

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
JCM No. 01 of 1989

Date	Order with signature of Judge
------	-------------------------------

For hearing of CMA No.468/2021

24.10.2022

Mr. K.A. Wahab, Advocate for the applicant.

Mr. Obaid ur Rehman, Advocate for the objector a/w Objector Sikandar Abdul Karim.

Mr. Abdul Shakoor, Advocate for the bidder.

Mr. M. Fahim Zia, Advocate for the Intervener.

Mr. Abdul Khaliq, Advocate for the applicant.

Mr. Shahid Ali Ansari, Advocate holding brief for Mr. Mushtaq A. Memon, Advocate for the Official Liquidator.

Dr. Ch. Muhammad Waseem, Official Assignee.

Mr. Muhammad Tayyab, Responent No.3 present in person.

This application is filed by one Sikander Karim (“objector”) seeking restraint order against the Official Liquidator from auctioning off the property bearing No.B-20/A, SITE, Karachi, measuring 1.00 acre (subject property). The objector has claimed that owner of the subject property named Muhammad Tayyab executed a registered Power of Attorney dated 17.08.1998 coupled with an Agreement of Sale dated 16.08.1998 in his favour. Learned counsel for the objector has averred that initially the subject property was handed over to the objector as security through an agreement dated 10.08.1988 while later on, through an Addendum dated 13.08.1988 the subject property was sold to the objector. He has further stated that in the instant proceedings, when the companies came in liquidation and the Official Liquidator published a notice for the sale of the subject property in August, 1996 claiming the subject property was an asset of the company under liquidation, the objector asserted his

ownership through letter dated 10.08.1996 of his counsel to the Official Liquidator urging for the withdrawal of the sale notice. He referred to order dated 10.10.1997 whereby the Joint Liquidator was required to conduct an enquiry and submit a report. He states that no report was filed by the Joint Liquidator, whereafter the Official Liquidator filed an unauthorized reference bearing No.145/2021 seeking sale of the subject property and later on “illegally” invited offers for the sale through publication in the daily Dawn of 13.11.2021, and that the objector thereafter filed Suit bearing No. 2339 of 2021 with an application seeking stay of the auction proceedings, when vide order dated 13.11.2021, his said application was dismissed with the direction that he may approach the learned company judge for the relief sought. Thereafter this application is filed by the objector seeking stay of the auction proceedings, in these execution proceedings.

2. The Official Liquidator filed his reply and has referred that the subject property has been declared by the Ex-Director of the company in the “Statement of Affairs” as one of the assets of the company under liquidation, resultantly he took over possession thereof on 17.02.1990, he stated that at the said premises, at the time of taking over of the possession, iron scrap was lying which was released with permission of this Court on 14.03.1990 and the Official Liquidator appointed 2 chowkidars on 17.02.1990 and their salaries are being paid by him till date. He then referred to order dated 22.01.1995 whereby he was allowed to sell assets of the company, when on 08.08.1995 and 26.07.1996 the Official Liquidator hosted repeated auctions for the subject property. He admitted receiving of

a letter from an advocate on behalf of the objector in the year 1996 whereby the Official Liquidator was informed that the subject property was allegedly owned by the objector as such the property was requested to be excluded from the list of assets of the company. The Official Liquidator has pointed out that the transaction relied upon by the objector is fake and collusive as the recorded owner of the subject property was the Managing Director of M/s. T.J. Ibrahim & Company who admitted that the subject property was purchased from the funds of the company in liquidation, also that no amount has been stated as sale consideration by the objector and neither he ever deposited any sums in the account of the company in liquidation. He also stated that in response to the 3rd auction scheduled on 25.03.1997, the objector filed the instant CMA to exclude the subject property, whereas vide order dated 16.04.1997, this court has directed the Joint Liquidator to conduct enquiry as to the claim of objector and to submit a report. On the report of the Joint Liquidator, this court vide order dated 08.05.2014 directed the Official Assignee to release an amount of Rs.15.00 Lacs to the claimant Hafeez Ahmed who waived of his claim over the subject property. The Official Liquidator in his reply shared verification of the title of subject property which affirms that the same is in the name of Muhammad Tayyab. He referred to Section 406 of the Companies Ordinance, 1984 (as applicable at that instant) and has challenged the veracity of the agreement relied by the objector since the same pertained to the period within one year before the companies came in for liquidation. He feared that in order to usurp the subject property of the company in liquidation, the Ex-Managing Director Muhammad Tayyeb and the objector have created a collusive

agreement and the power of attorney is also without any consideration. He also informed that in the present land dispute the said Muhammad Tayyab was prosecuted by the NAB Court for illegal affairs of the company in liquidation who submitted his statement to the Official Liquidator on 19.02.2015 wherein he denied receiving of any pay order (Rs.8.00 Lacs) from the objector as well as denied any consideration. He prayed for dismissal of the application.

3. Heard learned counsel for the objector and the Official Assignee/Liquidator. Learned counsel for the objector has mainly contended that on application being CMA No.1341 of 1996 filed by the objector, this court vide order dated 16.04.1997 called for an inquiry report from the Joint Liquidator however, thereafter, neither such a report was considered nor his CMA has been finally adjudicated. He urged that without referring to such proceedings, the Official Liquidator moved reference No.145/2021 and obtained order for the auction of the subject property. Learned counsel has been asked as to why the objector kept silent for decades thereafter, to which he replied that the objector was in jail and thereafter left for South Africa as there were threats to his life, as such none pursued his claim. To my mind, such stance is either not substantiated with any proof, nor fits the bill of laches. Counsel for objector has further contended that general power of attorney coupled with sale agreement devolved title of the subject property on to the objector, for which the objector has paid valuable consideration and the Ex-Director Muhammad Tayyab did not deny the execution of general power of attorney and sale agreement. Learned counsel however admitted that to assert such a right to ownership, he has filed Suit

No. 3239 of 2021 on 10.12.2021. Learned counsel has been asked to assist as to whether such a declaration of title can be given in these proceedings, more particularly after almost 30 years of taking over possession of the subject property by the official liquidator, to which he concedes that the proper remedy lies before the civil court for which he has moved ahead through a suit. Muhammad Tayyab has denied receiving any sums and admittedly no amount is seen to have been credited in the account of M/s. T.J. Ibrahim Company in liquidation as well as M/s. Alliance Motors (Pvt) Ltd. The record reflects that said Muhammad Tayyab and other members of the management of M/s. T.J. Ibrahim & Company and Alliance Motors (Pvt) Ltd. received more than 3.7 Billions from about 50,000 investors from the general public promising profit of 10% per month. From these huge sums, these directors have deceitfully and fraudulently purchased assets in their own names and in the names of their family members instead of the companies in liquidation. The official liquidator has affirmed that so far in these cases 129 properties have been sold by the Official Liquidator against which he received Rs.89,67,79,328/(Rupees Eighty Nine Crores Sixty seven lacs seventy nine thousands three hundred and twenty eight only). He apprised that all of these properties were in the names of benami owners, either being the directors or their family members. This property is also one of such property in the name of director of M/s. T J Ibrahim namely Mohammad Tayyeb. Learned counsel was asked to point out any specific order passed by this court recalling the permission to sell the subject property, on which he fails. Merely an order for calling inquiry report would not *ipso facto* stop the process of sale ordered by the court. Section-330 of the Companies Ordinance read as under:

“Custody of company’s property:(1) The provisional manager or official liquidator, as the case may be, shall take into his custody or under his control, all the books and papers, property, effects and actionable claims belonging to or which the company is or appear to be entitled; and all persons who are or have been directors, chief executives, managers, officers, servants, bankers, auditors and agents of the company and who may be having in their knowledge, custody, control or charge, directly or under them any such books or papers, property, effects and actionable claims, shall forthwith report and hand over or cause to be handed over possession to the liquidator of all such items and furnished to the liquidator such information and explanations as he may require and any default or failure on their part shall be punishable with imprisonment of either description which may be extended one year and with fine which may extend to ten thousand rupees and the Court may direct the books, papers, property and effects to be delivered to the liquidator in case of default or failure, and in the event of noncompliance with the directive, to order the person in default to pay further amount by way of compensation equal to the value of the property as the court may determine.

(2) For the purpose of enabling the provisional manager or the official liquidator as the case may be to take into his custody or his control and property, effects, actionable claims or books of account or other documents to which the company is or appears to be entitled, the provisional manager or the official liquidator, as the case may be, may by writing request the District Magistrate within whose jurisdiction such property, effects, or actionable claims or books of account or other documents may be found to take possession thereof and the District Magistrate shall there upon, after such notice as he may think fit to give any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the provisional manger or the official liquidator, as the case may be.

(3).....

(4).....

4. To conclude, it is admitted by the objector that Muhammad Tayyeb was the Ex-Managing Director of M/s. T.J. Ibrahim & Company owned the subject property and the said Muhammad Tayyeb has admitted that he purchased the subject property solely from the funds of the company in liquidation vide his statement dated 02.09.2015 as well as he reaffirmed this fact on specific query during the hearing of this case. The Official Liquidator has apprised that seventeen properties were found either in the name of the said Muhammad Tayyab or his wife as well as his brothers which have been sold out by him as assets of the companies in liquidation. The affect of taking over possession by the Official Assignee on 17.02.1990 has not even been denied in the instant application. Thus, I am of the considered view that the subject property is an asset of the Companies in liquidation which has been rightly taken over in the year 1990 by the Official Liquidator while exercising his powers under Section 330 of the Companies Ordinance, 1984 and as such this application merits no consideration. Resultantly, this application was dismissed by my short order dated 28.05.2022 and these are the detailed reasons thereof.

JUDGE