

(2007) 05 PAT CK 0074

In the Patna High Court

Case No : Company Petition No. 7 of 1998

In Re: Shiv Shakti Builders and Financial Company Ltd. (In Liquidation)

Date of Decision : 03-05-2007

Acts Referred:

Citation : (2007) 05 PAT CK 0074

Judgement

V.N. Sinha, J.—With reference to the averments made in paragraph 6 of the report dated 31.8.2006, Official Liquidator submitted that the agreement for Sale/ sale deed executed in favour of Smt. Shakun Kedia, wife of Sri Suresh Kedia by the Managing Director of the Company in Liquidation be set aside by resorting to powers contained in Section 531A of the Companies Act, 1956 (hereinafter referred to as the Act) as the said agreement for sale/ sale deed was executed within a period of one year from the date of presentation of the winding up petition i.e. 15.4.1998. In this connection, he relied on the provisions contained in Section 531A of the Act, which inter alia provides that any transfer of property movable or immovable by a company not being in the ordinary course of its business and/ or for valuable consideration, if made within a period of one year before the presentation of the winding up petition shall be void against the liquidator and in the instant case winding up petition being filed on 15.4.1998, the agreement for sale/ sale deed being executed on 20.10.1997 within six months of the filing of the winding up petition should be declared as void.

2. Learned Counsel for the purchaser, with reference to his reply dated 12.1.2007 and supplementary affidavit dated 19.4.2007, submitted that the company in liquidation which is a building and financial company sold the subject matter of agreement for sale/ sale deed dated 20.10.1997 in the ordinary course of business as it required money for transacting its business and she being a bona fide purchaser having paid the amount of consideration of Rs. 5,00,000/- and obtained possession of the property in the due course, the transaction should not be allowed to be impeached in these proceedings. Learned Counsel for the purchaser in this connection placed reliance on the following judgments in the case of N. Subramania Iyer Vs. The Official Receiver, Quilon, , in the case of

N. Babu Janardhanam and Anr. v. Official Liquidator, Golden Cine Studios P. Ltd. reported in 1993 (78) CC 490, in the case of Kishan Tulpule and Ors. v. Kishco Mills Pvt. Ltd. and Anr. reported in 1992 (74) CC 89 and in the case of Hearts of Oak Assurance Co. v. James Flower and Sons (A firm) reported in 1936 (6) CC 77. In this connection, it was further submitted on her behalf that the winding up petition may have been presented before this Court on 15.4.1998, whereafter this Court under orders dated 1.5.1998 directed for publishing the notice in terms of Rule 99 of the Company (Court) Rules, 1959 fixing 26.6.1998 as the date for hearing of the matter but before the said date i.e. on 15.5.1998 itself the Official Liquidator, Patna High Court was appointed Provisional Liquidator dispensing with service of notice on the Company as is required under Sub-section (2) of Section 450 of the Act since the winding up petition itself was presented by the company on the basis of the resolution of the share holders and as the formal winding up order is not passed till date the request made by the provisional Liquidator to annul the Agreement for Sale/ sale deed dated 20.10.1997 is absolutely without jurisdiction as according to the learned Counsel this Court will have jurisdiction to annul the sale deed at the request of the Official Liquidator only after formal winding up order is passed.

3. Before I take up the first point about the bona fide of the purchaser, would like to deal with the second submission that without any formal winding up order being passed, the Provisional Liquidator has no jurisdiction to question the sale deed in terms of Section 531A of the Act. Once the winding up petition is presented before the Company Judge on the basis of the share holders' resolution, praying inter alia to secure winding up of the company through the aegis of the Company Judge and the Company Judge having admitted the petition under Rule 96 directing advertisement of the petition under Rule 99 of the Company (Court) Rules by publishing notice in form 48 fixing the date of hearing and after hearing the parties without passing a formal order of the winding up of the company appointed Official Liquidator as Provisional Liquidator then under the scheme of the Act and the Rule particularly in terms of the powers of the Liquidator contained in Section 457 of the Act as also in terms of Sub-section (3) of Section 450, Provisional Liquidator shall have all powers of the Official Liquidator as Provisional Liquidator is also put in-charge of the assets of the company and after passing of the formal winding up order Provisional Liquidator becomes Official Liquidator. In my opinion, therefore even without passing of the formal winding up order, Provisional Liquidator shall have the same powers as that of Official Liquidator and he can always take steps for protecting the interest of the company. In the circumstances, for failure to pass formal winding up order in these proceedings, request of the Official Liquidator to annul the Agreement for Sale/ sale deed is not premature and without jurisdiction. Now I shall take up other point raised by the learned Counsel for Smt. Shakun Kedia that she being a bona fide purchaser of the properties of the company for valuable consideration of Rs. 5,00,000/- paid vide receipt No. 4296 dated 13.10.1997, Annexure-2/1 to the counter affidavit filed on behalf of Smt.

Shakun Kedia, the transaction should not be annulled as void as there is absolutely no connection between her and the Ex-Director of the Company, who executed the sale deed in normal course of business for raising funds to meet the business and legal expenses of the company. Perusal of the report whereunder request has been made to annul the transaction also indicates that not even a single circumstance has been indicated to even remotely suggest that the sale in question is a sham transaction lacking bona fide.

4. In the circumstances, I am not inclined to annul the sale deed executed by the Ex- Managing Director of the Company in favour of Smt. Shakun Kedia earlier to the presentation of the winding up petition by the company at the request of the share holders of the company.

5. Report dated 31.8.2006 and its reply and supplementary reply kept at flags "16", "17" and "17A" are, accordingly, disposed of.