

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

**INTERIM APPLICATION NO. 1454 OF 2024  
IN  
COMPANY PETITION NO. 924 OF 2003**

**Helbon Engineers Pvt. Ltd.**

**A Company duly incorporated  
under the Companies Act, 1956**

**and having its registered office at:**

**Plot No. 2 & 5 near Veer Rubber Company,**

**MIDC, Chikloli, Near Forest Naka,**

**Ambernath (W), Thane – 421 502**

**...Applicant**

**In the matter between**

**Jayantilal A. Shah, C. A. of Devyani J. Shah**

**Sole Proprietress of M/s Jayant Trading**

**Corporation, carrying on business at**

**22/30, Princess Street, 4/12, Mulchand Mansion,**

**Mumbai 400 002**

**...Petitioner**

**V/s.**

**1. Ferral Anant Machinery Manufacturers Pvt. Ltd.**

**A Company in Liquidation, having its registered**

**office at Flat No. 5, Moon Stone Apartment,**

**65-E Linking Road, Santacruz West, Mumbai-400054**

**2. The Official Liquidator**

**Bombay High Court, Bank of India Building,**

**5<sup>th</sup> Floor, Mahatma Gandhi Road,**

**Fort, Mumbai-400 023, as liquidator of**

**Ferral Anant Machinery Manufactures Pvt. Ltd.**

**Having its office at : 22 Gulabbai Desai Road,**

**Mumbai-400 026.**

**...Respondents**

**Mr. Sarosh Bharucha with Mr. Hrushi Narvekar and Mr.K.V Ramdasan  
i/b E. A. Sasi & Mr. Arnav Rane, Advocate for the Applicant.**

**Mr. Ranjeev Carvalho, Advocate for Official Liquidator.**

**Mr. Chetan Shelake, Assistant Official Liquidator.**

CORAM : ABHAY AHUJA, J.  
RESERVED ON : 2<sup>nd</sup> MAY, 2024  
PRONOUNCED ON: 10<sup>th</sup> JUNE, 2024

**JUDGMENT :**

1. This Interim Application has been filed on behalf of the Applicant seeking various reliefs *inter alia* for a declaration that the sale agreement dated 5<sup>th</sup> September, 2007 is not affected by Section 536 (2) of the Companies Act, 1956 and to ratify the said sale.

2. The background facts are that in and around 1981, the Maharashtra Industrial Development Corporation (“MIDC”), who as owner of the land being two pieces and parcels of land known as : (i) Technician Shed No.2 admeasuring 1870 sq. meters and built up shed admeasuring 786 sq. meters or thereabout and (ii) Technician Shed No. 5 admeasuring 1755 sq. meters and built up shed admeasuring 1314 sq. meters or thereabout, both situated at Ambernath Industrial Area, within the village limits of Ambernath and sub-District of Ulhasnagar, District and registration District : Thane (the “said Property”), leased the said property in favour of one Ferral Anant Machinery Manufacturers Pvt. Ltd. (the “said company) against which a winding up order has been passed and arrayed as the Respondent No.1.

3. On 25<sup>th</sup> August 2003, one Mr. Jayantilal A. Shah, Constituted Attorney of Devyani J. Shah, Sole Proprietress of M/s Jayant Trading Corporation, the Petitioner, filed the petition for winding up against the said company.

4. It is the case of the Applicant that the said company did not inform the Applicant of the filing of the winding up petition nor of any order of admission or of winding up and the Applicant came to know of the same only in the year 2011.

5. On 4<sup>th</sup> February 2005 an *ex-parte* order was passed by this Court admitting the winding up petition.

6. In or around 2006-07, the Applicant learnt about the intention of the said company to transfer its leasehold rights and sell the structures standing on the said land. That, accordingly negotiations ensued between the Applicant and the said company for transfer of the said property. That, at the time of negotiations, the directors of the said company represented to the Applicant that the said property was free of all and any encumbrances and subject to the approval of MIDC and the same could be transferred to the Applicant for valuable

consideration. That, at the relevant time, the said company informed the Applicant that it had only one creditor i.e. Bank of Baroda, however, its dues were being cleared by the said company. On 16<sup>th</sup> February, 2007, the Applicant issued a public notice inviting objections to the transfer of the said property, however no objections were received. On 29<sup>th</sup> June, 2007, the Respondent No.1-company applied to MIDC for transfer of the said property in favour of the Applicant. On 4<sup>th</sup> July, 2007 and 27<sup>th</sup> July, 2007, the Bank of Baroda issued its letter confirming that the Respondent No.1-company has paid all its dues and that the bank has released all documents kept with it as security.

7. On 14<sup>th</sup> August, 2007, the MIDC granted its approval for transfer of the said property in favour of the Applicant subject to payment of differential premium of Rs. 5,40,900/-, which was paid by the Applicant.

8. That on 5<sup>th</sup> September, 2007, the Applicant and the said company entered into a sale agreement for transfer of the said property in favour of the Applicant for a consideration of Rs.1,25,00,000/- payable by the Applicant to the Respondent No.1-company. It has been submitted that the sale agreement has been duly registered before the Sub-Registrar of

Assurances and the entire consideration of Rs. 1,25,00,000/- has also been paid by the Applicant to the said company.

9. That, thereafter, the Applicant has invested substantial sums of monies in the said property for installation of plant, machineries, equipment, raw material/stock-in-trade, etc, so as to use the said property for its business of manufacturing of electrical transformer tanks, other engineering and fabrication works. The Applicant employed around 100 workers whose livelihood is dependent on the Applicant. Further, that in the year 2010, the Applicant mortgaged the said property to the South Indian Bank Limited for raising finance to the extent of Rs.4,24,00,000/- for establishing the business.

10. On 26<sup>th</sup> July 2010, order was passed by this Court winding up the company. It is not in dispute that none appeared for the company and as recorded earlier, the Applicant came to know of the winding up related proceedings only in the year 2011, when on 25<sup>th</sup> June 2011, a representative from the office of the Official Liquidator visited the said property and informed the Applicant that the Official Liquidator would be taking over possession of the said property in the light of the winding up order. It is submitted that it was after this date that the

Applicant conducted necessary searches and came to know of the winding up petition and the orders passed therein.

11. Thereafter, in the year 2011, the Applicant filed Company Application No.325 of 2011 in the winding up petition *inter alia* for a declaration that the sale agreement dated 5<sup>th</sup> September 2007 was valid, subsisting and binding.

12. On 6<sup>th</sup> August 2011, a Memorandum of Understanding (MOU) was entered into between the Applicant and the Petitioner whereby the dues of the Petitioner were settled by the Applicant.

13. On 13<sup>th</sup> October 2011, keeping all contentions open, an order was passed by this Court permitting the Applicant to withdraw the said Company Application No.325 of 2011 with liberty to adopt appropriate proceedings against the company in liquidation and particularly in relation to the sale agreement dated 5<sup>th</sup> September 2007. The Applicant was protected from dispossession for a period of two months and status-quo was directed to be maintained at the site accordingly, which order was extended for some more time. Also, the following order was passed on the Official Liquidator's Report No.269 of 2011 :

*“ In the light of the withdrawal of the company application and the order made therein, presently Mr.Sawant appearing for Liquidator states that the Liquidator is not seeking any reliefs in terms of prayer clause (a) of this report. The request of Liquidator to pass orders in terms of prayer clause (a) is deferred for a period of eight weeks from today.*

*2) As far as prayer (b) is concerned, Mr.Sawant states that Bank of Baroda was one of the secured creditor of the company in liquidation. The representative of Bank of Baroda informs the Liquidator in a meeting dated 28th February 2011 that the company in liquidation has already settled the dues of the said bank under One Time Settlement scheme. The bank submitted a letter dated 16th May 2011 along with statement of account and NOC indicating that it has received a sum of Rs.3,38,32,000/- plus interest of Rs.14.85 lakhs for the period as per the compromise proposal sanctioned and the company in liquidation has a credit balance of Rs.4,382/-. It is stated in the report that date of payment to Bank of Baroda is not informed.*

*3) Learned Counsel places reliance upon a letter dated 24<sup>th</sup> May 2011 of the Bank of Baroda addressed to the Deputy Official Liquidator confirming this fact and relies upon the annexures thereto.*

*4) In the submission of Mr.Sawant, notice of this report was served on Bank of Baroda. It has failed to respond to the said notice. It has received notice and yet has not filed any response nor is any representative of the said bank present in Court.*

*5) Mr.Sawant submits that the company in liquidation was wound up on 26th July 2010. However, the record would indicate that the company petition for winding up was admitted on 4th February 2005. The order of winding up was passed on 26th July 2010. Inviting my attention to the provisions enabling the Court to pass an order of winding up, it is contended that such an order enures for the benefit of all creditors as if it had been made on their joint petition. Therefore, upon an order of winding up being passed, the*

*same relates back to the date of presentation of the winding up petition. Admittedly, the bank of Baroda has informed that the payment has been made some time by the company in liquidation, post the winding up order. In any event, it is made during the pendency of the proceedings. That the application of doctrine of relation back is, therefore, not in dispute. The documents that have been placed on record would indicate that on 4th July 2007, the bank issued a no dues certificate in favour of the company in liquidation. Therefore, at least until that date the claim was not settled. If at all the monies were received, they were received during the course of proceedings. Upon the order of winding up being passed, it was the duty, therefore, of Bank of Baroda to inform the Liquidator and if required by the Liquidator to bring back the monies and deposit them with him. The secured creditors have to be treated equally and particularly in the light of section 529 and 529A of the Companies Act, would rank pari pasu and, therefore, their claim is on par as stated in the statutory provisions.*

*6) Today claims of workmen and others have to be invited. They have to be adjudicated. Therefore, the Bank of Baroda cannot retain any sums as that would mean that one of the creditors and that too claiming to be a secured one gets preference over others.*

*7) Mr.Sawant, therefore, submits that the report be made absolute in terms of prayer clause (b). Having heard Mr.Sawant at some length and with his assistance perusing the report and annexures, including the letter dated 4th July 2007, leaves me in no manner of doubt that the bank appears to have agreed to one time settlement with the company in liquidation, post admission of this company petition. Atleast the company in liquidation was aware of the fact that a winding up petition is pending in this Court against it. Thereafter the winding up petition was admitted. The order of winding up may have been made subsequently but applying the principles of relation back, which have statutory recognition in terms of sections 441 of the Companies Act, Mr.Sawant's submissions would require acceptance. The claims against the company have yet to be received by the*

*Liquidator and, thereafter, would be required to be adjudicated. In these circumstances, interest of justice would be served if, firstly the Liquidator is directed to advertise and issue a public notice inviting claims from all interested parties, including workmen of the Company in liquidation and upon adjudication thereof, if the amount to the credit of the company or the funds lying with the Liquidator insofar as the subject company is concerned, fall short so as to enable him to meet the dues of the secured creditors, workmen and others, including statutory dues, then, he can call upon the Bank of Baroda to deposit Rs.3,53,17,000/- in terms of prayer clause (b) of the report and on such a communication being received from the Official Liquidator, Bank of Baroda shall comply with the same and deposit monies within eight weeks from the date of receipt of such communication. Report is made absolute in terms of prayer clause (b) with liberty as above.”*

14. In the year 2011 itself the Applicant filed Regular Civil Suit No.50 of 2011 before the Civil Judge Senior Division at Kalyan *inter alia* seeking a declaration that the sale agreement dated 5<sup>th</sup> September 2007 was valid, subsisting and binding. On 20<sup>th</sup> March 2012, an interim order was passed by the Kalyan Civil Court restraining the Official Liquidator from dispossessing the Applicant from the said property.

15. On 12<sup>th</sup> September 2012, the Bank of Baroda, who was the only creditor of the Respondent no.1 – company in liquidation, made an application to recall the order dated 13<sup>th</sup> October 2011 passed by

this Hon'ble Court and for other prayers. The said matter had come up for consideration on 12<sup>th</sup> September 2012. This Hon'ble Court directed that in the event of the Official Liquidator receiving any claims from the workers/creditors of the Company, the Official Liquidator was directed to adjudicate the same and call upon the applicant bank to deposit the necessary amounts by giving 14 days clear notice in writing. Upon receipt of such notice, the applicant was entitled to move an application seeking necessary reliefs. The order was passed without going into the merits of the application since the Official Liquidator had not received any claims from any of the workers/creditors of the Company.

16. On 25<sup>th</sup> January 2023, the Official Liquidator filed an application in the Kalyan Civil Court under Order VII Rule 11(b) and (d) of the Code of Civil Procedure, 1908 (the "CPC") for rejection of the plaint in view of Section 536(2) of the Companies Act, 1956.

17. On 18<sup>th</sup> August 2023, the plaint came to be rejected and thereafter on 30<sup>th</sup> August 2023, this application came to be filed.

18. On 6<sup>th</sup> September 2023, a notice was issued by the Official Liquidator informing that possession of the said property would be taken on 14<sup>th</sup> September 2023. On 4<sup>th</sup> October 2023, the Official Liquidator filed its reply to the winding up petition. It is submitted on behalf of the Applicant that in the said reply, the Official Liquidator has admitted that it has received no claims with respect to the company in liquidation.

19. Mr.Sanjay Jain, learned Counsel for the Applicant would submit that since the sale agreement dated 5<sup>th</sup> September 2007 was entered into before the passing of the winding up order dated 26<sup>th</sup> July 2010, the Applicant is a *bonafide* purchaser of the said property for consideration without notice of the winding up proceedings. That, the sale agreement dated 5<sup>th</sup> September 2007 is a *bonafide* transaction in the ordinary course of business of the company, which *bonafides* of the Applicant and the transaction are fortified by the following facts :

- (i) the Applicant gave public notice dated 16<sup>th</sup> February 2007 before purchasing the subject Property and received no objections;
- (ii) Bank of Baroda gave its NOC before the transaction inter alia setting out that its dues qua the Company are settled;
- (iii) MIDC granted its approval to the transaction on 14<sup>th</sup> August

2007, thus demonstrating that even according to them there was no embargo on the transfer;

- (iv) the Applicant paid a sum of Rs.5,40,900/- to MIDC as differential premium for transfer of the Subject Property; and
- (v) the Applicant settled the dues of the Petitioner against the Company, as evident from the Memorandum of Understanding dated 6<sup>th</sup> August, 2011 after coming to know of the captioned Petition and the orders passed therein.

20. Mr.Jain, learned Counsel for the Applicant, would submit that the said transaction was entered into in the interest of the company as the company required monies to pay its debts and liabilities. That, in view of settled law that Section 536(2) of the Companies Act, 1956 is an enabling section which does not render a transaction entered into by a company from the date of filing of the winding up petition till the date of the winding up order void *ab-initio*. Learned Counsel would submit that the Company Court has the power or rather absolute discretion to declare that a transaction entered into by a company between the date of filing of the winding up petition and the date of the winding up order is not void but is valid, subsisting and binding and in the interest of justice. It is submitted that the transaction of the Applicant has been shown to be *bonafide* and in the interest of the business of the company, and therefore, in the interest of justice, the same be declared

as valid, subsisting and binding.

21. Learned Counsel submits that it is an admitted position that the Official Liquidator has not received any claims from the workers, employees or creditors. That, even the dues of the petitioner have been settled by the Applicant. That, therefore, there are no claims which the company has to meet through the liquidation process, and that, there is no reason therefore for the sale agreement dated 5<sup>th</sup> September 2007 to be void.

22. Mr.Jain has relied upon the following decisions in support of his contentions :

(i) ***S.P Khanna vs. S.N. Ghosh***<sup>1</sup>

(ii) ***Pankaj Mehra and Another vs. State of Maharashtra and Others***<sup>2</sup>

23. It is, therefore, submitted that the reliefs, as sought for in the application, be granted.

24. On the other hand, Mr.Ranjeev Carvalho, learned Counsel for the Official Liquidator, has opposed the application.

25. At the outset, Mr.Carvalho would submit that the transaction falls

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1 1975 SCC Online Bom 263

2 (2000) 2 SCC 756

foul of the provisions of the Companies Act, 1956 and attracts the provisions of Section 536(2) of the said Act. Learned Counsel would submit that the presentation of the winding up petition was in the year 2003. The winding up petition came to be admitted on 4<sup>th</sup> February 2005. That, in view of Section 441 of the Companies Act, 1956, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up. That, the sale transaction has taken place only in the year 2007 as per the sale deed dated 5<sup>th</sup> September 2007 executed between the said company and the Applicant, which is much after the date of the presentation of the petition, without in any manner obtaining leave of this Court. That, therefore, the said sale is void *ab-initio* and *non-est* in the eyes of law.

26. Mr.Carvalho would further submit that the petitioner in the winding up petition had advertised the petition in the Free Press Journal and the Maharashtra Government Gazette in the year 2005 when the winding up petition was admitted by this Court by order dated 4<sup>th</sup> February 2005 and that it is a settled law that publication of a notice is a constructive notice to the public at large in respect of the pendency of petition for winding up of the company in liquidation.

That, therefore, the contention of the Applicant that the Applicant and the company in liquidation were not aware of the winding up petition, does not hold any water and ought not to be countenanced by this Court.

27. Mr.Carvalho would submit that in view of the pending winding up petition, which was duly advertised, the company in liquidation had no right in law to sell and the Applicant had no right and/or could not claim any rights and/or equities to purchase the said property from the company in liquidation, which had no power to execute any conveyance deed, transfer any properties during the pendency of the liquidation proceedings and in support, the learned Counsel draws the attention of this Court to Section 536(2) of the Companies Act, 1956. Learned Counsel, therefore, submits that since the sale agreement dated 5<sup>th</sup> September 2007 was executed after the commencement of winding up proceedings in the year 2003, the agreement in itself is null and void, *non-est*, runs contrary to the principles of Indian Contract Act, 1872, as the parties to the transaction lacked competence / locus to enter into the transaction.

28. Mr.Carvalho submits that under Section 456 of the Companies Act, 1956, all the property and effects of the company shall be deemed to be in the custody of the Official Liquidator, as from the date of the winding up of the company. Learned Counsel, therefore, submits that since the sale agreement dated 5<sup>th</sup> September 2007 is null and void and *non-est* in the eyes of law, the application be dismissed and the Applicant be directed to handover peaceful possession of the said property to the Official Liquidator. Mr.Carvalho has relied upon a Division Bench decision of this Court in the case of ***Sunita Vasudeo Warke vs. Official Liquidator and Others***<sup>3</sup>.

29. I have heard the learned Counsel at length and also considered the rival contentions. Mr.Jain has submitted that he has instructions to not to file any rejoinder in the matter. Therefore, this Court proceeds accordingly.

30. The Applicant has sought the following prayers :

- (a) This Hon'ble Court be pleased to order and declare that the Sale Agreement dated 5<sup>th</sup> September 2007 being Exhibit-F above is valid, subsisting and binding;
- (b) This Hon'ble Court be pleased to order and declare that the Sale

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<sup>3</sup> 2013(2) Mh.L.J. 777

Agreement dated 5<sup>th</sup> September 2007 annexed as Exhibit-F above is not affected by Section 536(2) of the Companies Act, 1956;

(c) This Hon'ble Court be pleased to pass an order of permanent injunction restraining the Official Liquidator, High Court, his servants, agents and representatives from in any manner whatsoever disturbing the possession of the Applicant with respect to the said Property and taking any action against Applicant pursuant to the Orders dated 4<sup>th</sup> February 2005 and 26<sup>th</sup> July 2010 annexed as Exhibit-I & J above, passed by this Hon'ble court in the captioned Petition;

(d) This Hon'ble Court be pleased to pass an order to recall and / or set aside the Orders dated 4<sup>th</sup> February 2005 being Exhibit-I and 26<sup>th</sup> July 2010 being Exhibit-J passed by this Hon'ble Court in the captioned Petition.

31. It is not in dispute that the company petition was presented on 25<sup>th</sup> August 2003 and admitted on 4<sup>th</sup> February 2005. A perusal of the order dated 4<sup>th</sup> February 2005 clearly indicates that the company was represented at the time of admission of the winding up petition. However, at the time of passing of the winding up order dated 26<sup>th</sup> July 2010, none was present for the company and it has been recorded in the said order that the Respondent no.1-company was absent though served. That, the Official Liquidator came to be appointed with usual powers under the Companies Act,1956.

32. The Official Liquidator proceeded with the liquidation

proceedings and held meetings with the ex-directors as well as the petitioner and Bank of Baroda, who was the secured creditor. On 17<sup>th</sup> June 2011, the representative of Bank of Baroda had confirmed that the dues had been settled in OTS scheme and stated that the company in liquidation had a credit balance of Rs.4,382/- which was agreed to be deposited with the Official Liquidator. The petitioner had stated that the factory premises of the company in liquidation had already been sold and transferred during the period of liquidation. The Official Liquidator, thereafter, had proceeded to visit the factory premises of the company in liquidation on 25<sup>th</sup> June 2011 situated on the said property, when it was found that the Applicant was functioning from the said property. In paragraph 8 of the affidavit-in-reply it has been stated that one Mr. Joseph Abraham, Managing Director of the Applicant informed that the Applicant had purchased the said factory premises belonging to the company in liquidation in the year 2007, which is after the date of admission order dated 4<sup>th</sup> February 2005, for a total consideration of Rs.1,25,00,000/- from the company in liquidation vide registered sale deed dated 5<sup>th</sup> September 2007. It is not in dispute that the said consideration has been paid to the company in liquidation and that the sale agreement has been registered.

33. Thereafter, the Official Liquidator had filed Official Liquidator's

Report No.269 of 2011 seeking the following prayers :

(a) Whether this Hon'ble Court would be pleased to declare the sale of the property of the Company (In Liqn.) situated at Plot No.2 & 5, Industrial Estate situated at Village – Chikhaloli, Sub-District Thane as void in terms of provisions of sec 537(1)(b) read with section 536 of the Companies Act, 1956 and also to direct the purchaser M/s. Helbon Engineers Pvt. Ltd to handover possession of the said premises to the Official Liquidator forthwith;

(b) In view of para 4 and 11 above whether this Hon'ble Court would be pleased to direct the Bank of Baroda to deposit Rs.353.17 lacs (i.e. amount received Rs.338.32 lacs as per compromise proposal sanctioned plus interest of Rs.14.85 lacs for the delayed period) along with interest payable on the said amount as per the prevailing rate of interest at the point of time with the Official Liquidator forthwith;

34. The Applicant had also taken out Company Application No.325 of 2011 to declare the sale agreement dated 5<sup>th</sup> September 20007 as valid and binding on all the parties concerned and to restrain the Official Liquidator, his servants, agents or otherwise by an order of injunction of the Court from taking any steps *qua* the said property.

35. The Official Liquidator's report as well as the company application, as noted above, came up for hearing on 13<sup>th</sup> October 2011 when the Applicant was allowed to withdraw the said application with

liberty to adopt appropriate proceedings against the company in liquidation and particularly in relation to the agreement dated 5<sup>th</sup> September 2007 and the Official Liquidator was directed not to dispossess the Applicant from the said property in its possession and the Applicant was directed to maintain *status-quo* initially for a period of two months which was extended for some more time. The Official Liquidator was directed to advertise public notice inviting claims and upon adjudication thereof, if the amount to the credit of the company in liquidation fell short to meet the dues of the creditors, then in that event, the secured creditor viz. Bank of Baroda was directed to deposit Rs.3,53,17,000/-. Thereafter, the Official Liquidator had invited claims by advertisement in the Free Press Journal and Nav Shakti dated 12<sup>th</sup> December 2011, however, no claims were received.

36. Bank of Baroda preferred Company Application No.345 of 2012 to recall the order dated 13<sup>th</sup> October 2011 and the matter came up for consideration on 12<sup>th</sup> September 2012, when the Court disposed of the application directing that in the event the Official Liquidator receiving any claims from the workers / creditors of the company in liquidation, the Official Liquidator would adjudicate the same and call upon Bank of Baroda to deposit the necessary amounts by giving fourteen days'

clear notice in writing and upon receipt of such notice, Bank of Baroda was entitled to move an application seeking necessary reliefs. It was clearly recorded that the said order was passed without going into the merits of the application since till the date of the order, the Official Liquidator had not received any claims from the workers / creditors of the company. Thereafter, as recorded above, the Applicant filed Civil Suit No.50 of 2011 before the Civil Judge Senior Division at Kalyan *inter alia* seeking a declaration that the agreement dated 5<sup>th</sup> September 2007 executed between the Applicant and the company in liquidation was valid and subsisting. The Kalyan Court, by order dated 20<sup>th</sup> March 2012, granted temporary injunction restraining the Official Liquidator from dispossessing the Applicant or interfering with its possession of the said property till the final decision of the suit. However, the Official Liquidator had filed an application for rejection of the plaint under Order VII Rule 11 (b) and (d) of the CPC and by order dated 18<sup>th</sup> August 2023 the plaint was rejected under Order VII Rule 11(d) of the CPC on the ground that Civil Court had no jurisdiction to deal with the subject matter and therefore the suit was barred.

37. Thereafter, the Official Liquidator issued letter dated 6<sup>th</sup>

September 2023 to the Applicant and their Advocate requesting them to handover the possession of the said property on 14<sup>th</sup> September 2023.

38. It is not in dispute that in or around 1981, the land underlying the said property was leased in favour of the company in liquidation after which the said company in liquidation constructed two sheds on the said property. It is also not in dispute that the Applicant, after learning about the intention of the Respondent no.1-company to transfer its leasehold rights and sell the structures, entered into negotiations with the company in liquidation for transfer. That, based on the negotiations and representations of the directors of the company in liquidation, that the said property could be transferred to the Applicant for valuable consideration subject to approval of the MIDC and subject to the dues of the secured creditor viz. Bank of Baroda, on 16<sup>th</sup> February 2007, the Applicant issued a public notice inviting objections to the transfer of the said property in its favour, however, no objections were received. On 4<sup>th</sup> July 2007 and 27<sup>th</sup> July 2007, Bank of Baroda issues its letters confirming that the company in liquidation had paid all its dues and that the bank had released all the documents kept with it as security. On 29<sup>th</sup> June 2007 the company in liquidation

applied to the MIDC for transfer of the said property in favour of the Applicant. On 14<sup>th</sup> August 2007, the MIDC granted its approval for transfer of the said property in favour of the Applicant subject to payment of differential premium of Rs.5,40,900/- which was duly paid by the Applicant. Thereafter, on 5<sup>th</sup> September 2007, the said company entered into an agreement for sale for transfer of the said property in favour of the Applicant for a consideration of Rs.1,25,00,000/-. As noted above, the sale agreement has been duly registered and the entire consideration of Rs.1,25,00,000/- has been paid by the Applicant to the company in liquidation. The bank statements annexed to the petition and the correspondence indicate that the payment has been made.

39. It has been submitted by the Applicant that soon after purchase of the said property, the Applicant has invested substantial sum of monies for installation of plants, equipments, raw materials, stock-in-trade for manufacturing, electrical transformers, tanks and other engineering and fabrication works. That, the Applicant employed around 100 workers whose livelihood is depending on the Applicant and that the Applicant has also availed of financial assistance of about Rs.4,24,00,000/- by mortgaging the said property. The said mortgage

has been registered/noted with the office of the Registrar of Companies, as can be evidenced from Exhibit H to the application. It has been submitted that the Applicant learnt of the winding up petition only on 25<sup>th</sup> June 2011 when the representative of the Official Liquidator i.e. the Respondent no.2 visited the said property informing that the possession of the said property would be taken over by the Respondent no.2 and that the Applicant was not aware of the winding up petition until then and that only thereafter, after making necessary enquiries and searches, that it was learnt that the winding up petition was filed on 25<sup>th</sup> August 2003 and was admitted on 4<sup>th</sup> February 2005 and made absolute on 26<sup>th</sup> July 2010. The admission order dated 4<sup>th</sup> February 2005 had clearly recorded that the Respondent-company disputed the liability of the petitioner. The order dated 26<sup>th</sup> July 2010 which passed the winding up order though recorded that the company was served, however, none was present on behalf of the company. No doubt, notices with respect to the admission and winding up of the company would have been published, but it is not in dispute that pursuant to MOU dated 6<sup>th</sup> August 2011, the Applicant has settled the dues of the petitioner. The sale transaction is dated 5<sup>th</sup> September 2007 and despite the public notice dated 16<sup>th</sup> February 2007 inviting objections to the transfer and despite the pendency of the petition, no

objections were received from any one including the petitioner. The petitioner also appears to have missed the said public notice to raise any objection with respect to the transfer. It is not in dispute that as on date, there is no liability against the company in liquidation and that there are no creditors as all the creditors including the Bank of Baroda have admittedly been paid. There also do not appear to be any workers' dues. There is no material shown which is contrary to the above facts or to demonstrate lack of bonafides. There is also no material to demonstrate that the transaction of sale is not for valuable consideration.

40. No doubt, pursuant to Section 441 of the Companies Act, winding up of a company by Court shall be deemed to have commenced at the time of presentation of the petition which in the present case would be 25<sup>th</sup> August 2003. It is also provided under Section 536(2) of the Companies Act that in the case of a winding up by a Court, any disposition of the property of the company made after the commencement of the winding up shall, unless the Court otherwise orders, be void. This Court in the case of *S.P. Khanna v. S.N. Ghosh (supra)* has clearly observed that if *bonafides* are established, then Section 536(2) would not apply, as the said provision is clearly an

enabling provision in favour of saving transactions in the interest of justice. That, all transactions which are *bonafide* and shown to be fair, just and reasonable, deserve to be protected because of clear equity involved in such matters. Section 536(2) declares the transactions after commencement of the winding up void but leaves discretion to the Court to make appropriate orders in that regard. That, the jurisdiction vested is equitable and is meant to be exercised as such. If even *bonafide* transaction for a consideration would not be protected, then the company, only by the fact that the process of winding up has started, would benefit itself by unjust enrichment. Such a result is clearly to be avoided while exercising power under the said provision.

41. In the case of *Pankaj Mehra and Another vs. State of Maharashtra and Others (supra)*, the Hon'ble Supreme Court has considered the impact of the legislative direction in Section 536(2) that any disposition of the property of the company made after the commencement of the winding up shall be void. The Hon'ble Supreme Court has observed that there are two important aspects: first is, that the word "void" need not automatically indicate that any disposition should be *ab-initio* void. That, the legal implication of the word "void" need not necessarily be a stage of nullity in all contingencies. The

Hon'ble Supreme Court has observed that the manner in which the word "void" has been employed in Section 536(2), the same means voidable. Paragraphs 14, 15, 19 and 20 of the said decision are usefully quoted as under :

*"14. In the above backdrop alone we can consider the impact of the legislative direction in Section 536(2) that any disposition of the property of the company made after the commencement of the winding up (i.e. after the presentation of a petition for winding up) shall be void. There are two important aspects here. First is, that the word "void" need not automatically indicate that any disposition should be ab initio void. The legal implication of the word "void" need not necessarily be a stage of nullity in all contingencies. Black's Law Dictionary gives the meaning of the word "void" as having different nuances in different connotations. One of them is of course "null, or having no legal force or binding effect". And the other is "unable in law, to support the purpose for which it was intended". After referring to the nuances between void and voidable the lexicographer pointed out the following :*

*"The word 'void' in its strictest, means that which has no force and effect, is without legal efficacy, is incapable of being enforced by law, or has no legal or binding force, but frequently the word is used and construed as having the more liberal meaning of 'voidable'.*

*The word 'void' is used in statutes in the sense of utterly void so as to be incapable of ratification, and also in the sense of voidable and resort must be had to the rules of construction in many cases to determine in which sense the legislature intended to use it. An act or contract neither wrong in itself nor against public policy, which has been declared void by statute for the protection or benefit of a certain party, or class of parties, is voidable only.*

*15. For discerning the legislative idea in employing the word "void" in the context set out in Section 536(2) of the*

*Companies Act the second aspect to be noticed is that the provision itself shows that the word void is not employed peremptorily since the court has power to order otherwise. The words “unless the court otherwise orders” are capable of diluting the rigour of the word “void” and to choose the alternative meaning attached to that word.*

19. *In Gray’s Inn Construction Co. Ltd., Re reported in (1980) 1 All ER 814(CA), the Court of Appeal (Civil Division) considered the principle on which discretion of the court to validate the dispositions of property made by a company, during the interregnum between presentation of a winding up petition and the passing of the order for winding up, has been dealt with, Section 227 of the English Companies Act, 1948 is almost the same as Section 536(2) of the Indian Companies Act. Dispositions which could be validated are mentioned in the decision. The said decision was cited before us in order to emphasise the point that courts would be very circumspect in the matter of validating the payments and the interest of the creditors as well as the company would be kept uppermost in consideration. Be that so, the said decision is not sufficient to support the contention that disposition during the interregnum would be irretrievable void.*

20. *It is difficult to lay down that all dispositions of property made by a company during the interregnum between the presentation of a petition for winding up and the passing of order for winding up would be null and void. If such a view is taken the business of the company would be paralysed. For the company may have to deal with very many day-to-day transactions, make payments of salary to the staff and other employees and meet urgent contingencies. An interpretation which could lead to such a catastrophic situation should be averted. That apart, if any such view is adopted, a fraudulent company can deceive any bona fide person transacting business with the company by stage-managing a petition to be presented for winding up in order to defeat such bona fide customers. This consequence has been correctly voiced by the Division Bench in the impugned judgment.”*

42. It is clear from the aforesaid exposition that the discretion to the

Court by the use of the words “unless the Court otherwise orders” has to be kept in mind. That, if all dispositions of property made by a company in liquidation during the interregnum between the presentation of the petition for winding up and the passing of the order for winding up, would be null and void, that would completely paralyse the business of company as the company has to deal with very many day to day transactions. Such interpretation, as observed by the Hon’ble Supreme Court, could lead to a catastrophic situation which should be averted.

43. In the facts of the case, as noted above, the Applicant has conducted its due diligence before entering into the sale agreement dated 5<sup>th</sup> September 2007, has paid the entire consideration to the company in liquidation and the sale agreement is duly registered after obtaining permission from the MIDC and confirmation of no dues from Bank of Baroda and has also settled the dues of the petitioner in the winding up petition. The Applicant has also invested large sums of monies and has also obtained financial assistance of over Rs.4 crores to establish its business employing around 100 workmen, which has not been disputed on behalf of the Official Liquidator. Therefore, in my view, the Applicant as well as the transaction, evidenced by sale

agreement dated 5<sup>th</sup> September 2007, are *bonafide*. Moreover, admittedly, there are no creditors or claimants or workmen claiming against the company in liquidation as on date. The transaction, in my view, is not only *bonafide* but also fair, just and reasonable and deserves to be protected. Accordingly, I am inclined to allow this application. Applying the law elucidated above, to the facts of this case, the arguments on behalf of the Official Liquidator cannot be countenanced and there is no question of the sale of the said property being void *ab-initio* or *non-est* in the eyes of law. Mr.Carvalho's reliance upon the decision in the case of *Sunita Vasudeo Warke vs. Official Liquidator and Others (supra)*, in my view, would not assist the case of the Official Liquidator, as the facts are distinguishable, the said decision having been rendered in the context of an oral agreement, although there cannot be any dispute as to the principles elucidated therein.

44. In view of the above discussion, sale agreement dated 5<sup>th</sup> September, 2007 being a *bonafide* transaction is ratified. The Application is made absolute in terms of prayer clauses (b) and (c), which read thus:-

*“(b) This Hon’ble Court be pleased to order and declare that*

*the Sale Agreement dated 5<sup>th</sup> September, 2007 annexed as Exhibit-F above is not affected by Section 536(2) of the Companies Act, 1956;*

*(c) This Hon'ble Court be pleased to pass an order of permanent injunction restraining the Official Liquidator, High Court, his servants, agents and representatives from in any manner whatsoever disturbing the possession of the Applicant with respect to the said Property and taking any action against Applicant pursuant to the Orders dated 4<sup>th</sup> February 2005 and 26<sup>th</sup> July 2010 annexed as Exhibit-I & J above, passed by this Hon'ble Court in the captioned Petition;”*

45. Ordered accordingly.

46. In the light of the above order, it would not be necessary for this Court to consider the prayer for recall / setting aside of the orders dated 4<sup>th</sup> February 2005 and 26<sup>th</sup> July 2010.

47. After the order is pronounced, Mr.Carvalho seeks stay of the order, which is opposed by the learned Advocate appearing on behalf of the Applicant. Considering that the sale transaction is of the year 2007, in view of what has been held as above, the request for stay is rejected.

**(ABHAY AHUJA, J)**