

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 31ST DAY OF MAY, 2012

BEFORE

THE HON'BLE MR. JUSTICE A.S. BOPANNA

COMPANY APPLICATION NO.1425 OF 2011

AND

COMPANY APPLICATION NO.370 OF 2012

IN

COMPANY PETITION NO.109 OF 2007

C.A. NO.1425/2011:

Between :

Hegde & Golay Limited,
Registered Office at Shreeshyala,
Kanakapura Road,
Bangalore - 560 002
Represented by its Director
Smt. Raahni Hegde Gopi

... Applicant

(By Sri. Uday Holla, Senior Counsel
for Shri. Saji P. John, Advs.,)

And

1. Karnataka Industrial Area Development Board,
14/3, 2nd Floor, RP Building,
Nrupathunga Road,

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Bangalore - 560 001
 Represented by
 The Executive Member & CEO

2. The Official Liquidator
 High Court of Karnataka,
 Office at : 12th Floor, Raheja Towers,
 M.G. Road,
 Bangalore - 560 001 ... Respondents

(Shri. K.S. Mahadevan &
 Shri. Jayaram for OL
 Shri. P.V. Chandrashekar, Adv. for KIADE
 Shri. Gowtham Dev C. Ullal for ROC
 Shri. K. Prakash, Adv. for SBI)

C.A. 370/2012 :

Between :

Hegde & Golay Limited,
 Registered Office at Shreeshyala,
 Kanakapura Road,
 Bangalore - 560 002
 Represented by its Director
 Smt. Rashmi Hegde Gopi ... Applicant

(By Sri. Uday Holla, Senior Counsel
 for Shri. Saji P. John, Advs.,)

And

Assistant Executive Engineer,
 Uttarahalli Division,
 Bruhat Bengaluru Mahanagar Palike,
 Bangalore ... Respondent

(Shri. Gowtham Dev C. Ullal for ROC
Shri. K. Prakash, Adv. for SBI)

C.A. No.1425/2011 is filed under Section - 392(1) of the Companies Act, 1956, praying that for the reasons stated therein this Hon'ble Court may direct the first respondent to execute the sale deed in respect of the application schedule properties in favour of the applicant, etc.

C.A. 370/2012 is filed under Section - 392(1) of the Companies Act, 1956, praying to direct the respondent its representative, officials, associates assistants not to interfere with the peaceful possession of the applicant in respect of the Schedule Properties without the leave of this Court, etc.

These applications coming on for Orders, this day, the court made the following:

ORDER

C.A. No.1425/2011:

The instant application is filed by the applicant praying that the first respondent - KIADB be directed to execute the sale deed in respect of the application schedule property. The property referred to in the application is the land measuring 7 acres 1 gunta formed out of survey no.81/1, 81/2A, 81/2B, 82/4A, 82/2 part situated at Doddakallasandra Village, Uttarahalli Hobli,

Bangalore South Taluk. The said land had been allotted in favour of the applicant by the KIADB. Subsequently, the applicant-company had experienced financial difficulties and as such, winding up petition was filed before this court in C.O.P. No.8/1980. This Court had ordered winding up by its order dated 26.7.1985. Subsequently, a scheme of arrangement was propounded as at Annexure - D to the application. The scheme has been approved by this Court by an order dated 16.09.2009 (Annexure - C). One of the terms in the scheme being that the said land allotted by the KIADB be transferred to the applicant-company, the applicant is before this Court since the KIADB has not executed the sale deed in that regard.

2. The first respondent - KIADB have filed their objection statement and opposed the application.

3. Heard Shri.Udaya Holla, learned Senior Counsel representing Shri. Saji P. John, learned counsel for the

applicant, Shri. P.V. Chandra Shekar, learned counsel for the first respondent and Shri.K.S. Mahadevan, learned counsel for the second respondent – Official Liquidator and perused the application papers.

4. The sum and substance of the objection raised to the application as contended on behalf of the first respondent is that, the said property measuring 7 acres 1 gunta was no doubt allotted to the applicant-company by a allotment letter dated 19.05.1972 (Annexure - A). But, in the absence of there being a lease-cum-sale agreement and the terms of lease being complied with and the period of lease also having been lapsed, the question of executing the sale deed does not arise. As such, it is contended that the prayer made in the application to execute the sale deed cannot be granted in the light of the said objection statement.

5. I have perused the relevant clause contained in the scheme of arrangement, which was approved by this

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Court (Annexure - D), based on which the present relief is sought. Clause-11 of the said scheme, reads as follows:

"11. Upon the Scheme becoming effective, the Company/Promoters shall pay the dues of the KIADB and the KIADB shall execute sale deed in favour of the Company in respect of the land allotted to the company."

6. A perusal of the said clause would clearly indicate that on the scheme becoming effective, the applicant-company would have to pay the dues to the KIADB and the KIADB shall execute the sale deed in favour of the company. The order dated 16.09.2009 (Annexure - C), passed by this Court in Company Petition No.109/2007 i.e., the petition wherein the scheme of arrangement was considered for approval, does not in anyway alter the said clause, which is contained in the said scheme. The scheme, as proposed, has been approved by this Court, wherein the nature of payments to be made by the applicant-company to the creditors is also clearly indicated. Therefore, the scheme being

composite with regard to the payments to be made by the applicant-company to the creditors and in that regard, the revival of the company on the land which was possessed by the company for its further activities was envisaged. It is in that context the scheme has been approved by this Court.

7. It is relevant to notice that in the said petition, which was filed under Section - 391 to 394 of the Companies Act, the first respondent herein namely, the KIADB was impleaded as second respondent. Therefore, if at that stage the second respondent therein had any objection to this scheme of arrangement, insofar as the manner of conveying the property to the applicant-company by the KIADB, it was for the second respondent to raise such contention at that juncture so that the same would have enabled this Court to consider that aspect of the matter in the light of the contention which had been put forth with regard to the approval or



otherwise of the scheme. In the absence of such objection, when the court has considered and approved the scheme in the form in which it had been brought before this Court, and that too in the presence of KIADB, at this juncture all that is necessary is to see that the scheme is implemented as approved by this Court. As provided in the scheme, the KIADB would certainly be entitled to seek payment of its dues before the sale deed is executed.

8. With regard to the legal position relating to the validity and statutory form of the scheme, which is approved by the Court and the manner in which it requires to be implemented without putting any spokes, the same need not be adverted to in detail except to notice the legal position which has been enunciated by the Hon'ble Supreme Court as pointed out by learned Senior Counsel appearing for the applicant by citing the decisions in the case of M/s. J.K. (Bombay) Private

Limited vs. M/s. New Kaiser-I-Hind Spinning and Weaving Co. Ltd., and Others reported in AIR 1970 SC 1041 and in the case of Ashok Paper Mills Kamgar Union vs. Union of India and Others reported in (1997) 3 Comp LJ 55 (SC) and also the decision of the Gujarath High Court in the case of Divya Vasudhara Financiers Limited vs. K.N. Samant And Others reported in 1990 (69) COC 646.

9. Apart from the above, the contention on behalf of the respondent with regard to non-execution of the lease-cum-sale agreement also requires to be considered by this Court. In this regard, apart from the fact that it was not raised earlier, a perusal of the allotment letter as at Annexure - A, would indicate that the allotment was made as far back as on 19.05.1972. Though it is contended that no lease-cum-sale agreement has been executed, the fact that the applicant-company had been put in physical possession of the property as early as on

23.08.1972, is evident from the Possession Certificate (Annexure - B). This would indicate that the applicant-company had enjoyed possession of the property from the year 1972 till the date this Court had intervened by passing the order of winding up in the year 1985. Thereafter the official liquidator had stepped into the shoes and continued in possession. Therefore, the company is deemed to have continued in possession of the property once the scheme was approved by this Court, which would span a period of nearly four decades. Hence, the mere contention that the lease-cum-sale agreement was not executed cannot be accepted at this stage, since the period, which has lapsed, is much beyond the period that would have been indicated as lease period in a normal course if the agreement had been executed.

10. Be that as it may, in a circumstance where after such long lapse of time, this Court while considering

the scheme accepted the position as indicated in the scheme that a sale deed would be executed by the KIADB by recovering the amount that is due and more particularly, in a situation where the KIADB has not produced any material to indicate that the allotment of lease had been cancelled for any violation exercising the clause which is indicated in Annexure - A, I am of the opinion that the KIADB in the present facts, when it was a party to the earlier proceedings where the approval of the scheme was considered, cannot object to the execution of the sale deed, which is accepted by this Court by approval of the scheme. Therefore, if the clause in the scheme extracted above is perused, at this juncture, all that is necessary for the applicant to comply, is to pay the amount, which is claimed as due by the KIADB.

11. In that regard, while taking up the application for consideration, this Court had permitted the counsel

for the KIADB to secure from the KIADB, the information regarding the amount that is required to be paid by the applicant. At this juncture, the learned counsel for the KIADB has indicated to this Court that a sum of Rs.3,07,651/- is payable. Hence, if the said sum is paid by the applicant to KIADB, the KIADB would be bound to execute the sale deed in favour of the applicant. In that view, the prayer made in the application is to be granted.

12. Accordingly, the first respondent - KIADB is directed to receive the sum of Rs.3,07,651/- from the applicant-company, execute and register the sale deed in favour of the applicant-company in respect of the application schedule property. The said amount shall be deposited by the applicant with the first respondent-KIADB within a period of two weeks from the date of receipt of a copy of this order. The KIADB shall thereafter execute and secure registration of the sale deed as expeditiously as possible, but not later than four weeks

from the date on which the amount is deposited with the KIADB. In terms of the above, the application in C.A. No.1425/2011 is allowed.

C.A.370/2012 :

The learned Senior Counsel appearing on behalf of the applicant would state that the application in C.A. No.370/2012 does not survive for consideration at present and it could be disposed of with liberty to file a fresh application if the need arises.

The submission is placed on record. The application is disposed of accordingly.

Sd/-
JUDGE

JJ