

(2017) 03 BOM CK 0008

In the Bombay High Court

Case No : Company Application No. 85 of 2014 In Company Petition No. 76 of 1991

Shri Kashinath R. Jhunjhunwala

APPELLANT

Vs

M/s. Laxmichand Bhagaji Ltd.

RESPONDENT

Date of Decision : 22-03-2017

Acts Referred:

Companies (Court) Rules, 1959 — Rule 86
Companies Act, 1956 — Section 391, Section 392

Citation : (2017) 4 AIRBomR 415 : (2017) 201 CompCas 613

Hon'ble Judges : R.D. Dhanuka, J.

Bench : Single Bench

Advocate : Mr. Dinesh Seth, Advocate, for the Petitioner; Mr. C.K. Rajan, Advocate, for the Original Petitioner; Mr. Mehul Rathod, Advocate, for the Respondent No. 1; Mr. Mayur Khandeparkar a/w Mr. Medhavin Bhatt i/by M/s. MV Law Partners, for the Respondent No. 3

Final Decision : Dismissed

Judgement

R.D. Dhanuka, J.—By this application, the applicants seek a declaration that the respondent no.1 and its committee members or any of their constituted attorneys including Mr. Suman Chhabra are not entitled to disturb the peaceful right, title and possession of the applicant nos.2 to 6 over the 6050 sq.yards of land (being 4840 sq. yards in Khasra No.669 and 1210 sq.yards in Khasra No.668) at Village Neb Sarai and direction to take on record the copies of various documents alleged to have been executed by the respondent no.1 set out in prayer clause (b) of the company application.

2. Mr. Khandeparkar, learned counsel for the respondent no.3 who is impleaded as a party pursuant to an order dated 13th July 2013 passed by this Court raises a preliminary objection about maintainability of this company application on various grounds. This Court has accordingly heard the learned counsel for the parties only on the issue of maintainability of this company application raised by the respondent no.3. Some of the relevant facts for the purpose of deciding the

issue of maintainability of this petition raised by the respondent no.3 are as under :-

3. By orders dated 24th October 1991 and 28th November 1991, this Court sanctioned the scheme of compromise and/or arrangement under Section 391 of the Companies Act, 1956 between the respondent no.2- company and its depositors.

4. It is the case of the applicants that the objective of the said scheme was to pay off the depositors of the respondent no.2 by selling off the assets of the respondent no.2 described in paragraph 2 of the affidavit-in-support of the company application including the 6050 sq.yards of land (being 4840 sq. yards in Khasra No.669 and 1210 sq.yards in Khasra No.668) at Village Neb Sarai.

5. The Company Court appointed a Managing Committee comprising of seven members including Ex-Prothonotary and Senior Master of this Court with a direction to take various steps to implement the said scheme of compromise and/or arrangement sanctioned by this Court.

6. In so far as the property in question is concerned, the said property was permitted to be sold by the said committee by an order dated 10th August 2001 passed by this Court. It is the case of the applicants that the said committee was permitted to invite new bids for the said land. The said land was sold to the respondent no.3 who is a sole proprietor of M/s.Sukh Shanti Associates. Learned counsel for the applicants placed reliance on clause 6 of the agreement to sell entered into between the respondent no.1-committee and the respondent no.3 and would submit that under the said clause, there was an option given to the respondent no.3 for execution of conveyance of parts of the land directly in favour of his nominees through the respondent no.1- committee.

7. It is the case of the applicants that the applicant nos. 2 to 6 accordingly approached the respondent no.3 for purchasing two plots of land admeasuring 6050 sa.yards viz. Khasra Nos.668 and 669 out of land purchased by the respondent no.3 from the respondent no.1- committee.

8. It is the case of the applicants that the applicants exercised their rights under the said agreement to sell dated 2nd January 2004 between the respondent no.3 and the respondent no.1-committee and directly obtained the execution of the Irrevocable Agreement dated 13th July 2004 in respect of the said plot in favour of the applicant nos.2 to 6.

9. Learned counsel for the applicants submits that the respondent no.1-committee executed an agreement in favour of the respondent nos.2 to 6 for consideration of Rs.62.5 lakh which was paid by the applicant nos.2 to 6 to the respondent no.1 in advance. He submits that the respondent no.1 also executed various documents in favour of the applicant nos.2 to 6 in respect of the said property.

10. Learned counsel for the applicants invited my attention to the notice dated

2nd September 2013 addressed by the respondent no.1 through its advocates to the applicant for rescinding/cancelling unregistered agreement dated 13th July 2004. He submits that the said notice was issued by the respondent no.1-committee and not by the respondent no.3. He submits that the ownership of the said property vested with the respondent no.2 which properties were allowed to be sold through the respondent no.1 by the Company Court. He submits that the applicant nos.2 to 6 have paid the said consideration directly to the respondent no.1. He submits that the respondent no.3 was the confirming party to the said agreement dated 13th July 2004.

11. It is submitted by the learned counsel for the applicants that the said notice dated 2nd September 2013 issued by the respondent no.1 through its advocate was subsequently withdrawn. It is submitted by the learned counsel that under clause 7 of the agreement to sell dated 2nd January 2004 entered into between the respondent no.1-committee in favour of the respondent no.3, the respondent no.3 was entitled to nominate his nominee for the purpose of execution of the sale deed in respect of the said property or any part thereof. He submits that the respondent no.1-committee submitted various reports before the Company Court from time to time seeking various directions and placing on record various steps taken by the committee in implementation of the scheme sanctioned by this Court.

12. Learned counsel invited my attention to the completion report of the sale of the agricultural land in question submitted by the respondent no.1-committee before this Court. It is submitted that the entire agricultural land which was agreed to be sold on the terms and conditions of the agreement to sell dated 2nd January 2004 had been sold but the amount realised come to Rs.14.7 crores on the basis of the actual area of the land which was available on site. In the said report, it was recorded that sale of the said agricultural land had been completed under the agreement to sell executed and the full amount of consideration had been paid by L. B. Ltd. Depositors Managing Committee. The Managing Committee had also executed power of attorney in favour of the respondent no.3 for doing various acts, deeds and things. The respondent no.3 was also signatories to the said report annexed at page 150 of the compilation.

13. It is submitted by the learned counsel for the applicants that the names of some of the applicants mentioned in Annexure 1 to the said report were submitted by the respondent no.1-committee. Learned counsel for the applicants invited my attention to 52nd meeting of the respondent no.1-committee held on 2nd October 2013 and would submit that in the minutes of the said meeting, there is a reference to the document executed by the respondent no.1-committee dated 13th July 2004 in favour of the applicant nos.2 to 6 and other documents. He submits that it was also decided to cancel and revoke the power of attorney granted to the respondent no.3 on 22nd April 2006.

14. Learned counsel for the applicants submits that the respondent no.1-committee thereafter executed a Memorandum of Understanding with the

applicants and recorded that the respondent no.3 had alleged to have committed fraud against the applicant nos.2 to 6 and it was declared that any action taken by the respondent no.3 under the General Power of Attorney dated 22nd April 2006 against the respondent nos.2 to 6 was without any authority and declared as void ab initio. He submits that in view of the said memorandum of understanding, notice of revocation of the agreement to sell dated 13th July 2004 issued by the respondent no.1-committee was withdrawn. It is submitted that the applicant nos.2 to 6 are in possession of the said property and such possession thus cannot be disturbed.

15. In so far as the maintainability of this company application is concerned, learned counsel for the applicants placed reliance on Rule 86 of the Companies (Court) Rules, 1959 and also on Section 392 of the Companies Act, 1956 and would submit that under these provisions, the Company Court has an ample power to modify the order passed by the Company Court sanctioning the scheme of arrangement and/or compromise. He submits that any person interested can apply for directions before the Company Court under these provisions for seeking implementation of the said scheme sanctioned by this Court or for any other appropriate directions.

16. In support of this submission, learned counsel for the applicants placed reliance on the judgment of the Delhi High Court in the case of Ram Lal Anand v. Bank of Baroda (1976) 46 Comp Cas 307 (Delhi) decided on 14th May 1974 in Company Appeal No.17 of 1973 and more particularly paragraph 12 thereof. He also placed reliance on the judgment of the Rajasthan High Court in the case of Mehtab Chand Golcha v. Official Liquidator, Golcha Properties (P) Ltd. (in liquidation) (1981) 51 Comp Cas 103 (Raj) decided on 19th October 1979 in S.B.C. Application No.15 of 1979 and more particularly paragraph 13 in support of the submission that the Company Court has an ample power to issue appropriate direction under Section 392 of the Companies Act, 1956 and to supervise the carrying out of the compromise or arrangement. He submits that the Company Court has also powers to make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

17. It is submitted by the learned counsel for the applicants that the applicants have grievance and cause of action against the respondent no.1-committee. He submits that in so far as the prayer clause (a) is concerned, the said relief is prayed against the respondent no.3 also not in his individual capacity but as a constituted attorney of the respondent no.1. He submits that agreement to sell executed in favour of the applicants by the committee which was rescinded is already restored by the committee on 23rd October 2013.

18. Mr. Khandeparkar, learned counsel for the respondent no.3, on the other hand, invited my attention to the order passed by this Court on 4th December 1997 in Company Application No.898 of 1996 along with other connected matters appointing nine committee members with powers to take all decisions by

majority. He submits that the respondent no.3 was nominated as the highest bidder. He placed reliance on the agreement to sell dated 2nd January 2004 entered into between the respondent no.1-committee and the respondent no.3 in respect of the property in question. He submits that consideration agreed under the said agreement was at Rs.16.40 crores which was agreed to be paid by the respondent no.3 to the respondent no.1-committee in respect of the said property.

19. Learned counsel for the respondent no.3 invited my attention to the agreement to sell dated 13th July 2004 entered into between the respondent no.1-committee and the applicant nos.2 to 6. The respondent no.3 was the confirming party to the said agreement. He submits that under the said agreement, the applicant nos.2 to 6 had agreed to pay part of the consideration amount which was payable by the respondent no.3 to the respondent no.1 in the sum of Rs.62.50 lakh on behalf of the respondent no.3.

20. Learned counsel for the respondent no.3 invited my attention to the order passed by this Court on 17th January 2008 in Company Application No.592 of 2007 in Company Petition No.76 of 1991 which was filed by the respondent no.2 company for setting aside the agreement to sell entered into by the respondent no.1-committee in respect of the property in question. He submits that in the said order passed by this Court, it is clearly recorded that the respondent no.3 had paid full consideration to the respondent no.1-committee as far back as in November 2006 and thereafter the respondent no.3 had been put in possession of the said land, who in turn had already handed over possession of substantial part of the land to the third parties.

21. A suggestion was given by the parties before this Court to validate the transaction in favour of the respondent no.3 herein and to complete further formalities if the respondent no.3 was willing to pay deficit amount of Rs.1.25 crore inclusive of interest. The respondent no.3 agreed to pay the said deficit amount to the respondent no.1 within a period of three months from the date of the said order. This Court accordingly ordered that the respondent no.3 shall pay a further sum of Rs.1.25 crore to the respondent no.1-committee on or before 15th April 2008 and only upon such deposit of the balance amount of consideration, the respondent no.1-committee will proceed to execute the necessary documents in favour of the respondent no.3 to complete the transaction and not otherwise. The respondent no.3 has accordingly paid the full consideration to the respondent no.1-committee. The applicant nos.2 to 6 herein were the respondent nos.3 to 7 in the said company application No.592 of 2007 in which this Court passed the said order dated 17th January 2008. The applicants, however, did not appear in the said proceeding before this Court. It is submitted that the respondent no.3 had withheld some payment in view of the fact that the area agreed to be sold by the respondent no.1 to the respondent no.3 was found less than the agreed area.

22. It is submitted by the learned counsel for the respondent no.3 that on 16th

July 2008, the respondent no.1-committee, thereafter, executed three documents in favour of the respondent no.3 i.e. (i) Supplementary Agreement to sell dated 16th July 2008; (ii) Deed of Settlement dated 16th July 2008; and (iii) Special Power of Attorney in favour of the respondent no.3. He submits that in the Deed of Settlement dated 16th July 2008, it is clearly recorded that the entire consideration in respect of the property in question has already been paid by the respondent no.3 to the respondent no.1-committee. He submits that under the said Deed of Settlement, it was also agreed that all the subsequent agreements to sell or other necessary documents which shall be executed by the respondent no.3 herein in favour of all buyers upon whom the respondent no.3 had already created third party shall always deem to be accepted and duly ratified by the respondent no.1.

23. It is submitted by the learned counsel that the respondent no.3 had entered into various agreements with various nominees which were unregistered agreements. The original consideration amount was altered by the respondent no.1. The applicants, however, did not pay the differential amount though demanded by the respondent no.3. He submits that on 2nd September 2013, the respondent no.3 has accordingly terminated the agreement entered into with the applicant nos. 2 to 6. He submits that the said notice of termination dated 2nd September 2013 has not been challenged by the applicants till date.

24. It is submitted that on 9th November 2013, the respondent no.3 through his advocate's notice to the committee clarified that the legal notice dated 2nd September 2013 issued by M/s. Daksh Law Firm exceeded the instructions of the respondent no.3 and that he had already recused the said firm from representing him in any forum or Court of law. By the said notice, it was clarified that notice dated 2nd September 2013 issued by M/s. Daksh Law Firm was on behalf of the respondent no.3 and not by the respondent no.1-committee.

25. It is submitted by the learned counsel for the respondent no.3 that functions and powers of the Company Court are prescribed under the provisions of the Companies Act, 1956 and the Companies Act, 2013. He submits that no such reliefs as claimed by the applicants can be granted by the Company Court. He invited my attention to the prayers in the company application and submits that in so far as the prayer clause (a) which is for a declaration that the respondent no.1- committee or any other their constituted attorneys including the respondent no.3 herein are not entitled to disturb the alleged peaceful right, title and possession of the applicant nos.2 to 6 is concerned, the said relief itself is a substantive relief which cannot be granted in this company application in a disposed petition which was filed under Sections 391 to 393 of the Companies Act, 1956. He submits that the applicants seek determination of rival claims of the applicants and the respondent no.3 in respect of the property in question which cannot be decided by the Company Court.

26. In so far as the prayer clause (b) by which the applicants have prayed for an order to take the copies of various documents alleged to have been executed by

the respondent no.1 on record is concerned, it is submitted that some of those documents are disputed by the respondent no.3 and those documents which are alleged to have been executed in favour of the applicants unilaterally are not binding upon the respondent no.3. No such documents can be taken on record in this company application. In support of the aforesaid submission, learned counsel for the respondent no.3 placed reliance on the judgment of the Kerala High Court in the case of Rajendra Menon v. Cochin Stock Exchange Ltd., reported in (1990) 69 Comp Cas 256 and in particular paragraphs 7 and 8 thereof. He also placed reliance on the judgment of the Gujarat High Court in the case of Agarwal Mittal Concast Pvt. Ltd. v. Official Liquidator of M/s.Jalan Forgings Ltd. (in liquidation) and Ors., reported in (2011) 166 Comp Cas 465 and in particular paragraphs 1 and 25 thereof. He submits that there cannot be adjudication of a civil dispute that has been arisen between the contesting parties after one of the parties has become full and absolute owner of the property, which cannot be decided under the provisions of the Companies Act. He submits that the official liquidator or the company Court is not concerned with the dispute between the purchaser at Court auction and the seller. It is submitted that title in respect of the property in question in favour of the respondent no.3 has already been conferred pursuant to an order passed by this Court on 17th January 2008 upon payment of the entire consideration. He submits that even the differential amount is already paid pursuant to the said order passed by this Court.

27. In so far as the reliance placed on Rule 86 of the Companies (Court) Rules, 1959 by the applicants is concerned, it is submitted that Rule 86 would apply only if the application of this nature itself is maintainable. In support of this submission, learned counsel placed reliance on the judgment of this Court in the case of Kishore Y. Patel and ors. v. Patel Engineering Co. Ltd. and Ors., reported in 1993 Mh.L.J. 307 and in particular paragraph 11 thereof. He also placed reliance on the judgment of Supreme Court in the case of S.K. Gupta and Anr. v. K.P. Jain and Anr., reported in (1979) 3 SCC 54 and in particular paragraph 13 thereof. It is submitted that since the company scheme is already implemented and all properties of the respondent no.2-company are already sold and since the applicants are not seeking any modification of the sanctioned scheme in this company application, this Court cannot grant any such declarations as prayed by the applicants which reliefs do not relate to the scheme sanctioned by this Court. He submits that the Company Court in this application can exercise the jurisdiction only if (i) relief relates to the scheme sanctioned by the Company Court; (ii) relief relates to the companies incorporated under the provisions of the Companies Act, 1956; (iii) if the application is made by a party interested in the affairs of the Company or in the scheme of the company; and (iv) if the application is made for the purpose of carrying out the scheme of compromise or arrangement of the company.

28. It is submitted that none of the prayers in the company application do satisfy the aforesaid criteria. It is submitted that the applicants are indirectly seeking that the termination of the agreement entered into between the applicants and

the respondent no.3 be set aside by seeking such reliefs which cannot be granted by this Court. He submits that the applicants were not the parties to the scheme and are third parties. Claim of the possession made by the applicants is disputed by the respondent no.3. It is submitted by the learned counsel that there is no provision for recording of compromise or to take the documents unilaterally executed by the parties on record. No such reliefs can be granted in law.

29. Learned counsel for the applicants in rejoinder distinguished the judgment of the Supreme Court in the case of S.K. Gupta and Anr. v. K.P. Jain and Anr. (1979) 49 Comp Cas 342 (SC)(supra) and placed reliance on paragraph 14 thereof and would submit that Section 392 of the Companies Act, 1956 can be invoked by any person interested in the affairs of the company. He submits that Supreme Court has approved the judgment of the Gujarat High Court in the case of Mansukhlal v. M.V. Shah, reported in (1976) 46 Com Cas 279 which has held that the Parliament did not want the court to be functus officio as soon as the scheme of compromise and arrangement is sanctioned by it. The court has a continuing supervision over the implementation of compromise and arrangement.

30. In so far as the other judgments relied upon by Mr. Khandeparkar, learned counsel for the respondent no.3 is concerned, it is submitted by the learned counsel for the applicants that none of those judgments has dealt with the situation where the Company Court had sanctioned scheme and are thus clearly distinguishable in the facts of this case. He submits that only the Company Court can decide the rival claims of the parties under the scheme sanctioned by the Company Court and not by a Civil Court.

Reasons and Conclusions :-

31. There is no dispute that this Court had sanctioned the scheme of compromise/arrangement under Section 391 of the Companies Act, 1956 between the respondent no.2 and its depositors by orders dated 24th October 1991 and 28th November 1991. This Court had also appointed a committee i.e. the respondent no.1 for the purpose of implementing the said scheme of compromise/arrangement. The respondent no.1 had accordingly taken various steps to implement the said scheme of compromise/arrangement and had submitted various reports to the Company Court from time to time. The respondent no.1 had sold the immovable property in question including several other immovable properties of the respondent no.2. It is not in dispute that the respondent no.3 was one of the bidders for purchase of one of the properties and was successful in the said bid which property was the subject matter of the said proceedings.

32. By an order dated 17th January 2008, this Court clearly recorded that the respondent no.3 had paid full consideration to the respondent no.1-committee as far back as in November 2006 and thereafter the respondent no.3 had been put in possession of the said land. It is not in dispute that the respondent no.3 thereafter paid deficit amount of Rs.1.25 crore inclusive of interest in respect of

the property in question to the respondent no.1. It is the case of the respondent no.3 that the applicants did not agree to pay the deficit amount.

33. It is not in dispute that the respondent no.3 has thereafter terminated the agreement entered into between the applicant nos.2 to 6 and the respondent no.3 to which the respondent no.1 was also a party. It is not in dispute that the applicant nos.2 to 6 have not challenged the said termination notice issued by the respondent no.3 till date. It is however the case of the applicants that the termination of the agreement between the applicant nos.2 to 6, the respondent no.1 and the respondent no.3 has been withdrawn by the respondent no.1 committee now and they claim to be in possession of the property in question. The respondent no.1 committee has already sold the property of the respondent no.2 under the said sanctioned scheme. Pursuant to the order passed by this Court on 17th January 2008, the respondent no.1 committee had already executed three documents in favour of the respondent no.3 i.e. (i) Supplementary Agreement to sell dated 16th July 2008; (ii) Deed of Settlement dated 16th July 2008; and (iii) Special Power of Attorney in favour of the respondent no.3. In the said Deed of Settlement dated 16th July 2008, it is clearly recorded that the entire consideration in respect of the property in question has already been paid by the respondent no.3 to the respondent no.1-committee.

34. A perusal of the averments made in the company application filed by the applicants for various reliefs and reply filed by the respondent no.3 indicates that both the parties are claiming their rival claims of ownership in respect of the property in question. The applicants have not challenged the documents executed by the respondent no.1 in favour of the respondent no.3 pursuant to the order passed by this Court. In my view, the rival claims of ownership inter se between the parties post sale of the property which originally belonged to the respondent no.2-company cannot be decided in this company application by the Company Court. The scheme of compromise has been implemented in so far as the sale of property by the respondent no.1 committee appointed by this Court is concerned.

35. The only provisions relied upon by the learned counsel for the applicants for filing this company application for various directions and injunctive reliefs are Section 392 of the Companies Act, 1956 and the Rule 86 of the Companies (Court) Rules, 1959.

36. In my view, since in this company application, the applicants are inter alia praying for an injunction in respect of the property in question against the parties on the premise that there is a dispute about title in respect of the property in question between the applicants and the respondent no.3 is not maintainable before the Company Court, Rule 86 of the Companies (Court) Rules, 1959 is not attracted. Reliance placed by the learned counsel for the applicants on Rule 86 of the Companies (Court) Rules, 1959 is totally misplaced. In my view, the Companies Act, 1956 being a self-contained code, all the

proceedings which can be entertained by the Company Court are specifically prescribed therein. The Company Court cannot entertain any other proceedings which are not prescribed under the provisions of the Companies Act, 1956 or the Companies Act, 2013. This company application inter alia praying for an injunction and for taking various documents on record is not maintainable and is beyond the jurisdiction of this Court.

37. Kerala High Court in the case of Rajendra Menon v. Cochin Stock Exchange Ltd.(supra) has held that only such matters specified in the Companies Act, 1956 or in the Rules can be dealt with by the Company Court. The jurisdiction of ordinary Civil Court can be regarded as impliedly barred in respect of those matters specified in the Act to be dealt with by the Company Court. In my view, the judgment of the Kerala High Court squarely applies to the facts of this case. I am in agreement with the views expressed by the Kerala High Court.

38. Gujarat High Court in the case of Agarwal Mittal Concast Pvt. Ltd. (supra) has held that no claim or question arises for adjudication under the provisions of the Companies Act. The Company Court or the official liquidator is in no way concerned with the dispute between the purchaser at Court auction and the seller of electricity which dispute has arisen after completed sale and after the property in the premises has passed to the purchaser. In the facts of this case, it is clear that the title in respect of the property in question was conferred pursuant to an order passed by this Court upon payment of the entire consideration by the respondent no.3 in respect of the property in question. Internal dispute between the respondent no.3 on one hand and the applicants on the other hand being a dispute of civil nature and has arisen after the sale of the property in question in favour of the respondent no.3 is confirmed by the Court, such subsequent dispute between the purchaser of the property and his nominee thus cannot be adjudicated upon by the Company Court. In my view, the principles in the judgment of the Gujarat High Court in the case of Agarwal Mittal Concast Pvt. Ltd. (supra) applies to the facts of this case. I am in agreement with the views expressed by the Gujarat High Court.

39. This Court in the case of Kishore Y. Patel and ors. v. Patel Engineering Co. Ltd. and Ors. (supra) has held that while entertaining an application made before the Company Court, the Court is required to address itself to the question as to under which substantive provisions of the Companies Act, I of 1956, the application is made by the applicant. If the application made is found maintainable under some specific substantive provisions of the Act, then alone Rule 9 of the Rules can be pressed into service and not otherwise. It is held that since the application made by the plaintiff is not maintainable under any of the provisions of the Companies Act, I of 1956. Rule 9 of the Companies (Court) Rules cannot be invoked. The principles laid by the said judgment in the case of Kishore Y. Patel and ors. v. Patel Engineering Co. Ltd. and Ors. (supra) applies to this case. In that judgment, this Court has refused to exercise inherent power of the Court. I am respectfully bound by the said judgment.

40. Supreme Court in the case of S.K.Gupta and Anr. v. K.P. Jain and Anr. (supra) has held that the purpose underlying Section 392 is to provide for effective working of the compromise and/or arrangement once sanctioned and over which the Court must exercise continuous supervision and if over a period there may arise obstacles, difficulties or impediments, to remove them, again, not for any other purpose but for the proper working of the compromise and/or arrangement. It is held that unlike Section 391, Section 392 does not specify that a member or creditor or in the case of a company being wound up, its liquidator, can move the Court under Section 392. On the other hand, the legislature uses the expression "any person interested in the affairs of the company" which has wider denotation than a member or creditor or liquidator of a company. It is held that the Court can suo motu act to take an action as contemplated under Section 392(1) or it may act on an application of any person interested in the company's affairs order its winding up.

41. Learned counsel for the applicants and the respondent no.3 relied upon different paragraphs of the said judgment of the Supreme Court. In my view, rival claims made by the applicant nos.2 to 6 on one hand and the respondent no.3, on the other hand, in respect of the property in question and the applicants seeking an injunction against the respondent no.1 and the respondent no.3 in whatever capacity may not come within the purview of the principles laid down by the Supreme Court in the case of S.K. Gupta and Anr. v. K.P. Jain and Anr. (supra). The reliefs sought by the applicants are substantive reliefs for determination of title of the nominee of the original purchaser and not for implementation of scheme of compromise and/or arrangement.

42. A perusal of the said judgment makes it clear that the purpose underlying Section 392 is to provide for effective working of the compromise and/or arrangement once sanctioned. In my view, the Court can exercise continuous supervision till such scheme is implemented. If there are obstacles, difficulties or impediments during implementation of such scheme, the Court can exercise such powers under Section 392(1) and not for any other purpose. The dispute which is the subject matter of this company application has arisen between the applicants and the respondent no.3 in respect of the title of the property in question much after the order passed by this Court on 17th January 2008 holding that the respondent no.3 had made the entire payment in respect of the property in question and much after the respondent no.1 executing various documents by title in favour of the respondent no.3. In my view, the judgment of the Supreme Court in the case of S.K. Gupta and Anr. v. K.P. Jain and Anr. (supra) is thus clearly distinguishable in the facts of this case and would not assist the case of the applicants.

43. A perusal of the record clearly indicates that the applicants have not challenged the termination of the agreement effected by the respondent no.3 and also the documents executed by the respondent no.1 in favour of the respondent no.3 such as Supplementary Agreement to sell dated 16th July 2008,

Deed of Settlement dated 16th July 2008 and Special Power of Attorney which was executed pursuant to the order passed by this Court on 17th January 2008. The applicants did not challenge the said order dated 17th January 2008 passed by this Court in Company Application No.592 of 2007 in Company Petition No.76 of 1991 though were parties to the said proceedings. The said order dated 17th January 2008 passed by this Court has thus attained finality. In my view, the applicants cannot be permitted to seek review of the said order dated 17th January 2008 passed by this Court which has attained finality by seeking such direction as prayed in the company application. The reliefs that cannot be granted directly by the Court cannot be granted indirectly.

44. In so far as the prayer clause (b) in the company application is concerned, some of the documents referred to in the said prayer are unilaterally executed by the applicants or in favour of the applicants by a third party to which the respondent no.3 is not a party or signatory thereto. There is no provision under the Companies Act, 1956 for taking such documents on record in company application in support of the rival claims made by the applicants against the respondent no.3. The said prayer is also thus without jurisdiction and is not maintainable. Admittedly, the applicants were not parties to the scheme sanctioned by this Court. The respondent no.3 has disputed the claim of possession made by the applicants in these proceedings. This Court thus cannot adjudicate upon the claims of the applicants in these proceedings which were for sanction of the scheme of compromise and/or arrangement under the Companies Act, 1956. In my view, the company application is thus not maintainable.

45. In my view, the Company Court cannot exercise jurisdiction in this case also for the reasons that (a) reliefs sought do not relate to the scheme sanctioned by this Court but seeks declaration of civil rights i.e. injunction against the auction purchaser of the property and indirectly seeking determination of title of the applicants; (b) reliefs relate to the property purchased by the respondent no.3 and does not relate to the company incorporated under the provisions of the Companies Act, 1956; (c) the applicants are not interested in the affairs of the respondent no.2 company or in the scheme of the company; and (d) the application is not made for the purposes of carrying out the scheme of compromise and/or arrangement of the respondent no.2 company.

46. I therefore pass the following order :-

- (i) Company Application No.85 of 2014 is dismissed as not maintainable;
- (ii) Observations made by this Court in this order are only for the purpose of deciding the issue of maintainability raised by the respondent no.3 in these proceedings;
- (iii) There shall be no order as to costs.