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

COMPANY APPLICATION (CAL) NO. 05 OF 2022
IN
OFFICIAL LIQUIDATOR REPORT 11 OF 2018 (D)
IN
COMPANY PETITION NO. 05 OF 2001 (D)

APPELLANTS:

1] Manoj Motiram Apurwa (LR)
Aged 54 years Occ: Labour,

2] Smt. Leela Kanhaiyyalal Bhutada,
Aged Adult, Occu: Labour.

3] Purushottam Chhaganlal Dangra,
Aged Adult, Occup: Labour.

4] V.B. Deshmukh, Aged Adult,
Occup: Labour.

5] Mr. Rai Rai Bahaddur,
Aged Adult, Occup; Labour.

6] ~~Mahabir Prasad Pujari,~~
~~Aged Adult, Occu: Labour.~~

7] Shashikant Shivcharan Joshi,
Aged Adult, Occu: Labour.

8] Gopal Mahanlal Bhutada (LR)
Aged: Adult, Occu: Labour.

9] Ashok Shankarrao Deole,
Aged: Adult, Occu: Labour.

10] Rajiv Balkrishna Mundada
Aged Adult, Occu: Labour.

11] ~~Ramkarn G. Bhattad,~~
~~Aged Adult, Occu: Labour~~.
Nos. 1 to 11 All R/o Birla "B" Colony,
Vansadapeth, Plot No. 122, Jatharpeth,
Akola Tah. & Dist. Akola.

12] Jatashankar Prasad Tiwari,
Aged Adult, Occu: Labour.

13] Ramdas Nararyan Charpe,
Aged Adult, Occu: Labour.

14] Smt. Mangala Arvind Saraf,
Aged Adult, Occp. Labour.

15] ~~Laxman Shankar Lohit,~~
~~Aged Adult, Occup. Labour~~.

16] Samadhan Kisan Warghade,
Aged Adult, Occu: Labour.

17] Dinkar Baliram Bujade,
Aged: Adult, Occu: Labour.

18] ~~Dinkar S. Bhagade,~~
~~Aged : Adult, Occu: Labour~~.

19] ~~Kisan Mahadeo Gawande,~~
~~Aged: Adult, Occu: Labour,~~

20] ~~Eknath Mahadeo Vaidya,~~
~~Aged Adult, Occu: Labour.~~

21] Laxman Ganpat Kose,
Aged Adult, Occu: Labour.

22] Goraknath Rama Sonone,
Aged Adult, Occu: Labour.

Names of applicants Nos. 6,11,15,18,19,20 & 23 has been deleted as per the order dated 23.1.22
Sd/-
C/f Applicants

23] ~~Ramchandra Sardar, Aged Adult, Occu: Labour.~~

24] Suresh Mourya,
Aged Adult, Occu: Labour.

Nos. 12 to 24 All R/o Birla "C" Colony, Vansadapeth, Near Railway Line Opposite Ram Mandir, Kharap Road, Akola Tah. & Dist. Akola through their constituted power of attorney holder
Mr. Pradipkumar s/o Popatlal Vakharia.

...V E R S U S...

NON-APPLICANTS 1] M/s Akola Oil Industries Limited (In Liquidation) through its Official Liquidator, 2nd Floor, East Wing, New Secretariat Building, near VCA Stadium, Civil Lines, Nagpur-440001.

2] The Collector,
Collector Office Premises, Akola,
Distt. Akola.

Mr U.J. Deshpande, counsel for the applicants
Mr Anjan De, counsel for the Official Liquidator.
Mr Anand Parchure, counsel for the non-applicant No.1.

CORAM : URMILA JOSHI-PHALKE, J. .
DATE RESERVED : 24/01/2023
DATE OF DECISION: 05/04/2023

ORAL JUDGMENT :

1. The present application is filed by the applicants for

recalling of the order dated 09/6/2022 of this Court by which permission is granted to advertise the property for sell.

2. The applicants were the workers and staff serving in the Non-applicant No.1/Company which is under liquidation, in view of order dated 23/04/2004. The company under liquidation was ordered to be provisionally wound up by the order dated 06/06/2003 passed by the Company Court. By an order dated 06/06/2003, the Official Liquidator was appointed as a provisional liquidator with usual powers under the Company Act. Subsequently, by the order dated 23/04/2004, the Company was ordered to be wound up by appointing an Official Liquidator as the liquidator of the company. The aforesaid order was passed in Company Petition No. 05/2001.

3. Perusal to the order of winding up of the Company, the Official Liquidator has taken possession of the properties of the Company which are situated at different places. The Official Liquidator in order to pay the dues of the secured creditors including the dues towards staff/workers, sought permission to auction the immovable properties from the Company Court from time to time by filing various Official Liquidators Reports in Company Petition No. 05/2001. This Court, by an order dated 07/09/2007, granted permission to issue advertisement for sale of properties in OLR No.62/2003. However, the order authorizing proclamation was recalled and OLR filed for confirmation of sale became infructuous as per the order dated 29/01/2010.

4. The non-applicant No.1/Official Liquidator by filing

OLR No. 10/2011, sought permission to sale properties of the Company, by way of Public Auction by publishing notice for inviting tenders in the local newspapers. Accordingly, this Court by an order dated 09/03/2012, accorded the sanction for auction. However, the three properties, wherein the workers of the company were residing and were excluded from the same. The Akola Zilla Kamgar Sangh, had filed Writ Petition No.822/2013 and challenged the order dated 30/11/2011 passed by the Labour Commissioner granting certificate to the successful bidder, on a condition that until the dues of the workers were deposited in the Court or till they are in fact paid, the land admeasuring three acres shall be kept intact. The writ petition was dismissed holding that the learned Labour Commissioner has sufficiently protected the interest of the workmen by directing three acres of the land to be kept in reserved till the workman's dues are cleared. The respondent No.6, who was successful bidder in the said writ petition undertaken that it will not create any third party interest or alienated area of three acres which has been reserved in the layout sanctioned by the corporation. By subsequent, order dated 20/12/2014 passed in OLR No. 13 to 51/2012, this court observed that the interest of the workers was duly protected by order dated 11/07/2013 and allowed the confirmation of the sale of various properties, auctioned by the Official Liquidator. The official liquidator filed the Pursis dated 16/04/2004 in OLR No. 62/2003 informed to this Court that, out of total 148 plots sanctioned layout about 18734.37 sq.mtr (about three acres) land is available but not sold by the Company. The Official Liquidator also filed an application No.4/2020 for obtaining directions from this Court to the workers, who are occupying the quarters in plot No. 147 and row houses in plot No.119 to vacate those premises. Accordingly, notices were issued to the workers. The Official liquidator had also sought permission to sale the unsold plots vide order dated 09/06/2022. Accordingly, proclamation was issued on 08/07/2022, and called for offers for the plots bearing Nos. 118, 103 and plot No. 11. After valuation report was received, this Court permitted the official liquidator to advertise the property for sale. By preferring this application, the applicants are seeking recalling of the order of advertising the property for sale dated 09/06/2022.

5. The applicants who were workers of the said company, challenged the proclamation on the ground that upset price or reserved price is not mentioned in the proclamation. The earnest money deposit of Rs. 10 Lakhs determined for all the three properties without any basis. Thus, the official liquidator has not followed the procedure contemplated in Section 457 of the Companies Act.

6. The said application is strongly opposed by the Non-applicant No.1 by filing reply. As per contention of the non-applicant No.1, the official liquidator is that 100% dividend for the sum of Rs. 12,14,53,280.17 is paid to the 500 workers in compliance of the order dated 25/04/2016 passed in OLR No. 4/2016. The non-applicant No.1/Official Liquidator vide OLR No. 6/2017 filed declaration of dividend under Rule 275 of the Companies (Court) Rules, 1959 to declare the dividend at @100%

to the 21 workers. The official liquidator had paid 100% of the dividend for the sum of Rs. 20 Crores to the workers and creditors in compliance of order dated 17/11/2017 passed in the OLR No. 6/2017. The official liquidator has complied the orders and had already paid provident fund to the workers on 15/03/2018, as per the orders of this Court.

7. It is further contended by the Official Liquidator that as per the order dated 16/08/1994, the plot Nos. 18, 46, 52, 53, 54, 79, 80, 81, 82, 83, 84, 85, 86, 87, 134, 135, 137, 138 and 139 cannot be sold as per the report of the Collector without permission of the State Government which was not sent to the company and hence, the Official Liquidator has filed CAO No. 529/2011. In the said CAO No. 529/2011, the statement recorded by the counsel of the Collector is that condition No.4 does not apply, so far as the sale by the Official Liquidator is concerned, and there is no impediment in the way of the Official Liquidator in selling the property. It is made clear that this statement recorded shall not apply to subsequent transaction and subsequent transferee shall not be entitled to sale the property without prior permission from the Collector and the application was disposed of.

8. It is further contended by the Official Liquidator that OLR No. 62/2003 was filed for sale of the assets/properties consisting various plots including the land of the company, and the permission was granted by this Court vide order dated 07/09/2007. Then, the Official Liquidator has received highest bid from the Cargo Hub Infrastructure Private Limited of Rs. 6,25,00,000/-

(Rs. Six Crores Twenty Five Lakhs only) and deposited EMD of Rs. 8,00,000/-. Accordingly, the Official Liquidator has filed OLR No. 4/2008 for confirmation of the sale in favour of the Cargo Hub Infrastructure Private Limited and the various applications are also filed in this OLR No. 4/2008. Subsequently, due to the change of circumstances, the Official Liquidator has withdrawn OLR No. 62/2003 with liberty to file fresh as and when occasion arises and was permitted by this Court vide order dated 18/06/2010.

9. As per the order dated 18/06/2010, the Official Liquidator had filed report No. 10/2011 and prayed for permission to sell the properties of the company by way of public auction by publishing notice for inviting tender in the newspapers and to pay advertisement charges from the available company fund. In this regard, some objections are raised by the workers/Union. The said objections are rejected by this Court by passing order and permitted the Official Liquidator to sell the properties of the company. As stated in the report by way of public auction by publishing notice for inviting the tenders in the newspapers and to pay the advertisement charges from the available company funds and disposed of the OLR No. 10/2011. As per the contention of the Official Liquidators that applicants have no locus to intervene against the liquidation proceeding and hence application deserves to be rejected.

10. Heard learned advocate Mr U.J. Deshpande for the applicants. He submitted that Official Liquidator without fixing the upset price advertised the properties for sell. Thus proclamation is

issued against the provisions of the companies Act. Hence, proclamation issued is illegal and therefore, liable to be set aside. In support of his contention, he placed reliance on ***Union Bank of India V/s Official Liquidator H.C. of Calcutta and others***[1], wherein the Hon'ble Apex Court at Para -13 has stated that in the matter before it the valuation report was called for by order dated 16/02/1996, the Hon'ble Apex Court further came to the conclusion that valuation report was kept as a secrete, confidential document and without disclosing the valuation report to the Creditors and without fixing its reserved price, the properties were auctioned, and the sell was confirmed. In that background, the Hon'ble Apex Court observed that it was the duty of the Court to see that copy of the report was given to the secure creditors, and other affected persons.

11. He placed reliance in the case of ***M/S Tech Invest India Pvt. Ltd. thr. Major Shareholder Rajiv Gosain .vs Assam Power And Electrical Ltd and others***[2], wherein also it is held that, the auction sell of properties of company the valuation report was submitted before the Company Judge, it ought to have been disclosed the secured creditors and other interested persons in order to ascertain the market value of the property before property was auctioned.

He placed reliance of *M**.M. Thomas vs State Of Kerala And Anther***[3], wherein it is held that in review jurisdiction High Court rightly dismissed the appeal and set aside its earlier order which went beyond the claim in the petition and thus its order was

1 (2000) 5 SCC 274
2 2015 AIR SC3675
3 (2000) 1SCC 666

vitiated by error apparent, on the face of the record.

He placed reliance ***Grindlays Bank Ltd vs Central Government Industrial and others***[4], wherein it is held that setting aside does not amount to review and Tribunal does not become functus officio provided application is filed within 30 days of publication of award.

He placed reliance in the case of ***State of Punjab and others Vs Mehar Din***[5], wherein it is held that the scope of judicial review in the matters of tenders/public auction has been explored in depth by the Supreme Court in a catena of cases. Plausible decisions need not be overturned and, at the same time, latitude ought to be granted to the State in exercise of its executive power. However, allegations of illegality, irrationality and procedural impropriety would be enough grounds for Courts to assume jurisdiction and remedy.

He further placed reliance in the case of ***Bhagwati Developers Pvt. Ltd. Vs Peerless General Finance Investment Company Ltd and others***[6], wherein the issue regarding the company petition under Section 397 of Companies Act 1956 was dealt by the Hon'ble Apex /Court.

12. Mr Anjan De, learned counsel appeared for the non-applicant No.1/Official Liquidator submitted that statutory provision of appeal is given under Section 483 of the Companies Act. Therefore, this application is not maintainable. He further

4 AIR 1981 SC 606
5 (2022) 5 SCC 648
6 AIR 2013 SCC 1690

submitted that the applicants have not come before the Court with clean hands. The application is filed by the power of attorney, contending that all these applicants have executed power of attorney to Shri Pradipkumar s/o Popatlal Vakharia. In fact, several applicants are not alive.

13. He further contended that, thus the application filed by the power of attorney by mentioning the names of the dead persons. As soon as, some of the applicants died, their power of attorney come to an end. However, the power of attorney filed in this application on behalf of the persons, who are dead. He further submitted that, some of the persons have submitted that the application is filed without their consent. Thus, the application filed by the applicants on behalf of the dead person. The applicants who come to the Court for equity is required to come with clean hands. Though some of the applicants are not alive, the application is filed on their behalf and this fact is not disclosed to the Court by the applicants. Thus, the applicants have not approached to the Court with clean hands.

14. He further submitted that though the upset price is not fixed and disclosed in the proclamation. However, in view of Section 457 of the Companies Act, properties are advertised inviting the tenders and valuation report from the expert was called before advertising the property. The upset price is to be the valuation of the properties as per the valuation report. Thus valuation report is already filed before the Court, prior to advertising the property.

15. He submitted that dues of the workers are already cleared and this applicants have no locus. Even the locus of the Workers Union is discussed by this Court in Writ Petition No.822/2013, that the learned Commissioner of Labour has sufficiently protected the interest of the workmen by directing three acres of the land to be kept reserved in the workman till the dues are cleared. The interest of the workman was amply safeguarded by the order of the Labour Commissioner and secondly in view of the undertaking which was filed by the respondent No.6/successful bidder. The interest of the workers is duly taken care of and the petition was dismissed.

16. He further invited the attention towards order passed by this Court in Official Liquidator's Report No. 13 to 51 /2022, wherein also, the Union of Workers have raised an objection for confirmation of auction. The State Bank of India, who is undisputedly a secured creditor had also raised an objection. The Akola Zila Kamgar Sangh (INTUC), through its President Pradipkumar Vakharia raised an objections, and the objections by the Unions are that there is cartel form by the bidders to submit their bids in auction. While deciding the said application also, it is observed that interest of the workers is already protected by the order dated 11/7/2013 passed by the Division Bench of this Court in Writ Petition No. 822/2013 filed at the instance of Akola Zilla Kamgar Sangh (INTUC). It is further observed that the total dues of the workers to the extent of Rs. 12,09,26,150/- which are already protected and the application was disposed of. Thus he submitted

that now, the power of attorney by taking assistance of some of the workers obstructing the work of the official liquidator, who has no locus and therefore, application deserves to be rejected.

17. Before entering into the merits of the present application, it is necessary to see the background of the issue raised in the application. The Akola Pipe Industries Limited is a company duly incorporated under the Indian Companies Act. It was wound up by the order of this Court on 23/4/2004. After the order was passed, the liquidator has taken possession of the properties of the said company. The State Bank of India approached to this Court for seeking permission to approach Debts Recovery Tribunal under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The Company judge vide order dated 17/10/2003 permitted the State Bank of India to approach the Debts Recovery Tribunal. Thereafter, the State Bank of India auctioned the property. Thereafter, certain disputes arose between two bidders and the said disputes were settled. It was directed to successful bidders to pay an amount of Rs. 12 Crores as a consideration amount. It was further agreed that out of the said amount, an amount of Rs. 1.20 crores was to be deposited with Official Liquidator in view of the provisions of Section 529 of the Companies Act, so as to meet the claims of the workers.

18. It was further agreed by successful bidders that if there were any other dues, the same would be settled. The Debts Recovery Tribunal in Appeal No.25/2005 hold that the Bank had

charge over 18 Acres and 20 Gunthas. The said order was challenged by the Akola Zilla Kamgar Sangh by filing Writ Petition bearing No. 5843/2007 which was subsequently withdrawn. The Akola Zilla Kamgar Sangh filed Company Application No.144/07 restricting its claim for the purpose of payment of salary of workman, the said application was also withdrawn.

19. It further appears that the State Government had issued directions dated 27/09/2006, directing all Planning Authorities in the State of Maharashtra before granting building permission on the lands of the closed companies, shall obtain the certificate that the legal dues of all the workers of the company should be fully received before changing users from the industrial to residential. In view of the directions, the successful bidder approached to Labour Commissioner for grant of certificate as aforesaid. The Labour Commissioner vide order dated 30/11/2011 granted certificate, on the condition that until the dues of the workers are in fact paid, the land admeasuring 3 acres shall be kept intact. The said order was challenged by the Akola Zilla Kamgar Sangh through Pradipkumar Vakhariya by filing Writ Petition No. 822/2013. The Division Bench of this Court, in the said writ petition observed that, the petitioner has not approached to the Court with clean hands and suppressed the material facts.

20. It is further observed that the petitioners can be non-suited on the ground of suppression of facts. However, since the interest of the workers is involved, Court will not proceed against. It is further observed that learned Commissioner of Labour

has sufficiently protected the interest of the workman by directing 3 acres of the land to be kept reserved till workman's dues are clear and dismissed the writ petition.

21. Thereafter, the Official Liquidator of the company under the liquidation submitted a report seeking permission of the Company Court for selling the properties of the company described in the said report. The report of the official liquidator was registered as OLR No.10/11 in Company Petition No.05/2001. The official liquidator obtained the permission to sell the properties of the company vide order dated 09/03/2012. The permission was granted to sell the property by auction excluding the property, wherein the workers are residing. Thereafter, the official liquidator filed report Nos.13 to 51/2012 for confirmation of auction held on 09/11/2022. The Union of Workers raised an objection for confirmation of the sale. The separate application was filed by the Akola Zilla Kamgar Sangh, through its President Pradeep Vakharia**.** While deposing of the official liquidators Report Nos. 13 to 51/2012, the Company Judge of this Court observed that the Union of Workers has raised an objection for confirmation of the auction. The State Bank of India who is undisputedly an unsecured creditor has also raised an objection. The separate applications are filed by the Akola Zilla Kamgar Sangh through its President Shri Pradipkumar Vakharia in all these Official Liquidators report. The objections are common. The intervenors have also filed an application for cancellation of the tenders opened on 09/11/2012. The objections by the Union are that, there is cartel form by the bidders to submit

their bids in auction. The dispute regarding valuation of the property is also raised along with dispute regarding its ownership. According to the objectors, the property belongs to the State Government and not to M/s Akola Oil Industries Limited.

22. It is further observed by this Court that, learned counsels have invited attention towards provision of Rules-6 of the Company (Court) Rules 1959 to urge that the procedure as prescribed under Rules 84-85 of Order 21 of the Code of Civil Procedure is applicable, and that procedure has not been complied with, either by stipulating the condition in the notice inviting tenders for asking the parties to deposit the amount in the manner, specified under the Rule 84 and 85 of the Order 21 of the Civil Procedure Code. This Court has also considered the procedure for auction governed by Rules 272 and 273 of the Company (Court) Rules 1959 which has been complied with.

23. It is further observed by this Court that the dispute regarding valuation of the properties, supply of copy of valuation report to the Union of Workers, fixation of the reserve fund and the earnest money to be deposited along with bid is governed by the provisions Section 457 (2-A) and (2-F) of the Companies Act, 1956, and it was resolved by an order passed by this Court on 09/03/2012 in OLR No. 10/2011 that this was the subject matter of challenge in company appeal no. 02/2012 filed by the Union which was dismissed by the Division Bench on 18/09/2012. The order has attained the finality and therefore, no interference was called for by the Court.

24. It is further observed that Rule-6 of the Company Court Rules, 1956 relied by the learned counsel for the Union and in terms of the aforesaid provision, if the practice and procedure of the Court is prescribed under the Act and the Rules, the same is save and to the extent there is no provision under the Act and the Rules, the provision of the Code of Civil Procedure shall apply to all the proceedings under the Act and the Rules. In para-15, it is further observed by this Court that the other objections regarding the title of the Government in respect of the suit properties is concerned, it is not understood as to how the Union of workers is benefited by taking such stand. The objector/ Union had filed Writ Petition No. 1161/2013 before this Court, challenging the decision of the Government that the property belongs to M/s Akola Oil Industries. This petition was dismissed by the Court on 21/12/2013, holding that the Union has no locus standi in the matter to raise such objection. This order has attained finality. The objection is, therefore, rejected.

25. It is further observed in para-16 that it is not in dispute that interest of the workers is already protected by the order dated 11/07/2013 passed by the Division Bench of this Court in Writ Petition No.822/2013. Undisputedly, the total dues of the workers are to the extent of Rs. 12,09,26,150/-, which are protected. By observing the same, all civil applications filed in different OLR's seeking confirmation of sell and permission to deposit the amount are allowed to the extent that all other civil applications along with all connected civil applications for intervention, objections and

cancellation of sell are dismissed. Thus, the record shows that in various writ petitions and various applications, the interest of the workers is already protected by this Court by passing appropriate orders.

26. By preferring this application, the applicants/workers filed application through their Power of Attorney holder Mr Pradipkumar Vakharia. As per the contention of the applicants, they are the workers/staff serving in non-applicant Company. As per non-applicant No.1/Official Liquidator, the workers have no locus. As per contention of the Power of Attorney holder Shri Pradipkumar Vakhariya that applicants who are the applicant Nos. 1 to 24 have executed Power of Attorney in his favour. Here, it is to be seen that whether the applicants come before the Court with all fairness. The copies of the Power of Attorney placed on record. During the pendency of the application, the applicant No.14 Smt Mangala Arvind Saraf, approached to the Official Liquidator and submitted her application and contending that she is not aware for what purpose her signature was obtained and cancelled her power of attorney. Likewise, the applicant No.15-Laxman Shankar Lohit who is died on 27/04/2019 on whose behalf also, the present application is filed. His legal heirs Shantabai Ramchandra Sarkar is not a party to the application. Thus the application on the basis of Power of Attorney is filed on behalf of the applicant No.15 after his death. Though the Power of Attorney is executed by Shantabai Ramchandra Sarkar and other legal heirs, they are not party to the application. The said Shantabai Ramchandra Sarkar also approached

to the official liquidator and filed application on 16/01/2023 stating therein that, she is not aware why the authority letter is obtained and she cancelled the Power of Attorney.

27. It is contended that the Applicant No.18 – Dinkar S. Bhagde is also died long back on 04/12/2011. The Power of Attorney which is filed on record shows that, it bears the signature of wife of Dinkar Bhagade namely Vasumati Dinkar Bhagde. However, the said power of attorney does not bear the date, when it is executed. The wife of the applicant No. 18 also approached to the Official Liquidator and cancelled her Power of Attorney. In fact, the said Dinkar Bhagade died on 04/12/2011, no document is filed on record to show that at any point of time, he executed the Power of Attorney in favour of the said Mr Pradipkumar Vakharia**.** The wife approached before the Official Liquidator and submitted her application that she is not aware why her signature was obtained. The Power of Attorney, on which she had signed, does not bear the date. So, a doubt is created regarding the genuineness of the document. Subsequently, the applicant No.12 Jatashankar Tiwari, applicant No.10 – Rajiv Balkrishna Mundada, Applicant No.22 Goraknath Rama Sonone, applicant No.21- Laxman Ganpat Kose , applicant No. 16- Samadhan Kisan Warghade and applicant No. 14 -Smt Mangale Arvind Saraf informed to the Court that, their names are included in the application without their consent.

28. Learned counsel Mr Parchure appearing for successful bidder informed the Court that these person approached to the successful bidder. Considering the contention raised by these

applicants, they are asked to file an affidavit. Accordingly, they have filed the affidavit before the Court stating that, they are the Ex-employees of the Akola Oil Industries. Their names have been included by Shri Pradeep Popatlal Vakhariya without their consent and without their knowledge and sought the permission of the Court to withdraw their names from the said company application. The said affidavits are denied by the rest of the applicants and counter affidavits are filed by the applicant No.3 – Purushottam Chhaganlal Dangra and applicant No.7 Shashikant Shivachanran Joshi. The Amit Rameshwar Sharma, who is not an applicant. The affidavit of Smt. Kamaladevi Bhutda is filed, who is not the applicant. The applicant No.11 husband of Kamaladevi is died on 15/01/2021. Surprisingly, the affidavit of Mahavir Prasad Pujari is also filed by the applicants. In fact, the name of applicant No.6 – Mahabir Prasad Pujari is deleted by the power of attorney as he is dead in view of the order of this Court on 23/01/2023..

29. Thus, it is apparent that the applicants have filed the affidavit of a dead person i.e. applicant No.6. The affidavits are also filed of a person namely Raibhaur Ramgaur Rai, Kamaldevi Ramkaran Bhattad who are not the applicants. The affidavit of the applicant No.4 Vijay Bhaskarrao Deshmukh is on record. In the said affidavit, it is contended that successful bidder approached to them with printed form of affidavit. It is pertinent to note that, no date is mentioned in the said affidavit when the said bidder approached to them. The said affidavit is filed on 30/01/2023. In fact, on 23/01/2023 itself, the applicant Nos. 10, 12, 14, 21 and 22

brought to the notice of this Court that, their names are mentioned as applicants without their knowledge, and therefore, they are asked to file their affidavits. On the next day itself, the matter was kept but these applicants never informed that successful bidder approached to them. Thus, it is apparent that Power of Attorney is filed by the said Pradeep Kumar Vakhariya on behalf of the persons who are dead, who have no knowledge about the contents of the application and who have not consented to file an application.

30. Now, as far as the merit is concerned, OLR No. 07/2017 was filed for seeking permission to get assessment and valuation of the property of the company i.e. plot Nos. 118, 113 from the panel of valuer. This Court by passing order dated 16/02/2018 permitted the Official Liquidator to get assess value of the company property, as old valuation was of no use. Thereafter, OLR No. 11/2018 was filed for permission of sell of plot bearing Nos. 11, 103 and 118 and permission was sought for calling quotations from intending purchasers of the property of the company by way of public auction. This Court permitted the official liquidator to issue a sale notice. As per the order dated 09/06/2022, the official liquidator published an advertisement in Lokmat Times and Lokmat (Marathi) in Akola Edition. In response to the notice, official liquidator received five tenders from five intending purchasers in respect of the Plot No. 11, the highest bid was received from Shri Prakash Jamnadas Anandani. In response to the notice, six offers received from intending purchasers in respect of the plot No. 118. The highest offer was given by Ramesh Kashiram Wankhede and seven others received

from the papers for plot No. 103, the highest offer was received from Shri Aashish Jamdang. Thereafter, the official liquidator filed OLR Nos. 17/2022, 19/2022 and 20/2022 for seeking permission to accept highest offer and confirm sale. The order passed by this Court dated 09/06/2022 is under challenge and prayed for recall or review of the said order, on the ground that upset price is not fixed.

31. It is submitted by the learned Counsel Mr Deshpande, that statutory dues of the workers are pending. The properties are advertised without fixing upset price, hence proclamation is illegal. Whereas, it is submitted by the learned counsel Mr Anjan De that in view of Section 483, if the applicants are aggrieved by the said order. They have to file an appeal. The review application is not maintainable and the applicants have no locus to file the such application. It is further submitted by the learned counsel Mr Anjan De that in view of the Official Liquidator's Report Nos. 04/2016 and 06/2017 shows that the claim of 489 workers is satisfied. As per the affidavit of Official Liquidator, he has paid 100% of the dues/claims as dividend for the sum of Rs. 12,14,53,280.17/- to the 500 workers in compliance of the order dated 25/04/2016 passed in OLR No. 04/2016. The affidavit of the official liquidator is supported with the bank statement to that effect. It appears that liquidator of the company under liquidation submitted a report seeking permission of the Company Court for selling the properties of the company described in the said report.

32. The report of the official liquidator was registered as

11/2018 in Company Petition No.05/2001. Thereafter official liquidator has filed an OLR No. 07/2017, by passing the order on 16/02/2018 on the said application, it was observed by this Court that initial valuation was done in the year 2011. This valuation, is obvious is of no use, therefore, the application is allowed and official liquidator was directed to submit a new valuation report. In view of the order dated 16/02/2018, the official liquidator has filed fresh valuation and therefore, the permission was granted to advertise the property for sale. In the said report, the liquidator sought permission of the company court to conduct the valuation of the properties which were described in the report and to sale the same. The report further reveals that, at the time of taking possession of the properties, both immovable and movable of the company, the company was under liquidation. The two valuers had been appointed, who had submitted their valuation reports and in view of fresh valuation reports, the permission was granted to advertise the property for sale.

33. It is further appearant that the official liquidator has submitted OLR No. 11/2018, for seeking permission to advertise the property for sale. The learned Company Judge by an order dated 09/06/2022 permitted the company to issue advertisement for sale of the properties. The present applicants, however, had challenged the aforesaid order on various grounds and review of the order. The applicants had objected that properties of the company cannot be sold without fixing the upset price. The applicants have contended that the official liquidator has not fixed the upset price or reserve

price and it is not mentioned in the proclamation. The earnest money deposit of Rs. 10,00,000/- determined for all three properties without any basis. Thus, the liquidator has not followed the procedure contemplated in Section 457 of the Companies Act.

34. The learned counsel Mr Deshpande, for the applicants has urged that the official liquidator had advertised the property without fixing the upset price which is mandatory, and thus he has not followed the procedure. On the contrary, the learned counsel Mr Anjan De submitted that though upset price is not fixed but valuation report is obtained by the official liquidator and therefore, there is sufficient compliance of Section 457. The Section 457 of the Companies Act provides for sale of the properties, either by public auction or by issuance of advertisement inviting tender or by private contract negotiations.

35. The learned counsel Mr Deshpande placed reliance in the case of ***Union of India v/s Official liquidator and others*** cited supra. In the said judgment Hon'ble Supreme Court in para-13 has stated that in the matter before it the valuation report was called for by order dated 16/02/1996. The Hon'ble Supreme Court further came to the conclusion that the valuation report was kept as a secrete, confidential document and without disclosing the valuation report to the creditors and without fixing its reserved price, the properties were auctioned and the sale was confirmed. In the present case, the learned Company Judge has fixed the upset price to be the valuation of the properties, as per the valuation report. Even if, no copy of valuation report was provided, no prejudice

would be caused to the applicants, as sale has not yet confirmed.

36. In the case of ***M/s Tech Invest India (Pvt.) Ltd., through Major Shareholder Rajiv Gosain Vs M/s Assam Power and Electricals Ltd., and others*** *cited supra*, wherein it is held that auction sale of properties of company, valuation report was submitted before the Company Judge, it ought to have been disclosed to the secured creditors and other interested persons in order to ascertain the market value of the property before property was auction sold**.** The application is filed by the applicants at a pre-mature stage as yet the valuation report is kept in a sealed cover and not open. As observed earlier, no copy of the valuation report was provided to the applicants as it is not opened yet. It is submitted by the learned counsel Anjan De, no prejudice could be said to the caused to the applicant as sale has not been confirmed. Whatever is directed is that, the advertisement be issued inviting tenders. The bids are received and the sale has not been yet confirmed. In that background, no prejudice is caused to the applicants and the application is filed at premature stage.

37. In the case of ***M.M. Thomas vs State of Kerala and another*** cited supra, wherein the scope of review is discussed and it is held that in review jurisdiction, the high court rightly dismissed the appeal and set aside its earlier order. While discussing the scope of review, it is held by the Hon'ble Apex Court that as envisaged in Article 215 of the Constitution, must have inherent powers to correct the records. A court of record envelops all such powers whose acts and proceedings are to be enrolled in a perpetual

memorial and testimony. A court of record is undoubtedly a Superior Court which is itself competent to determine the scope of its jurisdiction. The other three judgments on which the applicants placed reliance are not relevant in the present matter.

38. The applicants have challenged the order on the ground that the procedure given under Section 457 of the Companies Act is not followed. The Section 457 of the Company Act provides for sale of the properties either by public auctions or by inviting tenders or by private contract negotiations. By issuance of advertisement cannot be allowed to out-way the benefits which would be derived in selling the properties. In view of Section 457 of the Companies Act specifically Section 2-F deals with the advertisement inviting bids, which shall contain following details namely :

> (a) name, address of registered office of the company and its branch offices, factories and plants and the place where assets of the company are kept and available for sale ;
>
> (b) last date for submitting bids which shall not exceed ninety days from the date of advertisement ;
>
> (c) time during which the premises of the company shall remain open for inspection ;
>
> (d) the last date for withdrawing the bid ;
>
> (e) financial guarantee which shall not be less than one-half of the value of the bid ;
>
> (f) validity period of the bids ;
>
> (g) place and date of opening of the bids in public ;
>
> (h) reserve price and earnest money to be deposited along with the bid;
>
> (i) any other terms and conditions of sale which may be prescribed.

39. In view of Section 2-F (h), the advertisement inviting bids shall contain the reserve price and earnest money to be deposited along with bid. Here in the present case, the earnest money is already fixed while advertising the proclamation. Though reserved price is not mentioned but the valuation reports are already obtained and this Court has fixed the upset price to be the valuation of the properties as per the valuation report. Therefore, the contention of the applicants is that the applicants have not followed the procedure, in view of Section 457 is not acceptable. The Hon'ble Apex Court in the case of ***Union Bank of India and M/s Technical Invest India*** held that auction of sale of properties, valuation report was submitted, it ought to have been disclosed to the secure creditors and other interested persons in order to ascertain market value. The said observation is made by the Hon'ble Apex Court in the facts of that case, the property was sold by the official liquidator without furnishing copy of the valuation report to the secure creditors and other interested persons.

40. In the case of ***Union Bank of India (supra)***, it is held by the Hon'ble Apex Court that in proceedings for winding up of the Company under liquidation, the Court acts as a custodian for the interest of the company and the creditors. Therefore, before sanctioning the sale of its assets, the Court is required to exercise judicial discretion to see that the properties are sold at a reasonable price. For deciding what would be reasonable price, valuation report of an expert is must. Not only that, it is the duty of the Court to disclose the said valuation report to the secured creditors and other

interested persons including the offerors. Further, it is the duty of the Court to apply its mind to the valuation report for verifying whether the report indicates reasonable market value of the property to be auctioned, even if objections are not raised. Thus, in view of these judgments duty casted on the Company Court is that, being a custodian in the interest of the company and the creditors before sanctioning the sale of its asset, the Court is required to exercise its judicial discretion to see that the properties are sold at a reasonable price, and for deciding reasonable price, the valuation report of an expert is must. The first step is that valuation report of the expert which is to be called in the present case. The second duty casted upon this Court is to disclose the said valuation report to the secured creditors and other interested persons, including the offerers that stage yet to come. The third duty casted upon this Court is to apply its mind to the valuation report for verifying whether the reports indicates reasonable market value of the property to be auctioned even if the objections are not raised. That stage is also yet to come. At present, the only valuation reports are submitted by the official liquidator and proclamation was issued. In view of the said valuation report and offers received from the bidders, the sale has not been confirmed. So, before execution of sale, the stages are required to be taken in view of the judgments of Hon'ble Apex Court. At present, as sale has not been confirmed, the objections raised by the applicants is not sustainable.

41. The next aspect is that the applicants filed this application for recall of the order. The provision of appeal is

envisaged in the Companies Act, 1956. Section 483 of the Companies Act, 1956 states that :-

> ***Section 483. Appeals from Orders:-*** *Appeals from [any order made or decision given before the commencement of the Companies (Second Amendment) Act, 2002], in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.*

42. Thus, in view of Section 483, applicants have to challenge the said order by preferring an appeal.

43. By this application, the applicants are seeking recall or review of the order passed on 09/06/2022. The scope of review is discussed by the Hon'ble Apex Court in various judgments. In the case of ***Haridas Das vs. Usha Rani Banik (Smt.) and others***[7], while considering the scope and ambit of Section 114 read with Order XLVII, Rule 1 of the Code of Civil Procedure, it is observed and held in paragraph Nos.14 to 18 as under:

> *"14. In **Meera Bhanja vs. Nirmala Kumari Choudhury, (1995)1 SCC 1780** it was held that:*
>
> *"It is well settled law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1, CPC. In connection with the limitation of the powers of the Court under Order XLVII, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleshwar Sharma v. Aribam Pishak Sharma speaking through Chinnappa*

7 2006 (4) Mh.L.J. (S.C.) 14

Reddy, J. has made the following pertinent observations:

> *'It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to be exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground. But, it may not be exercised on* the ground that the decision was erroneous on merit. That would be in the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate Court to correct all manner of error committed by the Subordinate Court."

15. A perusal of the Order XLVII, Rule 1 show that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.

16. In Aribam *Tuleshwar Sharma v. Aribam Pishak*

Sharma (AIR 1979 SC 1047) this Court held that there are definite limits to the exercise of power of review. In that case, an application under Order XLVII, Rule 1 read with Section 151 of the Code was filed which was allowed and the order passed by the judicial Commissioner was set aside and the writ petition was dismissed. On an appeal to this Court it was held as under: (SCC p-390, para 3)

> *"It is true as observed by this Court in Shivdeo Singh v. State of Punjab (AIR 1963 SC1908) there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court."*

17. The judgment in Aribam's case (supra) has been followed in the case of Smt. Meera Bhanja (supra). In that case, it has been reiterated that an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn

process of reasoning. The following observations in connection with an error apparent on the face of the record in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tiruymale [AIR 1960 SC 137] were also noted:

> "An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from selfevident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

18. *It is also pertinent to mention the observations of this Court in the case of* ***Parsion Devi v. Sumiri Devi (1997)(8) SCC 715)****. Relying upon the judgments in the cases of Aribam's (*supra) and Smt. Meera Bhanja (supra) it was observed as under :

> *"Under Order XLVII, Rule 1, CPC a judgment may be open to review inter alia, if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order XLVII, Rule 1, CPC. In exercise of the jurisdiction under Order XLVII, Rule 1, CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise."*

44. Thus, an application for review would lie inter alia when

the order suffers from an error apparent on the face of record and permitting the same to continue would lead to failure of justice. The power of review can also be exercised by the Court on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. An application for review would also lie if the order is passed on account of some mistake. It is well settled that reviewing Court is not an appellate court over its own order. Thus, the powers of review can be exercised for correction of mistake and such powers can be exercised within the limits of the statutes. The term 'mistake' or 'error' apparent is discussed by the Honourable Apex Court in the case of ***State of West Bengal and others vs. Kamal Sengupta and another***, *reported at* ***(2008) 8 SCC612*** and observed that the term `mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of fact or law.

45. The Honourable Apex Court in the case of **Ram Sahu**

(dead) through LRs vs. Vinod Kumar Rawat and others, reported at **2021(3) Mh.L.J. 268** by referring catena of decisions of the Honourable Apex Court observed that the principles which can be culled out from the above noted judgments are:

> (i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/ analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.
>
> (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
>
> (iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
>
> (iv) An error which is not self evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).
>
> (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

It is further held in the case cited supra that to appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in exercise of power of review nor the said Section imposed any prohibition on the Court for exercising its power to review its decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC.

46. Keeping in mind, the aforesaid principal, if the contention of the applicants are considered, they have challenged the order dated 09/06/2022 on the ground that proper procedure is not followed. The order passed by this Court is as follows:-

> Read the order dated 16/02/2018, as initial valuation of the property to be sold was of the year 2011, it was not accepted. Now, the official liquidator has done fresh valuation they want to sell the property. Permission is granted to advertise the property for sale.

On re-appreciation of the entire material on record, the only order passed by this Court is that the properties to be advertised for the same.

47. Taking into consideration, the scope of review petition, facts of the present case and the law laid down by the Hon'ble Apex Court, submissions made by the learned counsel for the applicant that the order needs to be recalled is not sustainable. As the term

'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC.

48. Here in the present case, the separate provision of appeal is provided under Section 483 of the Companies Act, 1956. Thus, the order or decision of this Court can be challenged by the applicant by filing the appeal. Thus, the order passed by this Court on 09/06/2022, I do not find any error apparent in the said order. The order is only to the extent that the properties to be advertise and quotations are to be invited from the persons interested. If the contention of the applicant is that the due procedure is not followed by the official liquidator, then it can be challenged by the preferring an appeal and not by filing review application.

49. The official liquidator has also filed an affidavit contending that the 100% dues/claims as dividend for sum of Rs. 12,14,53,280.17 to the 500 workers in compliance of the order dated 25/04/2016 as already paid. He further contended that, as directed by the Labour Commissioner vide order dated 13/11/2011, the respondent No.6 i.e. Krishidhan Seeds Limited Purchaser has given undertaking that he will keep open three acres of land till the dues of the workers are satisfied and to protect the interest of the workers. Accordingly, he executed undertaking/indemnity bond

which is filed in the writ petition No. 822/2013 in respect of the reserving of the land of 3 acres. The said undertaking is given as follows :-

a) The party No.1 (Krishidhan Seeds Limited Purchasers) undertakes to settle all the dues with official liquidator and pay all the deficit amount whatsoever, till then the property shall have a charge over the same the same. In event any excess remains the Party No.2 (SBI Akola) shall be entitled to the same.

b) It is further contended in the undertaking that with a view to safeguard the interest of the party No.2-bank by the official liquidiaqtor in respect of the dues or against any contingent claim by any department/statutory authority/Tax Authority what-so-ever, who may repair at any time and object to the same of the aforesaid properties confirmed in favour the property No.1 by the Party No.2.

Thus, by this affidavit the official liquidator as contended that the dues of the workers are already paid and the interest of the workers by seeking the undertaking of the successful bider i.e. Krishidhan Seeds Limited. The three acres of the land is kept out of the same to protect the interest of the workers.

50. Moreover, as observed earlier, the applicant has not come with the clean hands. The application is filed by the Power of Attorney on behalf of the dead persons. This Act of the Power of Attorney needs the strict action, however, considering all the applicants are the workers and taking into consideration their interest, I am not inclined to take any action and I do not proceed to do so. I have also examined the correctness of the order.

51. Since the issue of the workers is involved, I do not want to proceed to consider serious Act of the applicants who filed an application through the Power of Attorney. The Power of Attorney filed on record is also a doubtful. For the above reasons, the application deserves to be rejected.

Thus, an order wherein there is no apparent error or any mistake, the applicants could not point out the apparent error in the said order and therefore, the application deserves to be rejected.

In view of the above discussion, the application is **rejected** with no order as to costs.

JUDGE

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