OD-12

APO/164/2023
WITH
CP/336/1982

IA NO: ACO/3/2024, ACO/4/2025
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

RE BENGAL ENAMEL WORKS LTD (IN LIQN)
VS
BHASDEEP INFRASTRUCTURE DEVELOPMENT LTD
-VS-
THE O/L HIGH COURT CALCUTTA AND ORS

BEFORE:
The Hon'ble JUSTICE ARIJIT BANERJEE
And
The Hon'ble JUSTICE OM NARAYAN RAI
Date : August 13, 2025

Appearance:
Mr. Debnath Ghosh, Sr. Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. Biswaroop Mukherjee, Adv.
Ms. Saheli Bose, Adv.
Ms. Saberi Saha, Adv.
..for the appellant

Mr. Ranajit Chowdhury, Adv.
Mr. Sudipto Chowdhury, Adv.
Mr. Purnendu Modak, Adv.
Ms. S. Saha, Adv.
..for the Official Liquidator

Mr. Debasish Chattopadhyay, Adv.
Mr. Tirthankar Basu, Adv.
Mr. Suman Biswas, Adv.

Dictated by Arijit Banerjee, J.

The Court: A Company by the name of Bengal Enamel Works Limited (hereinafter referred to as “the company”) went into liquidation in the year 1984. The present appellant was one of the contributories of the company. The dues of the United Bank of India from the company were in excess of

Rs.500 lakh. The dues were settled at Rs.450 lakh. Rs.225 lakh was paid to the Bank by the present appellant on behalf of the company. This was in the year 2006. The balance portion of the settled amount was not paid. Therefore, the company remained in liquidation.

In 2013, the present appellant took out an application before a Learned Single Judge being CA/455/2013 saying that since it had paid a substantial sum of money to the creditor-Bank on behalf of the company, the landed assets of the company which were in the custody of the Official Liquidator should be released in favour of the appellant herein. An order dated May 14, 2014, was passed by the Learned Single Judge, the relevant portion whereof reads as follows:

> *"Having considered the submission of the parties there is no doubt that the secured creditor UBI lent and advanced sums to one Bengal Enamel Works Limited, which went into liquidation in 1984. A settlement was reached between UBI and the company on 12th February, 2005. This was pursuant to proceedings filed under sections 391(1) and 393 of the Companies Act, 1956 and an application filed under section 466 of the Companies Act, 1956. Although the settled amount was Rs.450 lakhs, for payment of only a part thereof, termination notice was issued on 14th January, 2006 which by consent of parties was stayed by order dated 8th March, 2006 on the condition that the company and the applicant herein would pay a sum of Rs.72.50 lakhs to the secured creditor UBI and on such payment land equivalent thereto would be released and title deeds in respect thereof would be handed over either to the company or to the applicant. On the basis of the said order an agreement was entered into between the company, its director, applicant and UBI on 18th March, 2008. In the said agreement which the parties referred to as a deed of release it was recorded that a sum of Rs.225 lakhs out of Rs.450 lakhs had been*

paid by the applicant and the company. Payment of balance Rs.225 lakhs was also set out in the said agreement which sum admittedly has not been paid. A schedule has been appended to the said deed of release wherefrom the plots of land which stood released in favour of the company finds mention.

According to the parties, the properties which were released in favour of the applicant is at present in the custody of the Official Liquidator. Therefore, any direction that may be passed be on the Official Liquidator to hand over possession of the said properties to the applicant. In fact, a certificate has also been appended to the deed of release wherein the United Bank of India has certified that its dues has been liquidated and the company absolved of its liabilities, therefore, the properties mentioned be released in favour of the applicant herein who will hold the same as a mortgage. Admittedly, Rs.225 lakhs has been paid by the applicant and to the extent thereof the properties ought to be released in its favour. The agreement postulated payment of Rs.450 lakhs and as Rs.225 lakhs is 50% of the settled amount, let land equivalent to the said sum be released by the Official Liquidator in favour of the applicant herein within eight weeks from date. In the event valuation is required to be made the said exercise be undertaken by the Official Liquidator out of the funds lying with it, if any, in the account of the company (in liquidation). In the event no money is held by the Liquidator to the credit of the said company (in liquidation), let expense be borne from the Official Liquidator's Establishment fund for which the Official Liquidator will be entitled to reimbursement.

It is an admitted fact that the settled amount in its entirety has not been paid by either the contributories, shareholders or the company or the applicant herein. Therefore, it is made clear that it is only to the extent that payment has been made, the properties be released. The applicant will hold the said land released in its favour as a mortgagee and therefore will not be entitled to deal with the same.

In view of the aforesaid, this application is disposed of."

In the year 2017, the Official Liquidator filed an application before the Learned Company Judge being CA/458/2017 praying, *inter alia*, for the following orders:

> *"a. Leave be given to the Official Liquidator, High Court, Calcutta to release the landed property of the Company (In Liquidation) vide order dated 14 May, 2014 equivalent to Rs.225 lakhs to the Applicant of CA. No. 455 of 2013 viz. M/s. Bhasdeep Infrastructure Development Limited on the basis of the Valuation Report submitted by Mr. Samar Banerjee, Valuer, as proposed in paragraph 19 of this Letter for Direction.*
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> *b. Leave be given to the Official Liquidator, High Court, Calcutta to invite claim from the creditors of the Company (In Liquidation) by way of publication once in Bengali daily, once in Hindi daily, once in English daily and also through the website of the Official Liquidator, High Court, Calcutta.*
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> *c. Leave be given to the Official Liquidator, High Court, Calcutta to sale the remaining assets & properties of the Company (In Liquidation) after releasing the lands as proposed in paragraph 19 of this Letter for Direction equivalent to Rs.225 lakhs by way of public auction and date of sale may be fixed.*
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> *d. Leave be given to the Official Liquidator, High Court, Calcutta to open the Valuation Report for determining the value of land which will be handed over to Bhasdeep Infrastructure Development Ltd applicant of C.A.No.455 of 2013 in compliance of the Hon'ble High Court's order dated 14th May, 2014.*
>
> *e. Direction be given to the Official Liquidator, High Court, Calcutta to publish the Sale Notice once in Bengali daily, once in Hindi daily, once in English daily and also through the website of the Official Liquidator, High Court, Calcutta.*

f. Such further order/orders and/or direction/directions as the Hon'ble Court may deem fit and proper."

The said application was disposed of by the Learned Judge by an order dated April 4, 2019, by passing an order in terms of prayers (b), (c) and (e) of the application.

It appears that on an application made by one Bhawani Shankar Ganguli, being IA No.CA/9/2019, a Learned Single Judge, by an order dated November 22, 2022, recalled the earlier order dated April 4, 2019. This order was passed without notice to the present appellant.

The present appellant filed an application being IA No.CA/12/2023 for recall of the order dated November 22, 2022, whereby the earlier order of April 4, 2019, had been recalled. The said application was dismissed by an order dated June 12, 2023, which is impugned in the present appeal.

We do not see why the order dated May 14, 2014 should not be given effect to. That order, not having been challenged before a higher forum, has attained finality. It is not in dispute that way back in 2006, the appellant company paid Rs.2.25 crore to the creditor Bank thereby liquidating part of the debts of the company. In all fairness, the appellant company should be compensated for that.

Earlier a Surveyor's report had been filed in respect of the landed properties of the company (in liquidation). We were told that the entire leasehold property of the company stands surrendered in favour of the concerned lessors. Hence, the portion of the landed property of the company that may be handed over to the appellant as a compensatory measure, must be from the properties which were owned by the company.

A further Surveyor's report dated August 7, 2025 was filed before us on the last occasion, i.e., August 8, 2025. On that day, the Official Liquidator had also filed a report.

It appears from the said reports that landed property of the company is available, a part of which may be handed over to the appellant. The question is, on what date the valuation of the concerned land should be considered? Should it be 2014 when the Learned Single Judge recognized the appellant's claim, or should it be 2023? This question arises since when the appeal was admitted, by an order dated September 25, 2023, a Co-ordinate Bench had made the following observations:-

> *"Considering the fact that by earlier orders of this court the applicant was directed to be provided land of the company (in liqn.) of the value of Rs.2.25 crores and those orders have become final and binding, the Official Liquidator will set apart land of the above value and not subject it to any sale process till the disposal of this appeal or until further orders whichever is earlier. Setting apart the said portion the land shall be in the presence of the applicant, by an official order or decision of the Official Liquidator.*
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> *The stay application (IA No. GA 2 of 2023) is disposed of."*

Subsequently, an order dated February 6, 2024, was passed by a Co-ordinate Bench, the relevant portion whereof reads as follows:

> *"A problem has arisen while implementing the order dated 25th September, 2023.*
>
> *Mr. Debnath Ghosh, learned advocate submits that this court on 14th May, 2014 had directed land of the value of Rs.2.25 crores to*

be provided to the appellant by the Official Liquidator. By our order dated 25th September 2023 we had directed the Official Liquidator to set apart "land of the above value", not subjected to any sale process. Mr. Ghosh raises the question: land of the above value today or in 2014?

Our order suggests land of the said value today.

According to Mr. Ghosh, it should have been the land of the said value as in 2014.

In those circumstances, we direct Mr. Ghosh's client to take out an appropriate application for review/clarification and so on.

Furthermore, it is submitted by Ms. Smita Das De that the land ought to be demarcated by a surveyor/valuer. Mr. Ghosh submits that his client would bear the cost of this exercise.

In those circumstances, we direct that the land be surveyed and demarcated showing the extent and description of the land taking the value as Rs.2.25 crores as on 25th September 2023 and also a separate demarcation showing description and extent of the land valued at Rs.2.25 crores in 2014. Both plans would be taken as tentative subject to the result of the appeal or any application made by Mr. Ghosh's client."

Pursuant to the leave granted to the appellant, it has filed a clarificatory application which is listed before us as ACO/03/2024.

Having considered the facts and circumstances of the case, we are of the view that the valuation of land as in 2014 should be considered and accordingly, Rs.2.25 crore worth of land should be made over by the Official Liquidator to the appellant company as indicated at page 20 of the report of the Surveyor dated April 25, 2025. Let this be done after requisite demarcation within four weeks from date. The appellant shall construct necessary wall/fencing to demarcate its property from the rest of the property.

The costs and expenses relating to demarcation of the portion of the land to be made over to the appellant and raising boundary wall/fencing shall be borne by the appellant.

The appeal and the connected application stand disposed of.

(ARIJIT BANERJEE, J.)

(OM NARAYAN RAI, J.)

bp.