



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

**COMPANY APPLICATION NO.248 OF 2019
IN
COMPANY PETITION NO. 487 OF 2014**

**KALANI INDUSTRIES PRIVATE
LIMITED AND OTHERS)...APPLICANTS**

IN THE MATTER BETWEEN :

SICOM LIMITED)...PETITIONER

V/s.

**THE OFFICIAL LIQUIDATOR, HIGH COURT)
BOMBAY AND OTHERS)...RESPONDENTS**

**WITH
INTERIM APPLICATION NO.387 OF 2020
IN
COMPANY PETITION NO.487 OF 2014
WITH
OFFICIAL LIQUIDATOR'S REPORT NO.114 OF 2020
IN
COMPANY PETITION NO.487 OF 2014**

Mr. Darius Khambata, Senior Advocate, Mr.Chirag Sarawagi i/b Tushar Goradia, Advocate for the Applicant in CA/248/2019.

Mr. Nakul Jain a/w Ms. Riya Thakkar i/b Mr. Pravin Metha & Mithi & Co., Advocate for the Applicant-Manisha Kalani in OLR/114/2020 & IA/387/2020.

Mr.Rushabh Sheth, Advocate for the Official Liquidator.

Mr. Chandan Kumar, Official Liquidator is present in Court.

Mr. Chetan Shelke, Assistant Official Liquidator is present in Court.

**CORAM : ABHAY AHUJA, J.
RESERVED ON : 11th DECEMBER, 2024
PRONOUNCED ON : 9th JUNE, 2025**

ORDER. :

1. The present Company Application has been filed under Section 536 (2) of the Companies Act, 1956 (Act) seeking validation of the sale and transfer of 2,34,000 equity shares of Wanderland Real Estates Private Limited (“WREPL”) effected on 4th September 2014 by Treasure World Developers Private Limited (TWDPL/the Company in Liquidation) in favour of Applicants. The said transfer was effected pursuant to a Memorandum of Understanding dated 01st March 2009 as amended by agreement dated 23rd December 2011.

2. The background facts are as under :

2.1 Around 2007 till 2009, the Applicants along with one Mr. Prem Swarup Kalani and one Mrs. Manisha Kalani (Applicant in Interim Application No. 387 of 2020) were holding 267,750 shares in WREPL.

2.2 In 2009, Mr. Manish Kalani Managing Director of Entertainment World Developers Pvt Ltd. (“EWDL”) proposed a collaboration involving its subsidiary TWDPL and WREPL. The existing shareholders, including the Applicants, agreed to the proposal.

2.3 Accordingly, on March 1, 2009 WREPL the Respondent No. 2 herein, TWDPL and the Applicants executed a Memorandum of Understanding (the “MOU”) whereby the Applicants agreed to transfer a total of 2,67,750 shares (“Sale/Subject Shares”) of WREPL amounting to 51% of WREPL’s equity shares to TWDPL for a total consideration of Rs. 80,32,500/-. As per the terms of the MOU and in particular Article 4.2 read with Annexure C, TWDPL was required to infuse Rs. 29.53 crores into WREPL within 9 (nine) months. And as per Article 5 of the MOU, a right was to be vested in the Applicants herein to exercise a call option in the event of TWDPL not complying with its obligations under Article 4.2 or 4.3 of the MOU.

2.4 On July 9, 2009, WREPL requested TWDPL to infuse Rs. 29.53 crores in WREPL within 9 months from the date of execution of the MOU, in terms of Article 4.2 read with Annexure C of the MOU. That on July 24, 2009 TWDPL replied to WREPL requesting extension of the timeline for infusion of funds upto December 2010 and assured WREPL that TWDPL shall raise the required funds within a period of 12-18 months from July 24, 2009.

2.5 On July 30, 2009 WREPL wrote to TWDPL agreeing to extend the timeline for infusion of funds upto June 30, 2010 and stated that a further extension beyond this period would not be possible.

2.6 On January 25th 2010, TWDPL wrote to WREPL again requesting for additional time to infuse funds and extension till March 31, 2011 as TWDPL's Parent Company EWDL was planning to raise funds by way of an IPO.

2.7 That thereafter on March 19, 2010 WREPL reiterated that an extension beyond June 30, 2010 would not be possible and stated that if TWDPL failed to meet the June 30, 2010 deadline, WREPL would invoke the call option as provided under Article 5 which reads as follows :

“the Transferors shall any time after that have the right to (by way of written notice to be sent by the Authorized Person) require TWDPL to sell the Sale Shares back to the Transferors in such proportion as stated by the Authorized Person in the said notice (“Notice”). TWDPL shall in such an event deliver to the Transferors the relevant original share certificates and duly executed share transfer forms against simultaneous receipt of consideration in TWDPL Account...”

2.8 On, July 2, 2010, WREPL issued Call Option Notice, signed by Mr. Prem Kalani, Authorized Person on behalf of the Applicants, to

TWDPL, giving a 30-day notice in terms of Article 5 of the MOU. The notice stated that in the event of default to infuse funds within 30 days, the Applicants will be forced to invoke the Call Option and TWDPL will be required to transfer the shares back to the Applicants in the manner set out in Article 5 of the MOU.

2.9 On August 25, 2010, TWDPL wrote to Mr. Prem Kalani requesting the Applicants not to invoke the call option, because TWDPL had already filed a Draft Red Herring Prospectus (DRHP) for IPO in July 2010 and the invocation of call option by the Applicants would hamper the IPO process. Thereafter a similar request for not invoking the Call Option under the MOU was made by TWDPL on November 2, 2011 and an extension of time upto March 31, 2013 was sought for infusion of funds.

2.10 Thereafter on December 23, 2011 WREPL, the Applicants and TWDPL executed an Amendment Agreement modifying Articles 4 and 5 of the MOU. Under the amended terms, TWDPL was to infuse Rs. 75 crores into WREPL by 31st March 2013. The 2,67,750 shares were to be held as security, and the relationship between WREPL and TWDPL being that of lender and borrower. The Board of WREPL and TWDL

accordingly passed necessary resolutions to create the above security in favour of the Applicants against the obligations of TWDPL to be performed in terms of the MOU and Amended Agreement. In case of default under the amended Article 4 by TWDPL the Applicants had liberty to invoke the rights over the shares which have been given as security and lodge the Sale Shares for transfer to WREPL.

2.11 On June 4, 2013 Mr. Prem Kalani authorized person on behalf of Applicants issued notice to TWDPL whereby the Applicants gave TWDPL a final opportunity to infuse Rs. 75 crores in WREPL within 10 days from the date of the Notice, failing which the Applicants would invoke the Call Option under the MOU read with the amended agreement.

2.12 On March 28, 2014, SICOM Ltd, filed the Petition for winding up against TWDPL.

2.13 On April 8, 2014, the Applicants, as per Article 5 of the MOU read with Amended Agreement invoked Call Option Notice and tendered cheques amounting to Rs. 80,32,500/- towards consideration for the sale shares. The Applicants also called upon TWDPL to replace

the expired Share transfer Deeds, which were already provided to WREPL under the Agreement.

2.14 On June 16, 2014 TWDPL requested a hold on transfer for 60 days, failing which, TWDPL would agree to the call option, and on August 4, 2014 TWDPL agreed to transfer the Sale Shares back to the Applicants, and requested replacement cheques.

2.15 On August 16, 2014 Applicants provided fresh cheques of Rs. 80,32,500/- towards invocation of the Call Option. Thereafter on August 20, 2014 TWDPL sent the revised Share Transfer Deeds to the Applicants and while doing so, TWDPL stated as follows: *“In accordance with your Notice dated April 8, 2014 and further correspondence, please find annexed herewith the revised Share Transfer Deeds of the Sale Shares pledged with you.”*

2.16 Thereafter on September 04, 2014 the Board of Directors of WREPL approved the transfer of the sale shares of WREPL from TWDPL to the Applicants in its meeting held on September 4, 2014.

2.17 On November 22, 2014 Mr. Prem Kalani authorized person of Applicants passed away, and after his demise his holding in WREPL of

27,000 shares was transmitted to his Wife Mrs. Padma Kalani (Applicant No.3 herein).

2.18 On August 8, 2016 the Company Petition was admitted by this Court and on November 13, 2017 an order directing winding up of the Company was passed.

2.19 On October 16, 2018 Applicants filed this Company Application No. 248 of 2019 *inter alia* to approve and validate the sale/transfer of subject shares.

2.20 On January 15, 2020 Mrs. Manisha Kalani one of the other transferors mentioned in the MOU and Amended Agreement filed Interim Application No. 387 of 2020 adopting the averments of the Applicants herein in Company Application No. 248 of 2019, seeking validation of sale and transfer of 33, 750 equity shares of WREPL by TWDPL in her favour on September 4, 2014 effected to pursuant to the MOU and Amended Agreement.

2.21 The Official Liquidator has filed Official Liquidator Report No. 114 of 2020 submitting that the same be considered as Reply on behalf

of the Official Liquidator to the Company Application No. 248 of 2019 and the Interim Application No. 387 of 2020, denying that the transfer of shares is a bona fide transaction and denying that the aforementioned transfer is in furtherance of a pre-existing contract. The Official Liquidator's Report seeks custody/possession of the 2,34,000 and 33,750 equity shares of WREPL.

2.22 The Official Liquidator has also filed detailed reply to the Company Application as well stating that it is incumbent upon the Applicants to show that the ratification of transaction so sought was done in a bona fide manner and done in the best interest of the Company and that Applicants have failed to plead and prove the same in the present proceedings.

3. Mr. Darius Khambatta, learned Senior Counsel for the Applicants would submit that the transfer of the subject shares back to the Applicants pursuant to the MOU dated 1st March 2009 as amended by Agreement dated 23rd December 2011 is a *bona fide* transaction in the ordinary course of business of the company, which *bona fides* of the applicants and the transaction are fortified by the following facts :-

- i. The Applicants had transferred a majority stake in WREPL to TWDPL on the understanding that TWDPL will infuse funds into WREPL;
- ii. As per the MOU dated 01st March 2009, the said understanding was expressly subject to a call option reserved in favour of the Applicants, which was to be exercised by the Applicants if TWDPL fails in meeting its obligations;
- iii. On account of continuous defaults by the TWDPL for 5 years from the execution of the MOU, the Applicants were compelled to exercise their call option for the return of the Subject Shares granted vide MOU dated 01st March 2009 as well as the Amendment Agreement;
- iv. The transfer of Subject Shares was effected by notice exercising call option which was issued on 08th April 2014;
- v. That the Applicants have not made any gains whatsoever from the transfer and has in fact lost other opportunities to raise finances.

4. At the outset, Mr. Khambatta, Ld. Senior Counsel for the Applicant would submit 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 winding up order void *ab initio*. Learned Senior counsel would submit that the Court has absolute discretion to declare a transaction entered into by the company in liquidation between the date of filing of the winding up petition and the date of winding up order, and such discretion must be exercised equitably to save transactions that are genuine so that innocent third parties are not to put to a loss.

5. Mr. Khambatta has relied upon the following decisions in support of his submissions:-

*(i) S.P. Khanna v. S.N. Ghosh*¹

*(ii) Sunita Vasudeo Warke v. Official Liquidator and Ors*²

*(iii) Pankaj Mehra & Anr v. State of Maharashtra & Ors.*³

6. Mr. Khambatta, the learned senior counsel for the applicant, would urge that the transfer of shares by exercise of call option is not

1 1976 TaxLR 1740

2 2013 (2) Mh. L.J. 777

3 (2000) 2 SCC 756

void under Section 536 of the Companies Act, 1956 and has canvassed multi-pronged submissions in support of the same.

7. Firstly, Mr. Khambatta would urge that a call option creates an irrevocable right to receive the subject shares in favour of the Applicants. That once a call option is granted, it results in a complete, concluded and legally enforceable nature of a concession or privilege, which may be exercised upon the fulfillment of the conditions on which it is made exercisable.

8. Secondly, while the grant of call option is a matter of consent, the exercise of the call option is a unilateral act. An option by its very nature is dependent entirely on the volition of the person granted the option, in the present case the Applicants herein. Mr. Khambatta submits that the present Applicants, as per the terms of the Amendment Agreement dated 23rd December 2011 became legally entitled to exercise the call option from 31st March 2013 itself and the unilateral exercise of the call option would be binding upon TWDPL.

9. Thirdly, Mr. Khambatta would submit that the essence of an option is that while the grantor may be said to be conditionally bound,

the grantee is free. The Applicants have exercised a legitimate right and that the company under winding up did not have any say left in the transfer.

10. Lastly, the Amendment Agreement dated 23rd December 2011 specifically amended Article 5 of the MOU to classify the share transfer forms as security in favour of the Applicants. That the amended Articles 4 and 5 created strong legal rights in favour of the Applicants as creditors of the company under winding up by classifying the relevant share transfer deeds as security in favour of the Applicants.

11. To buttress the aforesaid submissions, Mr Khambatta has placed reliance on the following decisions :

*(i) Sakalaguna Nayudu v. Chinna Munuswami Nayakar*⁴

*(ii) V. Pechimuthu v. Gowramma*⁵

*(iii) La-Fin Financial Services Pvt Ltd v. IL & FS Services Pvt Ltd*⁶

*(iv) Garware Marine Industries Ltd. Applicant M/s. Henkel Chemicals (I) Ltd. v. Garware Marine Industries Ltd.*⁷

4 VOL. LV. Indian Appeals 243, J.C. 1928

5 (2001) 7 SCC 617

6 2015 SCC Online Bom 4794

7 2015 SCC Online Bom 6094 : (2015) 192 Comp Cas 204.

12. Mr. Khambatta submits that therefore, the reliefs, as sought for in the application be granted.

13. On the other hand, Mr. Rushabh Sheth, learned counsel for the Official Liquidator, has opposed the application.

14. Mr. Sheth would submit that the transaction falls 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 on March 01, 2014. That the call option available to the Applicants under Article 5 of the MOU dated 01.03.2009 read with Agreement dated 23.12.2011 was exercised on April 08, 2014. That no valid transfer took place only on the invocation of call option. The winding up petition came to be admitted on August 8, 2016. That, in view of section 441 of the Companies Act, 1956, the winding up of a company is deemed to commence at the time of presentation of the petition for winding up.

15. Mr Sheth would further submit that on August 20, 2014 transfer of shares should have been completed in the manner contemplated under Section 108 of the Companies Act, 1956 and mere signing of

transfer form by TWDPL and handing them over to the Applicants would not be sufficient to complete the transaction.

16. Mr. Sheth would submit that the transfer of the subject shares is an incomplete transaction and cannot be completed by making an application under Section 536(2) of the Companies Act, 1956. That entire events regarding transfer of shares having occurred post the date of presentation of the winding up Petition, an incomplete transaction cannot be ratified by this Court.

17. Mr Sheth further submits that, there is no pleading made by the Applicants to even state that the said transfer option exercised was in the best interest of the company and that the Applicants have failed to show their *bona fides* with respect to the transaction.

18. Mr Sheth has relied on the following decisions in support of his submissions :

(i) *Board of Industrial and Financial Reconstruction v. Hindustan Transmission Products Ltd.*⁸

(ii) *Export Import Bank of India v. Punjab National Bank*⁹

8 2012 SCC Online Bom 1294

9 OLR/139/2018 in CP/756/2014 and CP/119/2015 (decided on 14th January, 2020)

*(iii) Mukesh Mehra v. State Bank of India*¹⁰

*(iv) MCX Stock Exchange Ltd. v. Securities & Exchange Board of India*¹¹

*(v) Nagabhushnam v. Ramchandra Rao.*¹²

19. I have heard the learned Senior Counsel and Counsel at length and also considered the rival contentions.

20. It is not in dispute that the company petition was presented on March 28, 2014 and admitted on August 8, 2016. That the winding up order was passed on November 13, 2017. That thereafter the official liquidator came to be appointed with usual powers under the Companies Act, 1956.

21. On March 1, 2009 the Respondent No. 2, the company in liquidation and the Applicants herein had executed a Memorandum of Understanding for transfer of shares for certain consideration. The Applicants herein were under the MOU vested with the right to exercise a call option in the event of the company in liquidation not complying with its obligations under the MOU. Company in liquidation failed to comply with its obligations within the stipulated time. Upon such

¹⁰ IA(L)/2534/2021 in CP/321/2016 (decided on 27th September, 2023)

¹¹ 2012 SCC Online Bom 397

¹² VOL. XLV Madras Series 537

failure, the Applicants herein issued notice dated July 2, 2010 giving 30 days to TWDPL to infuse the funds failing which the Applicants would invoke call option. The Company in liquidation urged the Applicants not to invoke the call option for various reasons. By an Agreement dated December 23, 2011, the Articles 4 and 5 of the MOU dated March 1, 2009 stood amended and the right to exercise call option was extended till March 31, 2014. Company Petition No. 487 of 2014 was presented before this Court on March 28, 2014 seeking winding up of the Company. Although admittedly as of the date of presentation of winding up Petition the Applicants had not invoked the call option under the amended agreement, the irrevocable right of call option was vested with the Applicants upon the execution of the Memorandum of Understanding. The call option notice was first issued by the Applicants in July 2010. It is evident that though this right stood crystallized at that point in time, the Company in Liquidation requested the Applicants not to exercise the same and sought extensions time and again. Upon reading of the subsequent Amended Agreement it is clear that the parties have continued to recognize and have preserved the irrevocable nature of the call option and have just provided extension of time till March 31, 2013 to exercise the ministerial act of invoking the same. Thus, it was the obligation of the Company in Liquidation to

infuse the money on failure of which the Applicants had liberty to invoke the rights over the shares which have been given as security. Therefore, the Applicants in the present case became legally entitled to exercise their irrevocable right on March 31, 2013.

22. 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 March 28, 2014. It is also provided under Section 536 (2) of the Companies Act that in 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. It is trite, that if *bona fides* 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 *bona fide* 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.

23. It has been held in *Mukesh Mehra v. State Bank of India (supra)* that an incomplete transaction cannot be validated. It is also settled, that if a transfer has not been completed prior to the winding up order, no application would lie to the Court for a direction that the Official Liquidator to complete the transfer. Therefore the question that this Court is required to consider before validating the transaction of the Subject Shares under Section 536 (2) of the Act is whether the act of invocation has been completed prior to winding up order.

24. The reliance placed by Mr. Sheth, on the decision of this Court in *MCX Stock Exchange Limited v. Securities and Exchange Board of India (supra)* submitting that the transfer of shares has not concluded is misplaced as call option as provided under the MOU and the Amended Agreement in the present case created an irrevocable right to receive subject shares in favour of Applicants. I find substance in the submissions of Mr. Khambatta that a call option creates an irrevocable right to receive the shares and that exercise of call option is a unilateral act dependent entirely on the volition of the person granted the option. Once a call option is granted, it results in a complete, concluded and legally enforceable nature of a concession or privilege, which may be exercised upon the fulfillment of the conditions on which it is made

exercisable. A profitable reference in this context is made to the judgment of this Court in *La-Fin Financial Services Pvt Ltd v. IL & FS Financial Services Pvt Ltd (supra)* wherein the Respondent therein inter alia sought specific performance of the Agreement/Letter of Undertaking under which the Appellant inter alia undertook and assured that they would buy back the Respondent's shareholding in a company called MCX Stock Exchange Ltd. Paragraph 26, 27, 28, 29 of the said decision are quoted as under :

“26. Equally, we find the reliance placed by Mr Naphade on paragraphs 77 and 104(vii) of a decision of this Court in Writ Petition No.213 of 2011, decided on 14th March, 2012 (supra) (to further his argument that there was no concluded contract), is wholly misplaced. The Division Bench was deciding a writ petition in which a decision of SEBI rejecting the application filed by MCX-SX for permission to undertake the business as a Stock Exchange, was challenged. This order of SEBI was passed under section 4 of the Securities Contracts (Regulation) Act, 1956 read with sections 11 and 19 of the Securities Exchange Board of India Act, 1992. At paragraph 77, the Division Bench has sought to make a distinction between the option to purchase or repurchase and an agreement for sale and purchase of shares. The Division Bench has opined that the option to purchase or repurchase is, by its very nature, dependent on the discretion of the person who is granted the option, whereas in an agreement for sale and purchase of shares, there is an arrangement imposing obligations and benefits on the promisor and the promisee. The performance of an option cannot be compelled by the person who has granted the option, and a concluded contract for purchase or repurchase of shares arises only upon the exercise of that option. The Division Bench does not go on to hold that the Letter of Undertaking (which

was also being considered by the Division Bench in Writ Petition No.213 of 2011) is merely an “offer”, as sought to be contended by Mr Naphade. The Division Bench has correctly held that performance of an option cannot be compelled by the person who has granted the option. However, it is wholly another to say that the person who has been granted the option, cannot compel its performance. To hold otherwise, would defeat the very purpose for which the option was granted in the first place. It is correct that the Letter of Undertaking, as it stands, is not a concluded contract for sale and purchase of shares, until the option is exercised by the Plaintiff. In the present case, the Plaintiff has exercised its option vide its letter dated 3rd August, 2012. After the option was exercised by the Plaintiff, the Defendant, after committing to the Plaintiff that it will purchase the Plaintiff's shareholding in MCX-SX, has sought to resile from this commitment. It is this commitment of which specific performance is sought. In this view of the matter, we find that the reliance placed by Mr Naphade on paragraphs 77 and 104(vii) is of no assistance to the Defendant.

27. Even otherwise on a reading of the judgment and order dated 14th March, 2012 passed in Writ Petition No.213 of 2011, we are of the view that far from holding that the Letter of Undertaking is not a concluded contract, in paragraph 25, whilst narrating the facts, the Division Bench has stated as under:- “25. On 11 August 2010, IL&FS addressed a letter to SEBI in order to explain the background of the investment made in the Petitioner. The letter stated that a Share Purchase Agreement had been executed in August 2009 for the purchase of 44.2 million shares of the Petitioner from MCX. Another Share Purchase Agreement was executed by a private equity fund managed by an IL&FS Group Company with respect to 27.8 million shares. Under an exit arrangement it was agreed that La-Fin Financial Services which held a 26% equity stake in FTIL was obligated to offer to purchase the shares held by the IL&FS Group on the completion of one year and within a period of three years at a stipulated rate. The letter stated that on 10 August 2010, IL&FS Financial

ServicesLtd. had, in a meeting of its Board, resolved to explore an exit from the investment made in the shares of the Petitioner, including by expediting the right to sell the investment in accordance with exit terms to the promoters of the Petitioner.” (emphasis supplied)

28. In fact, the Petitioner therein (MCX-SX) had submitted before the Court that the Buy Back Arrangements entered into are lawful [see paragraph 31B(i) of the judgment]. Even Respondent No.3 therein (FTIL) submitted that the Buy Back Arrangements did not constitute a concluded contract for the purchase and sale of the shares, but only furnishes an option to the Plaintiff which was in the nature of a privilege or concession entirely dependent on the volition of the Plaintiff. It was specifically urged that this option involves a unilateral exercise of volition by the Plaintiff herein, as distinct from a contract of sale and purchase of shares, which involved reciprocal obligations. [see paragraph 32A(i)]

29. Further, paragraph 65 of the judgment, in fact records that the terms of the Buy Back Agreement stipulate that the Defendant or its nominees would be under an obligation to purchase back the shares at any time after completion of one year from the date of investment and no later than three years. On 14th December, 2009 MCX-SX addressed a letter to the Plaintiff seeking approval of the scheme of reduction and confirmed that this would not be construed as a dilution of the terms of the SPA and the Letter of Undertaking issued by the Defendant. At paragraph 74, the Division Bench has held that the option granted to the Plaintiff under the Letter of Undertaking was a privilege, the exercise of which depends upon their unilateral volition. It held that in the case of the Plaintiff, the Defendant had assumed an obligation to offer to purchase either through itself or its nominee the shares which were sold to the Plaintiff. The Division Bench held that in a Buy Back Agreement of the nature involved in the present case, the promisor who makes an offer to buy back shares cannot compel the exercise of the option by the promisee to sell the shares at a future point in time. If the promisee declines to exercise the option, the promisor cannot compel performance. It is in this context that the

Division Bench at paragraph 75 held that a concluded contract for the sale and purchase of shares comes into existence only when the promisee upon whom an option is conferred, exercises the option to sell the shares. Hence, an option to purchase or repurchase is regarded as being in the nature of a privilege. On reading the aforesaid judgment and the relevant paragraphs pointed out above, we are clearly of the view that the Division Bench did not seek to hold anything of the sort as is sought to be contended by Mr Naphade. The Division Bench does not hold that the Letter of Undertaking is merely an “offer” and therefore not a concluded contract. In fact, reading the judgment it is clear that even the Division Bench was of the view that the option given by the Defendant to the Plaintiff to sell its shareholding to the Defendant on the terms and conditions set out therein, was binding on the Defendant. Further, even the Petitioner as well as Respondent Nos.3 and 4 therein, proceeded on that very basis when they submitted to the Court that the Buy Back Arrangement as contemplated under the Letter of Undertaking dated 20th August, 2009 was lawful. We, therefore, have no hesitation in rejecting the first contention of Mr Naphade. At least prima facie, we are of the opinion that the Letter of Undertaking dated 20th August, 2009 is specifically enforceable.”

(emphasis supplied)

25. Drawing analogy between a call option and an agreement of sale, that though an agreement for sale of land remains executory until transfer of title to the land and payment of purchase price, however that does not mean that the agreement for sale of land is incomplete. I find substance in the submission of Mr. Khambatta that as the Applicants have provided fresh cheques to TWDPL for invocation of call option on August 16, 2014 and TWDPL has accordingly sent the revised

transfer deeds to the Applicants by August 20, 2014, the subsequent Approval of Board of Directors of WREPL on the transfer of subject shares on September 4, 2014 completed the sale of subject shares. Reliance can be place upon the decision of the Supreme Court in ***Vasudev Ramchandra Shelat v. Pranal Jayanand Thakar and Ors.***¹³ wherein the Supreme Court has held that delivery of documents to the donee, with a clear intention to donate shares, would be enough to confer upon the donee a complete and irrevocable right even in absence of registration. The Applicants have been conferred with an irrevocable right in their favour through the MOU and the Amended Agreement. That after invocation of the call option, the Applicants have also received the revised transfer deeds and the Company in liquidation has received the consideration. The Official liquidator's endeavour to give this transaction a colour of a typical call option cannot be countenanced in as much as in the present case, the failure on the part of the Company in Liquidation created an irrevocable right in favour of the Applicants. Further, the Share Transfer Deeds and Subject Shares were pursuant to the amended agreement pledged with the Applicants. Thus I am of the view that rights created by TWDPL in favour of the Applicants cannot be defeated.

13 (1974) 2 SCC 323

26. I do not therefore think that the Respondent has made out a case for defeating the clearly expressed intention of TWDPL and WREPL and the Applicants in the MOU dated March 1, 2009 and the Amended Agreement dated December 23, 2011. Further the facts show that there was a pre-existing contract between the parties well before the filing of the winding up proceedings and the subsequent enforcement of the terms cannot be questioned unless such enforcement is contrary to the terms. Mr. Sheth's reliance upon the decisions of *Board of Industrial and Financial Reconstruction v. M/s. Hindustan Transmission Products Ltd (supra)*, does not seem to advance the cause of the submission, as the said judgment was rendered in different fact situation. Also the judgment of *Mukesh Mehra v. State Bank of India (supra)* relied upon by the Official Liquidator does not seem to advance the cause of the submission made that no uncompleted rights can be completed. The Court has in *Mukesh Mehra v. State Bank of India (supra)* considered the principle in the case of *Sunita Vasudeo Warke v. Official Liquidator Ors (supra)* but due to peculiar facts of that case rejected the sale of property of the company in liquidation. In *Mukesh Mehra v. State Bank of India (supra)* the Company Petition was presented in the year 2015 and the winding up Order was passed in the year 2018 and the secured creditor bank of the Company in Liquidation initiated the One Time

Settlement in the year 2020 and the proposed transactions were presented by two Memorandum of Understanding dated 12th November 2020 and 20th November 2020. However in the present case, there was a pre-existing contract between the parties well before the filing of the winding up proceedings and the subsequent enforcement of the terms were initiated and acted upon prior to the admission of the Company Petition and prior to order of winding up. The approach therefore in the aforesaid decision is distinguishable. There can be no assistance to the Official Liquidator from the judgment in the case of *Nagabhushanam v. Ramchandra Rao and Others*¹⁴ as the same was rendered in a different fact situation. The Madras High Court was deciding in the Second Appeal, the priority between the auction purchasers at the Court sales and the transferee under the deed of assignment over the transfer of certain shares in Limited Companies. The Court in that case was dealing with the question of whether a deed not complying with the terms of the Act, and the Articles of Association is valid to transfer shares as against a person who has acquired the right to them by a Court-sale in manner required by the provisions of the Civil Procedure Code. But this Court is not considering the same, for the reason that the transaction in the present case has been

14 VOL XLV Madras Series 537

discussed in detail and the right of the Applicants is held to be irrevocable and complete and relevant judgments in that context have been discussed.

27. The next question which falls for consideration of this Court is whether the Applicants in their Applications have pleaded and proved that the transaction was done in a *bona fide* manner and in the best interest of the company.

28. This Court has in the case of *Helbon Engineers Pvt Ltd. v. Ferral Anant Machinery Manufacturers Pvt Ltd*¹⁵ held 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 paralyze the business of company. Such interpretation, could lead to catastrophic situation which should be averted.

29. In the facts of the case, as noted above, the Applicants have acted pursuant to a pre-existing contractual agreement entered into well

¹⁵ (2024) SCC OnLine Bom 2134

before filing and admission of the winding up proceedings. The Applicants have merely exercised their contractual irrevocable right of call option under Article 5 of the MOU and amended agreement upon TWDPLs continued failure to infuse the agreed funds into WREPL. The invocation of Call Option, issuance of consideration, and completion of transfer were initiated and acted upon as ministerial action. I am of the view that the transaction has been executed in accordance with rights long crystallized by the MOU and Amended Agreement, prior to the admission of the Company Petition and prior to order of winding up and is not only *bona fide* but also fair, just and reasonable and deserves to be protected. Accordingly I am inclined to allow this application. The arguments on behalf of the official liquidator cannot be countenanced and there is no question of the transaction being incomplete.

30. Mr. Sheth has urged that this Court has in *Export Import Bank of India v. Punjab National Bank (supra)* and in *Asha Bhosale v. Magnasound India Ltd.*¹⁶ held that applicants who seek validation of the transaction carried out after the date of commencement of winding up proceedings in view of Section 441(2) of the Companies Act, 1956 have to not only plead but also prove that such transactions were

¹⁶ 2015 SCC OnLine Bom 5539

carried out in ordinary course of business and were in the benefit of the company in liquidation.

31. Before we examine the pleas raised by the Applicants in the Application, it is necessary to refer to the case of *Ram Sarup Gupta v. Bishun Narain Inter College*¹⁷, whereby Supreme Court has held that the pleadings should receive a liberal approach; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. Sometimes pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such cases, it is the duty of the Court to ascertain the substance of the pleadings to determine the question.

32. In their pleadings the Applicants have stated that they have repurchased the subject shares under a bona fide belief that the transfer of shares pursuant to a pre-concluded contract was not a disposition of property for the purpose of Section 536(2) of the Companies Act. It is pleaded that the call option was exercised by the Applicants due to the default of TWDPL under the amended agreement.

¹⁷ (1987) 2 SCC 555

33. It is not desirable to to place undue emphasis on the form of the pleadings and instead the substance of the pleadings should be considered, and I am of the view that pleadings available on record have established, *bona fides* of the transaction of the Subject Shares.

34. In view of the above discussion, the sale and transfer of 2,34,000 equity shares of WREPL in favor of Applicants on 4th September 2014 effected pursuant to the Memorandum of Understanding dated 01st March 2009 as amended by agreement dated 23rd December 2011 is ratified. The Application is made absolute in terms of prayer clause (a) which reads as thus :

“(a.) That this Hon’ble Court be pleased to approve and to validate the sale and transfer of 2,34,000 equity shares of Wanderland Real Estates Private Limited by Treasure World Developers Private Limited (the Company in Liquidation) in favour of the Applicants on September 4, 2014 effected pursuant to the Memorandum of Understanding dated March 1, 2009 as amended by the agreement dated December 23, 2011.”

35. The Company Application accordingly stands allowed and disposed as above.

36. For reasons in the above Order in Company Application No. 248 of 2019, the Interim Application No. 387 of 2020 is also allowed in terms of prayer clause (a) which reads as thus :

“(a.) That this Hon’ble Court be pleased to approve and to validate the sale and transfer of 33, 750 equity shares of Wanderland Real Estates Private Limited by Treasure World Developers Private Limited (the Company in Liquidation) in favour of the Applicant on September 4, 2014 effected pursuant to the Memorandum of Understanding dated March 1, 2009 as amended by the agreement dated December 23, 2011.”

37. In view of the above, the prayers/directions sought for in the Official Liquidator’s Report No. 114 of 2020 are hereby rejected and the said report to accordingly stand disposed.

(ABHAY AHUJA, J.)

Digitally
signed by
KIRAN
SANJAY
GHUGE
Date:
2025.06.13
13:06:33
+0530