

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

COURT – IV

30.

**IA-5769(MB)2023 IN
C.P. (IB)/912(MB)2022**

CORAM:

MS. ANU JAGMOHAN SINGH
MEMBER (Technical)

SHRI KISHORE VEMULAPALLI
MEMBER (Judicial)

ORDER SHEET OF THE HEARING HELD ON **24.04.2024**

NAME OF THE PARTIES:

Hdfc Bank Limited

Vs.

Eurolife Healthcare Private Limited

SECTION: 7, 60(5) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016.

ORDER

IA-5769(MB)2023

1. Adv. Mutahhar Khan a/w Adv. Mihir Beradia, Ms. Kamini Pansare i/b VM LEGAL, Ld. Counsel for the Applicants present. Mr. Rohit Gupta a/w Adv. Ashutosh Agarwal i/b IC Legal, Ld. Counsel for the Liquidator/Respondent present.
2. This is an application filed by the Applicant, Wockhardt Limited & Anr. on 13.12.2023 seeking following reliefs:
 - a) *“This Hon’ble Tribunal be pleased to pass an order and exclude the Premises a portion of approximately 13,000 sq.ft. of the Larger Property along with the structures standing thereon being the “Wockhardt’s Cephalosporin Facility” and a super depot (including a regrind building) i.e. the Waluj Facility from the present liquidation proceedings ongoing in respect of the Corporate Debtor;*
 - b) *This Hon’ble Tribunal be pleased to pass an order of permanent injunction and restrain the Resolution Professional/Official Liquidator from taking*

any steps in respect of the premises a portion of approximately 13,000 sq.ft. of the Larger Property along with the structures standing thereon being the “Wockhardt’s Cephalosporin Facility” and a super depot (including a regrind building) i.e. Waluj facility against the interests of the Applicant”

3. Ld. Counsel for the Applicants submitted that on 08.09.1998, Maharashtra Industrial Development Corporation (hereinafter referred to as ‘MIDC’) and Applicant No.2 executed a lease deed by virtue of which MIDC assigned the leasehold rights in respect of Plot No.B-15/2 in Waluj Industrial Estate, Waluj admeasuring approximately 64,925 sq.mts. on the terms and conditions set out in the said lease deed. On 06.03.2002, Baxter (India) Private Limited (Baxter) and the Applicant No.2 executed a Business Transfer Agreement (BTA) by virtue of which Applicants agreed to transfer the business including rights in respect of the Larger Property in favour of Baxter on the terms set out in the BTA and executed a Deed of Assignment transferring the leasehold rights in respect of the Larger Property in favour of Baxter.

3.1. Ld. Counsel for the Applicants further stated that a facility operated by the Applicant No.2 termed as “Wockhardt’s Cephalosporin Facility” and a super depot (including a regrind building) (Waluj Facility) standing on a portion of approximately 13,000 sq.ft. of the said larger property (Premises) did not form part of the BTA. Thus, the Premises was not the part of Business Transfer and was in possession and leasehold rights of Applicants.

3.2. Baxter agreed to sub-let the Premises in favour of Applicants on the terms agreed between them. Accordingly, on 17.07.2002, a Sub-Letting Agreement was executed *inter alia* recording the agreed terms. The said Sub-letting Agreement was duly submitted with MIDC.

- 3.3. On 13.10.2016 Baxter and the CD (Eurolife Healthcare Private Limited) executed a business transferred agreement by which Baxter transferred its business and also its rights in the larger property in favour of the Corporate Debtor.
- 3.4. Subsequently, vide MOU dated 25.11.2016, the Applicants, Baxter and the Corporate Debtor executed MOU whereby it was agreed that Corporate Debtor and the Applicants shall execute a separate sub lease agreement for the premises. Accordingly, MOU dated 29.09.2017 was executed between the Applicants and the Corporate Debtor whereby the Corporate Debtor agreed to sub let the premises in favour of the Applicants and permitted the Applicant to continue to operate its Waluj facility on the said premises on payment of annual rent.
- 3.5. The applicants submit that the Sub-Letting agreement dated 29.09.2017 is valid, subsisting and binding and continuous of bind the Resolution Professional and hence this petition seeking orders from this Bench to exclude the said premises from the estate of the Corporate Debtor and that the said agreement grant sub lease of the premises in favour of the applicants on terms set out therein.
- 3.6. The Applicants submit they have complied with all the terms of the SLA and that non-payment of sub-letting charges to MIDC was on account of failure of Corporate Debtor to raise a demand on the Applicant.
4. Ld. Counsel for the Liquidator stated that the said land belongs to the Corporate Debtor by virtue of assignment Deed dated 27.03.2018 wherein the assignor i.e. Baxter has assigned the Waluj lease deed for parcel of land admeasuring 64925 sq. mtr. in the Waluj Industrial Area to the Corporate Debtor. That the Registered and relevant title documents including

assignment deed dated 27.2018 shows that the lease from MIDC and the right title and interest in the said land belong to the Corporate Debtor and that this was done with the permission of the MIDC, thus the said land belongs to the Corporate Debtor and the same thus from the part of the Liquidation assets. The Counsel for the Liquidator further submitted that it is well settled law that no right, title or interest can be conferred with respect to an immovable property without a registered document, as per Section 17 and 49 of the Registration Act, 1908 and Section 107 of the Transfer of Property Act, 1882.

5. The Liquidator submits that the MOU dated November, 2016 states that *“Eurolife agrees that after the Eurolife-Assignment, Eurolife shall assign its leasehold rights to the Sub Leased land to Wockhardt such that Wockhardt becomes the direct lessee of the Sub Leased land with MIDC as the lessor, subject to the following conditions.....”*. It is submitted that the MOU listed out four conditions to be fulfilled prior to assignment of lease hold rights to the Applicants. It is submitted that the Applicant neither complied with nor shown any steps taken by it for compliance of the aforesaid obligations. It is further submitted that the Applicant seeks to contend that the said land was agreed to be assigned to it without any consideration and any agreement without consideration is void under the law as per Section 25 of the Contract Act.
6. Heard Ld. Counsel for the parties and perused the material available on record.
7. This Bench takes note of the Deed of Assignment dated 27.03.2018 between Baxter (assignor) and Eurolife Healthcare Private Limited (assignee) which states as under:

“A. Wockhardt Lifesciences Limited and the Assignor herein entered into a business transfer agreement dated March 06, 2002. In furtherance to the said business transfer agreement, Wockhardt Lifesciences Limited Assigned the following lease deed to the Assignor by an under a Deed of Assignment dated July 17, 2002;

The Lease deed dated October 8, 1998 executed by the Maharashtra Industrial Development Corporate (“MIDC”) in favour of Wokhardt Limited to grant lease hold rights on all the peace and parcel of land known as Plot No.B15/2 admeasuring 64925 square meter (approximately) in the Waluj Industrial Area.....

D. MIDC has granted a consent to assign the Waluj Lease deed to the Assignee vide letter MIDC/RO (null)/WLJ/LMS-120/1369 dated March, 9 2017.....

Now Therefore this Deed of Assignment witnesseth as under:

1.Assignment

1.1 The Assignor hereby assigning the Waluj Lease Deed to the Assignee

1.2 Under the BTA, the Assignee has agreed to acquire from the Assinor, certain business including asset on ‘as is where is bais, for a lump sum consideration without value being assigned to individual asset and liabilities.

1.3 The parties have allocated Rs.14,27,39,763/- to this deed of assignment as value of the Waluj property, solely for calculation and payment of stamp duty, registration charges and other similar taxes and fee, which amount has been paid by the Assignee to the Assignor as part of the lump sum consideration under the BTA.”

8. The Bench is of the considered view that the above-mentioned clauses of the assignment deed dated 27.03.2018 clearly establishes the absolute right of the Corporate Debtor over the said property and therefore it is part of the liquidation estate. The prayer sought by the Applicants to exclude area of 13000 sq. ft. from the liquidation estate is without merits in view of the assignment deed transferring the entire land of 64925 sq. mtr. to the assignee i.e. the Corporate Debtor in this case. As the Applicants have failed to establish their right over the said property, the prayer sought for by the Applicant cannot be granted. Accordingly, IA-5769(MB)2023 is devoid on merits and **dismissed**.

Sd/-
ANU JAGMOHAN SINGH
Member (Technical)

Sd/-
KISHORE VEMULAPALLI
Member (Judicial)