



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

COMPANY APPLICATION NO. 332 OF 2019
IN
COMPANY PETITION NO. 369 OF 2015

Jaikishan Narang, HUF through its Karta Mr. Kiran Deepak Nagpal & Ors.	...	Applicants
<u>In the matter between :</u>		
Alliance Logistics	...	Petitioner
Versus		
Surendra Engineering Corporation Ltd. (in liquidation) & Ors.	...	Respondents

Mr. Simil Purohit, Senior Counsel, a/w Ms. Pooja Patil, Mr. Mayank Bagla and Ms. Siddhi Bhutadia i/by Bagla & Associates for Applicants.

Mr. Anirudh Hariani for Official Liquidator.

Ms. Kshamaya Daniel i/by Crawford Bayley Co. for Noticee No.2.

CORAM: MANISH PITALE, J.
RESERVED ON : 3rd MARCH 2025
PRONOUNCED ON : 12th MARCH 2025

P.C. :

. The applicants being landlords of subject premises are seeking direction from this Court to the official liquidator to handover vacant and peaceful possession of the said premises, which were taken on monthly tenancy basis by the company in liquidation. Since there are two premises, the applicants have referred to two tenancy agreements. It is the case of the applicants that the company in liquidation does not require the premises and

that the same have been lying unused, which mandates a direction to the official liquidator to handover possession of the premises to the applicants.

2. Before advertizing to the rival submissions in the present application, the facts in brief leading up to filing of the present application are required to be appreciated.

3. In the year 2015, Company Petition No. 369 of 2015 was filed by M/s. Alliance Logistics against Surendra Engineering Corporation Ltd. (the company in liquidation). By order dated 5th May 2016, the company petition was admitted and it was directed to be advertised. On 16th February 2018, this Court ordered winding up of the company and appointed official liquidator of this court as the liquidator of the company with direction to immediately take charge of all the assets, books and accounts etc. of the company in liquidation. On 20th March 2019, the present application was filed by the applicants being owners/landlords of the premises in question i.e. Flat Nos. 4 and 5 in Jaitirath Mansion, Barrack Road, Mumbai. During the pendency of the instant Company Application No.332 of 2019, an interlocutory application was filed by the applicants for permission to carry out repairs of the said two premises. On 21st September 2022, this Court permitted the official liquidator and officers of the Maharashtra Housing and Area Development Authority (MHADA) to inspect the premises and to carry out the repairs. Since the official liquidator had taken only symbolic possession of

the premises, on 28th April 2023, this Court was constrained to direct the official liquidator to take physical possession of the said premises along with Flat nos.1 and 2, that were also taken on rent by the company in liquidation from the applicants. On 19th May 2023, the official liquidator took physical possession of all the four flats, including the two flats i.e. the premises which are subject matter of the present application. Thereupon, the official liquidator filed reply affidavit in the instant Company Application No. 332 of 2019.

4. Mr. Simil Purohit, learned Senior Counsel appearing for the applicants, submitted that the company in liquidation was a monthly tenant in the two premises and since tenancy rights cannot be said to be assets of the company in liquidation, the official liquidator cannot retain possession of the premises. Reliance was placed on judgment of Division Bench of this Court in the case of *Modella Woollens Ltd. v/s. Official Liquidator & Ors., 2006 (1) Bom. C.R. 276*. It was further submitted that this Court has wide powers under Section 446 of the Companies Act, 1956, to determine the question as to whether the premises are required for beneficial winding up of the company. He submitted that in the case of *Patel Engineering Co. Ltd. v/s. Official Liquidator, 2004 SCC OnLine Bom 171*, this Court relied upon the judgment of the Supreme Court in the case of *Ravindra Ishwardas Sethna v/s. Official Liquidator, High Court, Bombay, (1983) 4 SCC 269*, for directing the official liquidator to handover

premises to the landlord even in a situation where the landlord had instituted eviction suit against the company in liquidation. It was held that the landlord had invoked the special remedy under Section 446 of the Companies Act and there was no impediment for this Court to grant such a prayer of the landlord.

5. The learned counsel for the applicants placed specific reliance on judgment of this Court in the case of ***Metal Tubes and Rolling Mills v/s. Official Liquidator, 2018 SCC OnLine Bom 2192***, on the question of very wide powers available with this Court under Section 446 of the Companies Act to pass appropriate orders even in such applications.

6. The learned counsel for the applicants further relied upon the judgment of the Supreme Court in the case of ***Shree Chamundi Mopeds Ltd. v/s. Church of South India Trust Association, CSI Cinod Secretariat, Madras, (1992) 3 SCC 1***, to contend that the observations made therein, support the case of the applicants that they are indeed entitled to invoke powers of this Court under Section 446 of the Companies Act, to seek possession of the said premises from the official liquidator.

7. The learned counsel for the applicants further placed reliance on judgments of the Delhi High Court in the case of ***Satinder Pal Singh & Anr. v/s. Joginder Sethi & Ors., ILR (2005) II Delhi 302*** and in case of ***In Re: Bharat Steel Tubes Pvt. Ltd., 2005 SCC OnLine Del 452***, as also judgment of the Punjab and

Haryana High Court in the case of *Smt. Kaushalya Aggarwal v/s. Punwire Paging Services Ltd. (in liquidation)*, 2004 SCC OnLine P&H 179, to contend that where a specific case is made out by the landlords in their favour, the Company Court cannot sit as a mere spectator even if the official liquidator claims that the premises are required for the process of liquidation. It was submitted that as per the observations made in the said judgments, the need of the official liquidator has to be strictly construed and merely the *ipse dixit* of the official liquidator cannot be accepted as gospel truth by the Court while deciding such applications.

8. While dealing with the submissions made on behalf of the official liquidator, the learned counsel appearing for the applicants submitted that the judgments upon which the official liquidator placed reliance, concerned lease agreements, wherein the periods of lease were still subsisting when the matters were brought up for consideration before the Court. It was submitted that this Court ought to appreciate the distinction between a lease and a monthly tenancy, while considering the present application. It was submitted that the premises in the present case being residential premises, the effect of Section 60(k)(c) of the Code of Civil Procedure, 1908 (CPC) cannot be ignored. It was further submitted that the official liquidator in the reply affidavit simply stated that the said premises are required for storing files, papers, records and books relating to the company in liquidation. Apart from this general statement, no specifics were given and therefore,

this Court can certainly go into the question of the genuineness of the need projected on behalf of the official liquidator. It was submitted that there are two more flats of the applicants i.e. Flat Nos.1 and 2 in the very same building, in respect of which this Court may reserve liberty for the applicants to agitate their claim. It was further submitted that as regards prayer clause (b) and (c) of the application, this Court may grant liberty to the applicants to raise their claims before the official liquidator during the process of liquidation.

9. On the other hand, Mr. Anirudh Hariani, learned counsel appearing for the official liquidator, submitted that this Court may not entertain the present application for the reason that the premises in question are required by the official liquidator for the purpose of winding up and the liquidation process. It was submitted that once the official liquidator had stated the need for the premises, no further issue arises and on this ground itself, the application deserves to be dismissed.

10. The learned counsel appearing for the official liquidator relied upon judgment of the Supreme Court in the case of ***Nirmala R. Bafna v/s. Khandesh Spinning and Weaving Mills Co. Ltd. & ors., (1992) 2 SCC 322*** and judgments of this Court in the cases of ***Vaz Forwarding Limited v/s. State Bank of India & Ors., 1994 SCC OnLine Bom 3, The Provident Investment Company Ltd. v/s. M/s. Mukund Limited & Anr. (judgment and order dated 23rd June 2017 passed in Company Application (Lodging) No. 634 of***

2016), *The Provident Investment Company Ltd v/s. Mukund Limited & Anr.* (Division Bench order dated 27th June 2022 passed in Appeal No. 312 of 2017) and the judgment in the case of *Reserve Bank of India v/s. L. M. Devare, Liquidator, 2001 SCC OnLine Bom 280*. By referring to the said judgments, the learned counsel appearing for the official liquidator submitted that the applicants could seek eviction by instituting appropriate proceedings under rent laws and approaching this Court under Section 446 of the Companies Act, is not justified. In any case, it was submitted that the official liquidator, having made the position very clear about the need of the premises for the process of winding up of the company, there was no question of the application being allowed. It was emphasized that the Supreme Court in the case of *Nirmala R. Bafna v/s. Khandesh Spinning and Weaving Mills Co. Ltd. & ors.* (supra), in a similar situation, had observed that the Court would not go into the question as to the manner in which the need projected by the official liquidator could be alternatively satisfied. It was emphasized that even in the case of *Patel Engineering Co. Ltd. v/s. Official Liquidator* (supra), this Court directed possession to be handed over to the landlords only on the basis that the official liquidator therein had conceded that the possession of the premises in question was no longer required for the company in liquidation. On this basis, it was submitted that the application deserved to be dismissed.

11. The learned counsel appearing for the ex-directors

submitted that applications had been filed for revival of the company and in that backdrop, the present application ought to be held as not maintainable.

12. This Court has considered the rival submissions in the light of the documents on record and the judgments on which reliance is placed.

13. The instant application has been filed under Section 446 of the Companies Act. The said provision indeed provides wide powers to the Company Court to pass appropriate orders. The Court has jurisdiction to even entertain and dispose of any suit or proceeding by or against the company, as also any claim made by or against the company in liquidation. In the case of *Patel Engineering Co. Ltd. v/s. Official Liquidator* (supra), even when eviction proceedings were initiated by the landlord in respect of the premises in question, this Court held that such an application by the landlord, seeking possession of the premises, could not be dismissed because, by approaching the Company Court, the landlord had invoked an independent and special remedy available to the landlord under the Companies Act. In the case of *Ravindra Ishwardas Sethna v/s. Official Liquidator, High Court, Bombay* (supra), the Supreme Court held that the Company Court cannot permit the company in liquidation to hold on to possession of the premises not needed for carrying on winding up proceedings. This indicates that the official liquidator in the present case is not justified in claiming that the application, in its present form,

cannot be entertained under Section 446 of the Companies Act. There is substance in the contention raised on behalf of the applicant that under Section 446 of the Companies Act, this Court has wide powers, with the focus being on examining issues and passing orders with the object of carrying on the winding up proceeding and in that process, examining whether the premises are required for the purposes of winding up of the company in liquidation. In the case of *Metal Tubes and Rolling Mills v/s. Official Liquidator* (supra), after referring to a number of judgments of the Supreme Court in this context, it was held that the Company Court under Section 446 of the Companies Act, has very wide powers to decide all questions that may relate to or arise in the course of winding up of the company.

14. In the light of the said position of law, this Court is unable to agree with the learned counsel for the official liquidator that the present application ought not to be entertained, as the landlord can institute eviction proceedings.

15. It is relevant to note that reliance placed on behalf of the official liquidator on judgments and orders of this Court in the cases of *Vaz Forwarding Limited v/s. State Bank of India & Ors.* (supra), *The Provident Investment Company Ltd. v/s. M/s. Mukund Limited & Anr.* (learned Single Judge and Division Bench) (supra) and *Reserve Bank of India v/s. L. M. Devare, Liquidator* (supra), is not justified, for the reason that in those cases, the Court was dealing with premises in which the company

in liquidation obtained possession on the basis of lease agreements, as opposed to the monthly tenancy of the company in liquidation in the present case. In the case of ***Vaz Forwarding Limited v/s. State Bank of India & Ors.*** (supra), the lease in question was still in existence and operational when the Court passed the order. Similarly, in the case of ***The Provident Investment Company Ltd. v/s. M/s. Mukund Limited & Anr. (learned Single Judge and Division Bench)*** (supra), the lease agreement was in existence and it would expire on 1st July 2028. Such are not the facts in the present case because the documents on record show that the company in liquidation was a monthly tenant of the applicants.

16. Even otherwise, the Division Bench of this Court in the case of ***Modella Woollens Ltd. v/s. Official Liquidator & Ors.*** (supra) has held that in the context of winding up of a company in liquidation, tenancy rights cannot be said to be “assets” of the company in liquidation. Similarly, the Supreme Court in the case of ***Nirmala R. Bafna v/s. Khandesh Spinning and Weaving Mills Co. Ltd. & ors.*** (supra), observed that tenancy rights of a company in premises may not be assets for the purpose of liquidation proceeding. If that be so, the official liquidator cannot insist on clinging on to the premises in question without justifiable reason for the same.

17. Even if this Court in the case of ***Patel Engineering Co. Ltd. v/s. Official Liquidator*** (supra) passed its order in a factual situation where the official liquidator had conceded that the

premises were not required for the company in liquidation, it would not mean that where the official liquidator does project need for the premises, the Court exercising jurisdiction under Section 446 of the Companies Act, cannot examine such a need or that it has to shut its eyes by accepting the need so projected on behalf of the official liquidator as gospel truth.

18. Reliance placed on behalf of the official liquidator on the judgment of the Supreme Court in the case of ***Nirmala R. Bafna v/s. Khandesh Spinning and Weaving Mills Co. Ltd. & ors.*** (supra), claiming it to be close on facts to the present case, is also not justified, for the reason that the proceeding arose out of the official liquidator insisting upon a sub-tenant to vacate the premises, in a situation where the landlord had consented to such sub-tenancy. In the said case, the landlord trust had also moved an application in the company petition for a direction to the official liquidator to surrender possession of a small portion, which was other than the remaining larger portion in possession of the sub-tenant. This was a mere 150 sq. ft. out of total area of the flat of 3500 sq. ft. In the context of this small area, the official liquidator had claimed that the same was required for storing records and it was in such a situation that the Supreme Court observed that the official liquidator could not be forced to store records and books in its office or anywhere else. In the said factual position, the reason stated by the official liquidator for continuing in possession of the small area of 150 sq. ft. was found to be a relevant reason.

The facts in the present case are distinguishable and in any case, the said judgment of the Supreme Court does not indicate that the reasons put forth by the official liquidator cannot be analysed and gone into by the Court while deciding such an application.

19. Reliance placed on judgment of this Court in the case of ***Reserve Bank of India v/s. L. M. Devare, Liquidator*** (supra) is also misplaced, simply for the reason that in the said case, the liquidator was appointed on a bank and this Court found that the premises in question were required for storing records of the bank, which included sensitive documents that were to be handled by the official liquidator and to be produced in various cases pending before the special Court. In other words, the need projected by the official liquidator was found to be acceptable in the facts and circumstances of the said case.

20. In this context, this Court finds that the approach adopted by the Delhi High Court in the case of ***Satinder Pal Singh & Anr. v/s. Joginder Sethi & Ors.***, (supra) and in case of ***In Re: Bharat Steel Tubes Pvt. Ltd.*** (supra) and the Punjab and Haryana High Court in the case of ***Smt. Kaushalya Aggarwal v/s. Punwire Paging Services Ltd. (in liquidation)*** (supra), shows that the Court while dealing with such situations can and should go into the question as to whether the liquidator actually needs the premises for the liquidation proceedings. This Court is of the opinion that in such cases, the need of the official liquidator has to be strictly construed. It cannot be that once the official liquidator comes

before the Court and states that the premises in question are required for the purposes of liquidation proceedings, the Court is bound to hold in favour of the official liquidator. Considering the wide powers available with the Court under Section 446 of the Companies Act, this Court is clearly entitled to exercise its power to examine the question as to whether the need projected on behalf of the official liquidator is relatable to the actual need of the premises in question for the purposes of winding up and the liquidation proceedings. The *ipse dixit* of the official liquidator cannot be accepted as gospel truth by the Court and the question as to whether the premises are genuinely needed by the official liquidator, can and must be gone into by the Court exercising such power.

21. In the present case, the official liquidator in the reply affidavit has simply stated in paragraph 13 that the premises in question are required for storing files, papers, records and books, relating to the company in liquidation. It is an admitted position that the official liquidator is in possession of four flats of the applicants. Flat nos. 4 and 5, which are subject matter of this application, are admeasuring 1170 sq. ft. and 687 sq. ft., respectively. The official liquidator is also in possession of Flat nos. 1 and 2 of the applicants admeasuring 1050 sq. ft. and 2150 sq. ft., respectively. The official liquidator has not made the effort of explaining why flats of the applicants in possession of the official liquidator are required for storing the books and record or

how much of the area is reasonably required for the said purpose. It is also an admitted position that after this Court passed specific orders, the official liquidator took physical possession of the said four flats on 19th May 2023. Till date, the official liquidator made no effort to keep the records and books of the company in liquidation in any of the aforesaid flats, if at all.

22. There is substance in the contention raised on behalf of the applicants that in Official Liquidator's Report No. 77 of 2022, the official liquidator has specifically stated that a search of flat Nos. 4 and 5 revealed that there were no books of accounts or records belonging to the company in liquidation. In the face of such material, this Court is of the opinion that the bald statement made on behalf of the official liquidator in the affidavit in reply, that the premises in question are required for storing books and records of the company in liquidation, is nothing but an attempt to somehow cling on to the said premises, despite the fact that the premises have been in disuse.

23. It is also relevant to note that in the affidavit in reply, the official liquidator has stated that the ex-directors of the company in liquidation fraudulently transferred the tenancy of flat Nos. 4 and 5 i.e. the premises in question in the present application, to third party for obtaining loan. It was only after this Court passed specific order on 28th April 2023 that eventually, the official liquidator, on 19th May 2023, took possession of the premises in question. The official liquidator has also not taken a stand that the

rent payable under the monthly tenancy agreements, executed between the applicants and the company in liquidation, have been paid regularly. In fact, there is a default on that count. The continued possession in the said premises would mount the liability of monthly rent unnecessarily and this Court having found that the need projected on behalf of the official liquidator for the said premises is not genuine, no purpose would be served by placing the burden of monthly rent in the context of the said premises on the company in liquidation.

24. Taking into account all the aforesaid factors and upon reaching a considered conclusion that the need projected on behalf of the official liquidator is not genuine and that the premises in question are not required for the purpose of winding up and the liquidation process, this Court is inclined to allow the present application for handing over possession of the premises to the applicants.

25. The contention raised on behalf of the ex-directors is only stated to be rejected, for the reason that perfunctory applications have been filed in these proceedings, claiming that the company can be revived. No genuine efforts appear to have been made on behalf of the ex-directors in that direction. In any case, as noted herein above, the continued burden of rentals is wholly unjustified and in the facts and circumstances of the present case, the prayer made on behalf of the applicants deserves to be granted.

26. It is made clear that this Court has not made any comment on the entitlement of the applicants for possession of flat Nos. 1 and 2, as the said two flats are not subject matter of the present application. In that regard, the applicants would be at liberty to raise their claims in accordance with law. As regards prayer clauses (b) and (c) of the present application, liberty is reserved for the applicants to raise their claims in an appropriate manner in the liquidation process. This Court has also not considered the contention raised on behalf of the applicants with regard to Section 60(k)(c) of the CPC, as the a dispute was raised on behalf of the official liquidator as to whether the premises in question are residential or commercial.

27. In view of the above, the instant application is allowed in terms of prayer clause (a), which reads as follows :

“(a) That this Hon’ble Court be pleased to direct the Official Liquidator to handover quiet vacant, and peaceful possession of Flat No.4 admeasuring 109.66 sq. mtrs. (carpet area) and Flat No. 5 admeasuring 63.80 sq. mtrs. (carpet area) to the Applicants, both in the building known as Jaitirath Mansion, situate at 6-A, Barrack Road, Behind Metro Inox Cinema, Mumbai 400 020 to the Applicants herein.”

28. Accordingly, the official liquidator shall handover the possession of the said two flats to the applicants within four weeks from today.

29. The application stands disposed of.

MANISH PITALE, J.