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

Official Liquidator Report No. 11 of 2022
in
Company Petition No. 7 of 2001
(In the matter of 'Maharashtra Explosives Limited' (in liquidation) **..Vs..** The Ld. Secretary, Government of Madhya Pradesh, Commercial Tax Department, Bhopal and ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S. V. Deshpande, Advocate for the Official Liquidator with Mr. Deepak Persoya, Official Liquidator
Mr. A. M. Joshi, AGP for the State of M.P.
Mr. D. I. Jain, Advocate for respondent no. 5
Mr. M. G. Bhangde, Senior Advocate assisted by Mr. A. G. Baheti, Advocate for respondent no. 6

CORAM : ANIL L. PANSARE J.

Date of reserving the order : 04-04-2025
Date of pronouncing the order : 17-04-2025

By this report, the Official Liquidator is seeking declaration that the sale of land admeasuring 4 Acres (1.619 Hectors) in Land Khasra No. 46/2 situated in/at Village Pindertali, Tahsil Singrauli, District Singrauli, belonging to company under liquidation viz. Maharashtra Explosives Limited is null and void. The sale was initiated at the instance of respondent nos. 1 and 2 – Commercial Tax Department, Waidhan Circle, District Singrauli, Madhya Pradesh (hereinafter referred to as 'Tax Department') and the sale was executed in favour of respondent no. 5 Shri. Mahendra Pratap Singh on 11-3-2005.

2. In addition to above prayer, the Official Liquidator is seeking permission to execute sale deed of the said property in favour of Cozy Properties Private Limited (respondent no. 6) in terms of order dated 3-10-2007 passed by this Court. The Official Liquidator has sought consequential reliefs as well.

3. Having heard both sides and having gone through the record, what transpires is that on 2-8-2001, the Official Liquidator was appointed for the purpose of the liquidation proceedings against company named 'Maharashtra Explosives Limited'. It appears that the company owed certain dues to the Tax Department. The property under question was attached by the Tax Department and put to sell through auction and on 11-3-2005, the sale was confirmed in favour of respondent no. 5, being higher bidder. The Official Liquidator was unaware of the said auction. He, in continuation of the liquidation proceedings, with the approval of the Court, put up the property for sale and accepted the highest bid quoted by respondent no. 6 and is now seeking permission to execute sale deed in terms of order dated 3-10-2007.

4. The Tax Department as also the revenue authority of the Madhya Pradesh have come up with a case that they were unaware of winding up proceedings. According to them, advertisement of winding up was never published in any newspaper having circulation in Madhya Pradesh. Thus, a plea is taken that it being unaware of the pendency of winding up, the process of auction undertaken by the Tax Department is *bona fide* and cannot be now nullified on account of liquidation proceedings pending at the relevant time. Respondent no. 5 – auction purchaser has taken plea of *bona fide* purchaser. The Official Liquidator has come up with a case that once the order of winding up is passed, the properties of the company would vest with the Court and, therefore, without its approval, nobody including the Tax Department could have dealt with the same. Respondent no. 6 has also taken a plea of *bona fide* purchaser.

5. Mr. M. G. Bhangde, learned Senior Counsel for respondent no. 6 submits that the process of auction initiated by the Tax Department is nullity because the auction itself is

vitiated for non compliance of relevant provisions including service of demand notice in terms of Section 146 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as the ‘Code’).

6. Thus, there are two important questions that fall for consideration.

(1) Whether it was permissible for the Tax Department to deal with the property belonging to company under liquidation ?

(2) Whether the auction process initiated by the Commercial Tax Department is vitiated for failure to serve demand notice under Section 146 of the Code ?

7. Mr. M. G. Bhangde, learned Senior Counsel for respondent no. 6 has invited my attention to Section 446 of the Companies Act, 1956 (hereinafter referred to as ‘the Act of 1956’) which provides that once winding up order has been made or the Official Liquidator appointed as provisional Liquidator, no suit or other legal proceedings shall be commenced. According to him, “other legal proceedings” will include the auction process commenced by the Tax Department. He has then referred to Section 447 of the Act of 1956, which provides that an order for winding up of company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made out on the joint petition, of a creditor and of the contributory. He submits that if the tax was payable by the company to the Tax Department, upon order of winding up having been passed, the Tax Department would become creditor and, therefore, in terms of Section 447 of the Act of 1956, the order for winding up shall operate against the Tax Department under the deeming provisions in Section 447

viz. that such order had been made out on the joint petition of the creditors.

8. Thus, it is argued that the order for winding up would operate in rem against all creditors. In support, Mr. Bhangde has relied on judgment of the Supreme Court in the case of ***Kaledonia Jute and Fibres Private Limited Vs. Axis Nirman and Industries Limited and others [(2021) 2 SCC 403]*** wherein the Supreme Court held that considering provisions of Sections 447, 454, 460 and 466 of the Act of 1956, it is clear that proceedings for winding up of a company are actually proceedings in rem to which the entire body of creditors is a party. The Court noted that the proceedings might have been initiated by one or more creditors, but by a deeming fiction, the petition is treated as a joint petition and the Official Liquidator acts for and on behalf of entire body of creditors.

9. Mr. Bhangde has then referred to sub-section (2) of Section 456 of the Act of 1956 which provides that all the properties and effects of the company shall be deemed to be in the custody of the Court as from the date of order of winding up of the company. Accordingly, it is argued that at the relevant time, the property under question was in the custody of the Court. He submits that once the property vest with the Court, it could be sold by none else than the Official Liquidator, that too, with the sanction of the Court in terms of Section 457 of the Act of 1956.

10. Mr. Bhangde submits that the cumulative effect of the aforesaid provisions will be that the Tax Department had no authority to deal with the property belonging to company.

11. Mr. Bhangde has then referred to the provisions of the Code. Section 146 of the Code provides that Tahsildar or Naib Tahsildar may cause a notice of demand to be served on any defaulter before the issue of any process under Section 147

for the recovery of an arrear. Section 147 provides that an arrear of land revenue payable to Government may be recovered either by attachment and sale of immovable property belonging to a defaulter or other modes provided therein. The reasons why the aforesaid provisions are referred by Mr. Bhangde is that the Tax Department initiated action against the company on the ground that the tax worth Rs. 34,73,448/- for the year 1989-90 till 1994-95 was due and payable by the company to the Tax Department. The same having been not paid, the Tax Department intended to recover the same as a land revenue. In such eventuality, the Tax Department was duty bound to serve notice of demand in terms of Section 146 of the Code. Mr. Bhangde submits that the Tax Department failed to show that such notice was served on the company. He further submits that the Tax Department has not assigned any reason as to how the tax payable in the year 1989-90 to 1994-95 could be recovered in the year 2004. On these two counts, the auction process initiated by the Tax Department is said to be illegal and vitiated.

12. Mr. Bhangde in support, has invited my attention to the judgment of the Supreme Court in the case of ***Mohan Wahi Vs. Commissioner, Income Tax, Varanasi and others [(2001) 4 SCC 362].*** The auction sale and its confirmation was challenged, *inter alia*, on the ground of non service of demand notice. The Court referred to some of the judgments and held as under.

> *"**17.** In Homely Industries v. STO also the significance of service of demand notice came up for the consideration of this Court and it was held that there can be no recovery without service of a demand notice; if such notice was not served, the recovery proceedings are not maintainable in law and are invalid and the same along with the recovery certificates are liable to be quashed.*

18. In Ram Swarup Gupta v. Behari Lal Baldeo Prasad a Division Bench of Allahabad High Court referred to the effect of Taxation Laws (CVRP) Act, 1964 on the law laid down by this court in Seghu Buchiah Settys case and held: (ITR p. 342)

> *"The effect of these provisions is to dispense with the need of issuing a fresh notice of demand and the recovery certificate and to allow the original recovery proceedings to continue, but only for the amount found due after reduction in the appeal, and it is for this purpose that the taxing authority is required to send intimation of the fact of the reduction to the assessee and to the Tax Recovery Officer. As the proceedings for recovery can be continued only for the amount that finally remains due, and not for any amount in excess thereof, the requirement of sending intimation to the Tax Recovery Officer becomes an essential duty of the taxing authority and must be held to be a mandatory condition. Non-compliance of that condition will be an illegality in the procedure and will invalidate the proceedings. A sale held in proceedings initiated and continued for the recovery of an amount in excess of the amount payable by the assessee, after its reduction in appeal, will be invalid. Such a sale is not validated by clause (c) of section 3 of the Act."*

The Division Bench decision of Allahabad High Court in Ram Swarup Gupta case was cited with approval before this Court in Union of India Vs. Jardine Henderson Ltd. though it was distinguished for its applicability to the facts of the case before this Court. The Division Bench of Orissa High Court has held in Sunil Kumar Singh Deo Vs. Tax Recovery Officer that non-service of demand notice goes to the root of the jurisdiction of the officer initiating recovery proceedings. We find ourselves in agreement with the view so taken. Incidentally, we may refer to three Division Bench decisions of the High Court of Madhya Pradesh, viz., Ghanshyamlal Vs. State of M.P., Manmohan Lal Shukla Vs. Board of Revenue, M.P. and Premchand Ramchand Vs. Board of Revenue, M.P. Section 146 of M.P. Land Revenue Code, 1959 provides that before issuing any process for recovery of arrears of land revenue the Tehsildar or Naib Tehsildar may cause a notice of demand to be served on *any defaulter. Chief Justice P.V. Dixit speaking for the Division Benches, in all the three cases, has held that the word may has the imperative meaning of shall and no proceedings for recovery can be initiated without service of notice of demand failing which the proceedings would suffer from jurisdictional defect. For a long period of time the High Court of Madhya Pradesh has been taking this view consistently.*

19. We are, therefore, clearly of the opinion that service of notice of demand on the assessee under Section 156 of the Act, is mandatory before taking steps for recovery under the Second Schedule. Non-service of notice of demand goes to the root of the validity of subsequent proceedings for recovery. A sale held in recovery proceedings initiated without serving the notice of demand shall be invalid and hence shall be liable to be annulled on being called in question."

Thus, the Supreme Court held that service of notice of demand before commencement of process of recovery for arrears of land revenue is mandatory and no proceedings for recovery can be initiated without service of notice of demand and failure to serve notice, the proceedings would suffer from jurisdictional defect. The Court further clarified that such sale shall be invalid and hence, shall be liable to be annulled on being called in question.

13. In this connection, on 20-9-2024, following order was passed.

"The learned AGP seeks time to file reply to the additional affidavit filed by the Respondent No.6 stating therein that the Commercial Tax Department has not adhered to the provisions of law, particularly Section 146 of the Madhya Pradesh Land Revenue Code, 1959 while auctioning the property under question. Thus, according to the Respondent No.6, the auction process itself is vitiated for non-compliance of the aforesaid provisions. Two weeks time to file reply is granted.

2. Stand over to 4th October, 2024."

In response, the Tax Department has filed a reply stating therein that demand notice as stipulated under Section 146 of the Code was issued from time to time and served upon the company. However, the demand notices are very old and the entire record is not available. The demand notice for the financial year 1994-95 was, however, traced. The copy of demand notice has been annexed. I have perused the same to find that the demand notice in the name of company was prepared but there is nothing on record to show that demand notice was served. It appears that the demand for the year 1989-90 for Rs. 57,465/- was prepared and also served because the notice itself show acknowledgment by the company. Such acknowledgment, however, is not reflecting on any other notice nor is there any other evidence to that effect. Thus, there is no proof of service of demand notice.

14. In this regard, the letter dated 21-9-2004 addressed to the Department by Recovery Officer is relevant. It is mentioned in the letter that company is not functional for past many years and nobody is available at the company address. This being the position, the argument that the notice of demand was not served upon the company appears more probable and requires acceptance.

15. Learned Assistant Government Pleader (AGP) has invited my attention to demand notice dated 20-7-2004 to argue that the demand for Rs. 34,73,448/-, for which the property was put to sell, was addressed to the company. I have gone through the said notice and as noted earlier, it refers to demand for the financial years from 1989-90 to 1994-95. The notice does not bear acknowledgment of the company. The letter referred to above indicates that company had stopped business for last many years and nobody is available at the company address. The said fact coupled with absence of

acknowledgment would lead to only one conclusion that the demand notice was not served upon the company. Secondly, no explanation is coming forth as to why demand for the year 1990-95 is raised in July, 2004 and how the recovery will be maintainable after such a long gap between the date when the tax was payable and the date when recovery proceedings were initiated. Be that as it may, the fact remains that the Tax Department failed to show that demand notice under Section 146 of the Code was served upon the company.

16. Learned AGP then submits that the sale of the year 2004 cannot be questioned in the year 2022. He further submits that for cancellation of sale, the Official Liquidator will have to file suit and sale cannot be annulled through application.

17. This argument is unacceptable. As rightly pointed by Mr. Bhangde, learned Senior Counsel for respondent no. 6, the sale proceedings without service of notice of demand will suffer from jurisdictional defect and shall be liable to be annulled on being called in question. In other words, since the entire process vitiated for non compliance of provisions of statute, there would be no necessity to file a suit for cancellation of sale. There being jurisdictional defect in the proceedings, the sale is nullity and, therefore, could be questioned in any proceedings and even by filing application.

18. Learned AGP has then invited my attention to Section 537 of the Act of 1956 which reads as under :

> *"**537. Avoidance of certain attachments, executions, etc., in winding up by Tribunal.** - (1) Where any company is being wound up by the Tribunal -*
>
> *(a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or*

> *(b) any sale held, without leave of the Tribunal of any of the properties or effects of the company after such commencement, shall be void.*
>
> *(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.]"*

19. Learned AGP, by referring to sub-section (2), submits that nothing would apply to the proceedings for recovery of any tax payable to the Government and, therefore, the sale under question cannot be said to be void.

20. This argument has been also rightly countered by Mr. Bhangde, learned Senior Counsel for respondent no. 6. He submits that sub-section (2) limits the effect of what is provided in the said Section and not against the other provisions of the Act of 1956. He has then invited my attention to the judgment rendered by Full Bench of Delhi High Court in the case of ***Life Insurance Corporation of India Vs. Asia Udyog (P) Ltd. [1981 SCC OnLine Del 135]*** wherein the effect of this provision was considered. The Full Bench referred to various judgments as also relevant provisions of the Act of 1956 and held thus :

> *"15. …… Section 537(1) provides that where any company is being wound up by attachment, execution or any sale held after the commencement of winding up without leave of the court, will be void. Under Section 441 of the Companies Act the winding up is deemed to commence at the time of presentation of the petition of winding up, even though winding up order is passed much subsequently. Section 537(1) however, makes it clear that if any execution or sale takes place after the commencement of winding up petition without leave of the court the same shall be void. Sub-section (2) which was brought into force in 1960 excludes the rigour of Section 537(1) to those proceedings only which are for recovery of any tax or dues payable to the government. All that it means is that if assuming that before the*

> *winding up order has been passed any sale had taken place without the leave of the court for recovery of any tax the same will not be deemed to be void. But the moment winding up order is passed Section 446 of the Companies Act will become applicable, and no proceedings shall be continued or commenced except by leave of the court. The only effect of sub-Section (2) of Section 537, therefore, is that the completed transaction whether by way of sale or in execution proceedings do not become void. But if any further proceedings are to be continued after the winding up order has been passed Section 446 will have to be complied with. .....”*

21. Thus, the Full Bench held that sub-section (2) of Section 537 is meant for the transactions completed prior to passing winding up order. The Court further clarified that the moment, the winding up order is passed, Section 446 of the Act of 1956 will be applicable and no proceedings shall be continued/commenced except with the leave of the Court. In that sense, sub-section (2) of Section 537 will not protect the transaction under question and will be of no assistance to the Tax Department.

22. Put altogether, the sale under question carries a jurisdictional defect. The Tax Department had no authority to commence recovery proceedings, without the leave of the Court, since order of winding up was passed on 2-8-2001. The sale is further vitiated for non service of demand notice under Section 146 of the Code. The sale, being nullity, the question of *bona fide* purchaser or of belated challenge is of no consequence. The first question is accordingly answered in the negative and second in the positive. Resultantly, following order is passed.

23. Sale dated 20-1-2005 registered on 11-3-2005 is quashed and set aside. Consequences to follow. The Commercial Tax Department shall repay to respondent no. 5

the sale proceeds viz. Rs. 5,90,000/- along with interest at the rate of 6% p.a. within six weeks from today. The Commercial Tax Department shall, however, be at liberty to submit its claim as creditor of the company and if submitted, the Official Liquidator shall adjudicate the same expeditiously.

24. The Official Liquidator is allowed to execute sale deed in favour of respondent no. 6 as prayed for under prayer clause (E).

25. The Official Liquidator Report is disposed of in terms of above.

(Anil L. Pansare, J.)

26. Mr. D. I. Jain, learned counsel for respondent no. 5 made a request for protection of respondent no. 5's possession. In other words, the counsel is seeking stay to the order. During the course of hearing, the Official Liquidator was directed to inspect the spot and file report. The report dated 7-1-2025 is accordingly placed on record, which indicates that respondent no. 5 had taken possession of the property 10-12 years back. As such, this possession cannot be recognized because the Official Liquidator had approached the revenue authorities concerned and on 22-11-2001, the possession of the property was handed over to the Official Liquidator in presence of the Manager of the company and Patwari, Singrauli. Unfortunately, the Talathi concerned has not taken note of the said possession in revenue record and, therefore, the subsequent events occurred. Had the name of Official Liquidator mutated, the Commercial Tax Department, Bhopal would not have initiated auction process. Nonetheless, now there are two documents, one indicates possession of the Official Liquidator and another indicates

possession of respondent no. 5. It is important to mention here that respondent no. 5 has not carried on any effective activity on the land and in that sense, the land under question is in the same status as was handed over to the Official Liquidator.

27. Considering the aforesaid aspect, the parties shall maintain status quo for a period of 30 days from today.

28. Learned AGP makes a request to stay the effect and operation of the order. The request, being reasonable, is accepted. The effect and operation of the order is stayed for a period of 30 days from today.

(Anil L. Pansare, J.)

wasnik