

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

COMP No. 10 of 2015

(M/S KANAK DHARA AGROTECH PVT. LTD. THRU. SHRI GAURAV KUSHWAHA Vs M/S REAL LIFE CONSUMER CARE PVT. LTD.)

Dated : 01-11-2022

Shri B.M. Maheshwari, learned counsel for the applicant.

Shri H.Y. Mehta, learned counsel for the OL along with OL.

1] Heard on **IA No.2785/2017**, which is an application filed by M/s Allwin Industries, a registered partnership firm, through its partner Santosh Choudhary. The application is for leave, without referring to any provision of law under which it is filed, and the following reliefs have been sought in the aforesaid application:-

“In view of the above facts and circumstances, it is humbly submitted and prayed that this Hon’ble Court may be pleased to allow this application and direct the Ld. Official Liquidator to transfer and register the said land admeasuring 0.900 Hectare situated at Gram Rao, Tehsil & District Indore bearing patwari halka No.27 Survey No.39/3 Gram Rau, Tehsil and district Indore in the name of the Applicant Firm as it has duly purchased and paid total sale consideration or said Mr. Jitendra Choudhary (to whom the said land stand sold by the Applicant Firm) in the interest of justice and for any other direction as may be deemed fit by this Hon’ble Court”

2] In sum and substance, the case of the applicant firm is that it was engaged in the business of manufacturing, dealing and trading of insecticide and fertilizers and in the course of its business, had

many transactions with the company in liquidation i.e. M/s Real Life Consumer Care Pvt. Ltd (herein after referred to as 'the Real Life'). The case of the applicant is that up to 05/03/2012, it had sold its goods to the Real life to the tune of Rs.2,48,34,500/-, however, as the Real Life was not in a position to pay its dues, in lieu of the same, the applicant entered into an agreement to purchase the immovable property of the Real Life company admeasuring 0.900 hectare situated at Gram Rau, Tehsil and District Indore bearing patwari halka No.27 Survey No.39/3, wherein an understanding was reached between the parties that the company in liquidation has received a sum of Rs.76 Lakhs in cash and the remaining sum of Rs.1.54 Crore would be adjusted towards the receivables against supplies of the material sold by the applicant company. In this regard, a resolution was also executed on 03/04/2012 by the Members of the Real Life the company in liquidation. The resolution of the company dated 03/04/2012 is also placed on record. It is further case of the applicant that although the possession of the property has already been taken towards the aforesaid transaction, however, there are no documents on record to prove that the possession has been taken. In support of his contention, counsel for the applicant has also placed on record the account statements of the Applicant firm to demonstrate that there were transactions of sale of goods and the company in liquidation was supplied the goods during the period from 2009 to 2012.

3] On the other hand, the aforesaid application is opposed by Shri Hitendra Mehta, learned counsel for the Official Liquidator (OL) and in addition to reply, two additional replies have also been filed. It is contended by Shri Mehta that the application is liable to be dismissed as being misconceived and made on the basis of bogus documents as the company went into liquidation only on 18/02/2016, and the OL has taken paper possession of the properties of the company on 21/12/2016 whereas the alleged transaction took place on 04/04/2012. It is further submitted that for the period 01/04/2011 to 31/03/2012, there was Nil manufacturing activity of Real Life, the company in liquidation and thus, there is no question that the company would purchase the goods from the applicant firm.

4] Shri Mehta, counsel for the OL has also submitted that the ex-directors of the company recorded their statements under Rule 130 of the Companies (Court) Rules, 1959, and it has been stated by Shri Deepchand Dhakad and Amrat Soni when asked as to who are the creditors of the company and what exact amount is due to them and nature of transaction, upon which it has been replied by both of them that they are not aware and it is not in their knowledge regarding any creditor. It is also submitted by Shri Mehta that even otherwise, there is no such document on record which can be said to be an agreement of the aforesaid transaction which the applicant firm is claiming, and otherwise also, it is not registered as per

Section 125 of the Companies Act. Thus, it is submitted that unless the claim is registered with the Registrar of Companies, no relief can be granted to the applicant. It is also submitted that by this application, the applicant is seeking specific performance of an agreement in the year 2017, which was never entered into between the parties in the year 2012, as the present application was filed after the date of winding up i.e., 18/02/2016. Counsel has also drawn the attention of this Court to the statement made by Shri Suresh Sapra, the ex-director Real Life to the Income Tax Department on 14/03/2016, wherein he has clearly stated that the company is the owner of the land in question and hence, the aforesaid land can be attached by the Income Tax Department. It is further submitted that one of the partners of Applicant firm M/s Allwin Industries, namely Praful Hardia is the ex-directors of Real Life, the company in liquidation and thus, it is sham transaction only to take undue advantage from this Court after a lapse of 6 years.

5] Shri Mehta has also submitted that in the resolution dated 03/04/2012 in which the company has agreed to transfer the land, although Praful Hardia is mentioned as the director of the company, however, he had already resigned on 15/12/2011 which also shows that it was a fake transaction. The attention of this Court is also drawn to the aforesaid resolution wherein in the body of the resolution, Shri Praful Hardia is referred to as the director of the

company, whereas he has signed the same in the capacity of the shareholder. Thus, it is submitted that if Praful Hardia was acting as a shareholder, he had no authority to enter into the aforesaid transaction of the property of the company.

6] It is also submitted that there is no compliance of S.211 of the Companies Act, 1956 which provides for Form and contents of balance sheet and profit and loss account. It is further submitted that there is no registration of the alleged resolution of transfer of property of the Company as provided under S.192 of the Companies Act. Thus, it is submitted that the aforesaid resolution cannot be said to be a legal one on which this Court can act upon. It is also submitted that as according to the applicant firm, since the possession has also been taken, no stamp duty has been paid and as such, no relief can be granted to the applicant. Lastly it is submitted that otherwise also, the applicant firm has no preferential right over the secured creditor and other creditors who are already registered with the Registrar of the Companies.

7] In rebuttal, Shri B.M.Maheshwari, learned counsel appearing for the applicant has submitted that the director Suresh Sapra has also given his statement to the OL wherein it was also informed that the partner of M/s Allwin Industries, Indore has sold the said land and received an amount of Rs.62 Lakhs from the purchaser of the said land which clearly demonstrate that the land was actually purchased by the applicant firm, however, it is also admitted that

subsequently after the company went into liquidation, the aforesaid agreement has been cancelled. Counsel has also submitted that the applicant firm cannot be held responsible for not keeping up to date ledger by the company in liquidation and non-compliance of s.192 , 211 or any other provisions of the Companies Act, 1956, whereas the applicant firm has produced the copies of ledger from 2009 to 2012 which clearly demonstrate that there was transaction between the applicant and the company in liquidation which is also supported by the balance sheet. Shri Maheshwari has also relied upon a decision of *Bombay High Court passed on 30/10/1991 in the case of Monark Enterprises Vs. Kishan Tulpule and others.*

8] Heard learned counsel for the parties.

9] On perusal of the documents filed on record, and on due appreciation of the submissions advanced by the counsel for the rival parties, this court finds that the present application, for all the practical purposes, is an application filed **u/s.446 of the Companies Act, 1956**. S.446 reads as under:-

"446. Suits stayed on winding up order.—When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending as the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of—

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under Section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960].

(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court.

[Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court]."

(emphasis supplied)

10] It is apparent that no suit or legal proceedings shall be commenced or proceeded with, except by leave of the court and subject to such terms as the court may impose.

11] This court is of the considered opinion that the contents of **IA No.2785/2017** partake of the nature of civil suit for specific performance of a contract. A detailed reply and two additional replies have also been filed by the Official Liquidator as also the rejoinder and photocopies of many documents have also been relied upon by the both the parties, whose veracity cannot be checked only on affidavits and arguments. In such circumstances, when various disputed questions of facts and laws are also involved, this court does not find it to be a fit case to decide in a summary manner, and thus, is of the considered opinion that the applicant firm can be asked to file a civil suit before the court of competent jurisdiction

where the parties can lead evidence in support of their respective claims.

12] Resultantly, the application **IA No.2785/2017** stands partly allowed and the applicant firm (M/s Allwin Industries) is hereby directed to file a civil suit in the court of competent jurisdiction against the company in liquidation through Official Liquidator and the civil court concerned shall decide the same in accordance with law and pass the appropriate decree which shall be subject to the order passed by this court in the Company petition. It is made clear that his court has not reflected upon the merits of the matter. Application **IA No.2785/2017 stands partly allowed and disposed of.**

(Subodh Abhyankar)
Judge

krjoshi