. 1 to 8 of at 2nd floor, Runwal Centre, Gowandi, Chembur, Bombay in course of winding up process.

12. The Official Liquidator/respondent no. 1 vehemently opposed the application. It is submitted that during the scrutiny of books records and from Canara Bank secured creditors, it is revealed that the Company is having property at Runawal Centre, Chembur, Mumbai and which M/s. Rahul & Company has tress passed with the connivance of ex-directors of Company (in liquidation) and therefore, the Official Liquidator could not take the possession of aforesaid property at that point

of time some time in 1999. It is further contended that his (Official Liquidator) official was at the site on 01-11-2002 at 12:00 noon known as Runawal Centre, Chembur, Mumbai to take possession and it has been noticed that the Company owned the entire floor but at the entrance/applicant has put a fresh wooden partition and only little part/portion of the aforesaid premises has shown and handed over to the official of the Official Liquidator on 01-11-2002. When it was brought to the notice of this Court, this Court permitted the Official Liquidator to visit personally for taking the possession of said property in question. Thereafter, the Official Liquidator visited the office but nobody was present there and the Official Liquidator could not verify the status of the property and could not take the possession. It is further submitted that he (Official Liquidator) received the notices as regards to the society dues against 2nd floor from the company of Patil & Associates (Advocate), Mumbai for recovery of society dues amounting to Rs. 10,21,559/- which establishes that the property belongs to the Company.

13. The learned counsel for the applicant vehemently submitted that on the basis of letter issued by the Society, without verifying the title, the company is not entitled to retake the possession of the unit nos. 4 and 8.

14. There is one affidavit filed by the Director of M/s. Runwal Developers Private Limited wherein it is submitted that

Subodh Constructions Private Limited is now merged with Runwal Developers Private Limited which is duly recorded by this Court in the order dated 10/03/2023. This Court vide order dated 28/02/2020 has directed the applicant to add M/s. Subodh Constructions Private Limited (now merged with Runwal Developers Pvt. Ltd.) i.e. original vendor as party respondent in the present application. Accordingly, notices were issued to M/s. Subodh Constructions Private Limited. M/s. Mid India Oils & Exports Limited has entered into an agreement to sell with respondent no. 2 for purchase of office premises nos. 4 & 8 situated on 2nd Floor, Runwal Centre, Gowandi, Chembur, Bombay. That M/s. Mid India Oils & Exports Ltd. nominated the applicant i.e. M/s. Rahul and Company as the beneficial owner of the above premises and accordingly, issued letter dated 14/08/1995 informing respondent no. 2 about the said nomination. In the said affidavit, it is made clear that respondent no. 2 has no objection in execution and registration of sale deed in respect of office premises nos. 4 and 8 situated at 2nd Floor, Runwal Centre, Gowandi, Chembur, Bombay in favour of applicant i.e. M/s. Rahul and Company.

15. From the above referred facts, it can be very well seen that an agreement executed between M/s. Mid India Oils and Exports Ltd. with M/s. Subodh Constructions Pvt. Ltd. for purchase of office premises nos. 4 and 8 is dated 12/03/1992. From letter dated 14/08/1995 (Annexure-3), it appears that M/s.

Rahul and Company is nominated by M/s. Mid India Oils and Exports Ltd. for purchase of premises nos. 4 and 8 as M/s. Mid India Oils and Exports Ltd. was not in a position to pay the sum of Rs. 43 lakh offered to the applicant. The said nomination was made irrevocable. Accordingly, on 14/08/1995, the possession was handed over by Mid India Oils and Exports Ltd. in respect of office premises nos. 4 and 8 at Runwal Chamber, Chembur, Mumbai in favour of the applicant - Rahul & Company and placed the applicant in physical possession of office premises nos. 4 and 8. These events took place 2 years' prior when the company went in liquidation i.e. on 07/10/1997. As such, the applicant is entitled to retain the possession of the said two unit nos. 4 and 8. However, it would be subject to condition that till status of property, its ownership is not decided by the competent authority, the applicant shall not create any third party interest in the unit nos. 4 & 8 of Runwal Chamber, Chembur, Mumbai. Accordingly, I proceed to pass the following order:-

ORDER

- 1) The application is allowed.
- 2) The respondents are hereby directed to handover the possession to the applicant of unit Nos. 4 & 8 at 2nd Floor, Runwal Centre, Gowandi Chembur, Bombay within a period of one month from passing of order by this Court.

- 3) The applicant M/s. Rahul and Company shall not create any third party interest till status/ownership of property is decided by competent authority.
- 4) The applicant company is directed to submit an affidavit with regard to pending litigation if any to the Court.
- 5) OLR to submit an affidavit mentioning liability of company in liquidation.
- 6) The application stands disposed of accordingly.

(Smt. M.S. Jawalkar, J.)

B.T.Khapekar