IN THE HIGH COURT OF JUDICATURE AT PATNA
COMPANY PETITION No.3 of 1984

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ROHTAS INDUSTRIES LTD. (IN LIQUIDATION)

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Appearance :

For the Petitioner/s	:	Mr. U.P. Singh, Sr. Adv. with M/s Binod Bihari Singh, Adv. and Mr. Rakesh Narayan Singh, Adv.
For the Respondent/s	:	Mr. Official Liquidator
For the State	:	Mr. Ajit Kumar, GA 9

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Item No. (I):- I.A. Nos. 306/2021, 313/2022, 315/2022 and 317/2022 with O.L.R. No. 96/2022 and 105/2022 Including I.A. Nos. 3289/2007, 4048/2007, 4204/2007, 7650/2008, 1714/2009, 3459/2009, 4873/2010 with 305/2021, 3167/2011, 5061/2011, 8991/2011, 2101/2011, 1823/2013, 9361/2013, 1371/2014, 3502/2014, 9482/2016, 3002/2017, 3167/2017, 276/2019, 296/2020, 314/2022, 318/2022, 319/2022, 320/2022 and 321/2022 with O.L.R. No. 2/2021

Date : 14-10-2022

1. This order shall dispose of the various I.A.'s as numbered above preferred before this Court from time to time with similar prayer mainly to allow selling to the applicants, the quarters owned by the company and are presently occupied by the applicants.

2. In **I.A. No. 306/2021**, the applicant Rajiv Kumar Singh (family of ex-employee) claims quarter no. L/26 which he is occupying since 1970. In **I.A. No. 4048/2007**, the

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applicant Ashok Singh claims quarter no. MF/39 which he is occupying since 01.08.1989, applicant Bindeshwari Prasad Singh claims quarter no. N/8 which he is occupying since 01.01.2000, the applicant Mithilesh Singh claims quarter no. DRLR-4 which he is occupying since 01.01.1996 (presently occupied by outsider Bachan Sharma). In **I.A. No. 4204/2007**, the applicant Arvind Kumar Singh (family of ex-employee) claims quarter no. 1-DRL, the applicant Kishun Chand Verma claims quarter no. 2-DRL which he is occupying since 01.06.2001(presently occupied by outsider Shankar Prasad), the applicant Ram Kumar Singh claims quarter no. 9-DRL which he is occupying since 01.01.1996 (presently occupied by outsider Amit Kumar Khanna), the applicant Chandi Prasad Mishra claims quarter no. 57-DRL which he is occupying since 01.01.2000 (presently occupied by outsider K.P. Prasad), the applicant Raj Kapoor Singh claims quarter no. 42-DRL which has been locked by security since 22.09.2009, the applicant Parshuram Singh claims quarter no. 41-DRL which he is occupying since 01.01.2003 (presently occupied by outsider Kameshwar Yadav). In **I.A. No. 3289/2007, 7650/2008, 1714/2009, 3459/2009, 2101/2011,** the applicant Ajit Kumar Kashiwal claims common issue of quarter matters of ex-

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employees which they are occupying since their service period. In **I.A No. 4873/2009**, the applicant Umesh Kumar Rai claims quarter no. D-34 which he is occupying since 01.01.2004, the applicant Ghuran Singh claims quarter no. S-162 which he is occupying since 01.01.1998, the applicant Ajay Ojha claims quarter no. S-341 which he is occupying since 01.07.2001. In **I.A No. 305/2021**, the applicant Pushpa Ray claims quarter no. D-type-34 which she has been occupying since 01.01.2004. In **I.A. No. 3167/2011**, the applicant Gautam Kumar Mondal, claims quarter no. CE/23 which was allotted to M.K. Dubey working employee by the O.L. since 06.08.2018. In **I.A. No. 5061/2011**, the applicant Ashok Kumar Singh claims quarter no. K-25 which he is occupying since 01.01.2001 (presently occupied by his brother Umesh Kr. Singh). In **I.A. No. 8991/2011**, the applicant Ishwar Prasad claims quarter no. D-31 which has been sold vide order of this Court dated 06.07.2022. In **I.A. No. 1823/2013**, the applicant Shiv Shankar Tiwary claims quarter no. S-23 which has been sold vide order of this Court dated 06.07.2022. In **I.A. No. 9361/2013**, the applicant Prabhu Dayal Pandey claims quarter no. S-150 who is an ex-employee occupying approximately since 1975. In **I.A. No. 1371/2014**, the applicant Rani Singh being outsider claims for

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sale/allotment of any quarter. In **I.A. No. 3502/2014**, the applicant Chandan Pd. Singh, claims quarter no. S-38 which he is occupying since 01.03.1999, the applicant Pramod Kumar Singh claims quarter no. SC-33 which he is occupying since 01.01.2001, the applicant Most. Heera Devi claims quarter no. S-12 which she is occupying since 01.02.1996, the applicant Sanjay Kumar claims quarter no. S-4 which he is occupying since 01.01.1996, the applicant Sunita Singh claims quarter no. M-3 which she is occupying since 01.01.1996. In **I.A. No. 9482/2016**, the applicant Sadhna Srivastava claims quarter no. D-12 which she is occupying since 01.01.1996. In **I.A. No. 3002/2017**, the applicant Dr. Om Prakash Lal claims quarter no. D-43 which he is occupying since 01.01.2000 (presently occupied by outsider Dr. Arvind Kumar Singh). In **I.A. No. 276/2019**, the applicant Ajay Raghav Mishra (family of ex-employee) claims quarter no. JOF-44 which he is occupying since 1970. In **I.A. No. 296/2020**, the applicant Neelam Srivastava claims quarter no. J/16 which she is occupying since 01.01.1996. In **I.A. No. 315/2022**, the applicant Sharda Singh claims quarter no. FF-26 which he is occupying since 01.11.1996, the applicant Smt. Asha Devi claims quarter no. D-type-66 which she is occupying since 01.07.1999, the applicant

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Radhika Verma claims quarter no. FF-9 which she is occupying since 01.11.1994, the applicant Nagendra Kumar Singh claims quarter no. S-96 which he is occupying since 01.03.2001, the applicant Ajay Kumar Mishra claims quarter no. D-type-65 which he is occupying since 01.04.1998, the applicant Gujrawti Devi claims quarter no. FF-38 which she is occupying since 01.01.1996, the applicant Satyendra Kumar claims quarter no. FF-10 which he is occupying since 10.05.1995, the applicant Ramjanam Singh claims quarter no. S-182 which he is occupying since 01.12.1997, the applicant Rajendra Prasad claims quarter no. I-01 which he is occupying since 01.01.1997, the applicant Bhim Singh claims quarter no. FF-13 which he is occupying since 01.05.2003, the applicant Tankesh Kumar claims quarter no. D-12 which he is occupying since 01.01.1996, the applicant Smt. Munni Devi claims quarter no. S-375 which she is occupying since 01.01.1999, the applicant Satyendra Kr. Singh claims quarter no. F-6 which he is occupying since 01.01.1996, the applicant Suresh Kumar Srivastava claims quarter no. SC-45 which he is occupying since 01.03.1996, the applicant Shyam Bihari Sah claims quarter no. S-313 which he is occupying since 01.01.1998, the applicant Vijay Kumar Sinha claims quarter no. SC-47 which he

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is occupying since 01.05.2000, the applicant Sarju Prasad claims quarter no. FF-46 which he is occupying since 01.03.1992, the applicant Purshotam Pd. Singh claims quarter no. Star Type-E-6 which he is occupying since 01.01.1998, the applicant Jai Prakash Narain Singh claims quarter no. Star Type-H-5 which he is occupying since 01.05.1996, the applicant Shanti Devi claims quarter no. Star Type-H-9 which she is occupying since 01.01.1999, the applicant Bhagwan Rai claims quarter no. Star Type-K-1 which he is occupying since 01.05.2000, the applicant K.N. Singh claims quarter no. S.D.B-8(Upper) which he is occupying since 01.01.1996, the applicant Sarvjit Singh claims quarter no. JOF-38 which he is occupying since 01.01.1991, the applicant Sanjay Srivastava claims quarter no. SOB-28 which he is occupying since 28.03.2000, the applicant Ram Nath Singh claims quarter no. JOF-17 which he is occupying since 01.01.1990, the applicant Subhash Singh claims quarter no. N-21 which he is occupying since 01.01.1996, the applicant Vijay Kr. Jain claims quarter no. K-7 which he is occupying since 01.07.2005, the applicant Rajendra Pd. Singh claims quarter no. CW-20 which he is occupying since 01.10.1998, the applicant Shiv Shankar Rai claims quarter no. S-330 which he is occupying since 01.05.1996, the applicant

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Rang Bahadur Singh claims quarter no. K-4 which he is occupying since 01.01.2001, the applicant Pushpa claims quarter no. JOF-36 which she is occupying since 01.03.2000, the applicant P. Kumar claims quarter no. SOB-4 which he is occupying since 01.10.1995, the applicant Md. Ali claims quarter no. MF-5 which he is occupying since 01.03.1999, the applicant Ravi Shekhar claims quarter no. JOF-11 which he is occupying since 22.03.2003, the applicant A.N. Verma claims quarter no. MF-7 which he is occupying since 01.03.1999, the applicant Baban Mishra claims quarter no. Star Type-L5 which he is occupying since 01.03.1997, the applicant Ram Sakal Pathak claims quarter no. MF-22 which he is occupying since 01.03.1999, the applicant Suresh Singh claims quarter no. P-7 which he is occupying since 01.02.1999, the applicant Ajay Singh claims quarter no. P-5 which he is occupying since 01.07.1997, the applicant Sudhir Kumar Singh claims quarter no. S-280 which he is occupying since01.07.1996, the applicant Ram Prakash Singh claims quarter no. M-21 which he is occupying since 01.01.1995, the applicant Pramod Kr. Pandey claims quarter no. F-10 which he is occupying since 01.01.1990, the applicant Radha Govind Singh claims quarter no. K-16 which he is occupying since 01.01.1996, the applicant Chandra

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Shekhar Singh claims quarter no. K-15 which he is occupying since 01.12.1997, the applicant Sanjay Singh claims quarter no. SOF-31 which he is occupying since 01.07.2000, the applicant Anand Prateek claims quarter no. SOB-12 which he is occupying since 01.05.1996, the applicant Hridya Prakash Gupta claims quarter no. S-185 which he is occupying since 01.12.1997, the applicant Nirmal Kumar claims quarter no. J-13 which he is occupying since 01.03.1992, the applicant Vijay Singh claims quarter no. C-9 which he is occupying since 01.04.2005, the applicant Ram Nath Singh claims quarter no. SC-21 which he is occupying since 01.05.1996, the applicant Lalit Kumar claims quarter no. S-Type-H-6 which he is occupying since 01.03.2000. In **I.A. No. 313/2022**, the applicant Amarnath Singh claims quarter no. K-17 which he is occupying since 01.02.2002, the applicant Braj Mohan Singh claims quarter no. JOF-9 which he is occupying since 01.01.1991, the applicant Akhileshwar Kr. Tiwary claims quarter no. D-11 which he is occupying since 01.07.1996, the applicant Ajit Kumar Singh claims quarter no. FF-19 which he is occupying since 01.03.1992, the applicant Rajendra Prasad Singh claims quarter no. S-125 which he is occupying since 01.01.1998, the applicant Sanjay Singh claims quarter no. SOB-19 which he is

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occupying since 01.04.1994, the applicant Kiran Sinha claims quarter no. K-18 which she is occupying since 01.10.1993, the applicant Vijay Shankar Sharma claims quarter no. D-84 which he is occupying since 01.09.1992, the applicant Chandra Mani Singh claims quarter no. FF-28 which he is occupying since 01.12.2001, the applicant Jayendra Singh claims quarter no. SOB-3 which he is occupying since 01.08.1994, the applicant Vijay Kumar Mishra claims quarter no. CE-22 which he is occupying since 01.01.1996, the applicant Prashant Kumar Mishra claims quarter no. K-27 which he is occupying since 01.03.1995, the applicant Yadunandan Singh claims quarter no. J-28 which he is occupying since 01.08.1996, the applicant Bhagirath Singh claims quarter no. S-140 which he is occupying since 01.05.2004, the applicant Sayan Kumar claims quarter no. H-3 which he is occupying since 01.12.1999, the applicant Ranjit Bhoumik claims quarter no. FF-24 which he is occupying since 01.11.1994, the applicant Shivpujan Prasad claims quarter no. D-54 which he is occupying since 01.09.1989, the applicant Ram Surat Pandey claims quarter no. SOB-8 which he is occupying since 01.08.1996, the applicant Sanjay Kumar Singh claims quarter no. OCB-3 which he is occupying since 01.12.1998, the applicant Hemant Kumar claims quarter no. D-

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28 which he is occupying since 01.05.1993, the applicant Anurag Kumar Banna claims quarter no. D-46 which he is occupying since 01.10.1998, the applicant Arvind Kumar Singh claims quarter no. D-43 which he is occupying since 01.01.2000, the applicant V.N. Trivedi claims quarter no. D-10 which he is occupying since 01.03.1992, the applicant Dr. Vijay Narayan Singh claims quarter no. D-45 which he is occupying since 01.06.1990, the applicant Binod Kr. Jha claims quarter no. D-38 which he is occupying since 01.11.1995, the applicant Narendra Kumar Singh claims quarter no. S-121 which he is occupying since 01.01.2003, the applicant Praveen Ranjan Singh claims quarter no. S-232 which he is occupying since 01.01.1998, the applicant Gorakh Singh claims quarter no. S-64 which he is occupying since 01.01.1986, the applicant Hajaara Singh claims quarter no. MF/37 which he is occupying since 01.11.1995, the applicant Bishwajit Chakrabarty claims quarter no. D-61 which he is occupying since 01.01.1991, the applicant Rajiv Ranjan Singh claims quarter no. S-233 which he is occupying since 01.04.1998, the applicant Praveen Kumar Bhoumik claims quarter no. E-4 which he is occupying since 01.01.1999, the applicant Vijay Kumar Singh claims quarter no. E-5 which he is occupying since 01.03.1992, the applicant P.P.

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Srivastava claims quarter no. S-350 which he is occupying since 01.07.1998, the applicant Ramesh Kr. Sinha claims quarter no. S-363 which he is occupying since 01.01.1996, the applicant Uma Shankar Singh claims quarter no. S-358 which he is occupying since 01.05.1993. In **I.A. No. 314/2022**, the applicant Jawahar Lal Verma claims quarter no. M/8 which he is occupying since 01.07.2010 (presently occupied by outsider Ashutosh Kumar). In **I.A. No. 318/2022**, the applicant Banarsi Prasad Rajak claims quarter no. S-246 which he is occupying since 01.01.1998. In **I.A. No. 319/2022**, the applicant Shri Girja Nandan Singh being the authorized representative of ex-employees claims common issue of quarter matter which they are occupying since their service period. In **I.A. No. 320/2022**, the applicant Tara Devi claims quarter no. S/344 which he is occupying since 01.06.2001. In **I.A. No. 321/2022**, the applicant Dr. S.K. Singh claims quarter no. K-21 which he is occupying since 01.12.2003, the applicant Rajendra Pd. Singh claims quarter no. J/30 which he is occupying since 01.04.1994, the applicant Rajesh Kumar Singh claims quarter no. N/8 which he is occupying since 01.01.2000, the applicant Ashok Kumar Singh claims quarter no. MF/39 which he is occupying since 01.08.1989, the applicant Smt. Heera Devi claims quarter no. S-

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12 which she is occupying since 01.02.1996, the applicant Pushpa Ray claims quarter no. D-34 which she is occupying since 01.01.2004, the applicant Smt. Kanti Singh claims quarter no. D-59 which she is occupying since 01.01.1996, the applicant Janki Devi claims quarter no. S-40 which he is occupying since 01.04.2007. In **I.A. No. 317/2022**, the applicant Arvind Kumar Sinha claims quarter no. S-365 which he is occupying since 01.01.1996, the applicant Madhusudan Kumar claims quarter no. SC-24 which he is occupying since 01.07.2000, the applicant Raj Kumar Singh claims quarter no. P-35 which he is occupying since 01.01.1996, the applicant Deepak Kumar Srivastava claims quarter no. C-02 which he is occupying since 01.10.2011, the applicant Om Prakash Srivastava claims quarter no. D/06 (old) which he is occupying since 01.06.1990, the applicant Sunil Kumar Singh claims quarter no. S/368 which he is occupying since 01.01.1998, the applicant Murlidhar Singh claims quarter no. B/06 which he is occupying since 01.03.1993, the applicant Saraswati Devi claims quarter no. D/02 (old) which she is occupying since 01.02.1996, the applicant Lalan Prasad Singh claims quarter no. S-216 which he is occupying since 01.01.1998, the applicant Dinanath Tiwary claims quarter no. S/175 which he is occupying since

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01.12.1997, the applicant Sikendra Prasad claims quarter no. S/177 which he is occupying since 01.06.1996, the applicant Anil Kumar Srivastava claims quarter no. S/237 which he is occupying since 01.03.1992, the applicant A.K. Tripathi claims quarter no. S/370 which he is occupying since 01.08.2003, the applicant Puspa Sinha claims quarter no. S/212 which she is occupying since 01.05.1996, the applicant Anil Kumar Mishra claims quarter no. MF-21 which he is occupying since 01.05.1996, the applicant Moti Lal Prasad claims quarter no. S/167 which he is occupying since 01.05.1996, the applicant Mahendra Prasad claims quarter no. S/210 which he is occupying since 01.03.1999, the applicant Nagendra Prasad claims quarter no. S/297 which he is occupying since 01.12.1997, the applicant Murlidhar Prasad claims quarter no. S/106 which he is occupying since 01.01.1996, the applicant Surendra Kumar claims quarter no. SO/104 which he is occupying since 01.01.1998, the applicant Ramadhar Singh claims quarter no. S/332 which he is occupying since 01.06.2012, the applicant Suresh Prasad Singh claims quarter no. S/335 which he is occupying since 01.12.1997, the applicant Rama Shankar Rai claims quarter no. S/364 which he is occupying since 01.12.1997, the applicant Subedar Tripathi

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claims quarter no. S/327 which he is occupying since 01.01.1998, the applicant Sita Kumari claims quarter no. S/325 which she is occupying since 01.01.1998, the applicant Munna Ram claims quarter no. SC/88 which he is occupying since 01.05.2001, the applicant Binod Kumar Singh claims quarter no. S/107 which he is occupying since 01.01.1998, the applicant Kameshwar Ojha claims quarter no. S/178 which he is occupying since 01.01.1996, the applicant Pratima Devi claims quarter no. SC/84 which she is occupying since 01.03.1999.

3. In some cases, the quarters have been said to be occupied by their predecessors who were allotted the said quarters as employees of the company. While in other cases, the occupation has come by way of allotment subsequently or by way of simple handing over of the quarter of the company liquidation after the company had gone into liquidation in 1996. A chart showing the year from which the applicants have been occupying their respective quarters has been placed before the Court. It has been argued that earlier the company judge had passed orders allowing them by one way or the other to continue to occupy recent houses. Several generations have been living in the said houses which admittedly belong to the company.

4. It has been further averred that after the

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company went into liquidation in the year 1996, on 07.02.1997 the company judge noticed that there were several outsiders who were occupying the properties of the company which included police personnel and they were living without paying any rent. The hon'ble company judge at that relevant time formed a rent committee to determine the entitlement of the occupants, to fix the rates of rent in appropriate cases and also fix the installments in respect of arrears of rent. By the said order, one S.D.M. who was newly posted was also allowed to occupy one of the quarters.

5. It has been further pointed out that by another order no. 169 dated 27.06.1997, the proposal of the rent committee was noticed and the same was approved for the present with subject to modification revision in future. The revised rent was vacant with effect from 01.01.1996. It was also observed that in the event of non-payment of amount of arrears including the amount of current rent by December 1997, steps will be taken for eviction of the concerned persons.

6. Learned counsel submits that since the petitioners have been continuously paying their rent, they need not be evicted from their houses and they should not be treated as trespassers or unauthorized occupants. It has been further

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argued that even otherwise the applicants cannot be evicted without following due procedure of law.

7. That apart, this Court was also apprised of the order no. 280 dated 24.09.2004. On 06.05.2004, the hon'ble company judge directed for eviction of the unauthorized occupants as there were outstanding dues which were not paid by the occupants. An appeal came to be preferred before the Division Bench by the workers of the Rohtas Industries Limited alleging that there were 23 ex-employees residing in the quarters belonging to the company and even the rent was being adjusted from the arrears of their salary and therefore they should not be evicted. The Division Bench disposed of the matter with direction that they may bring this fact to the learned company judge for passing appropriate order. The other occupants also stated that they are paying rent as fixed by the rent committee found by the court on 27.06.1997 and in their cases too the Division Bench directed them to appear before the learned company judge. The company judge passed an order no. 279 dated 08.09.2004 and observed that while the Supreme Court had attempted to revive the company, nothing could be done and therefore the properties of the company were required to be disposed converting all the assets into cash and distribute

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the same to persons who are entitled. It noticed that more than two thousand houses belonging to the company are in possession of encroachers and trespassers which were mostly Government officers including those belonging to Police Department, Revenue Department and other such Departments of the State Government. Even the D.I.G., Shahabad Range was occupying the company property. It therefore directed that the houses being vacated and delivery of possession being handed over to the official liquidator.

8. The court observed in its order dated 24.09.2004 as under in Para 13, 15, 16 and also as observed under Para 20, directions were issued.

> *"13. At this stage, I asked some of the learned lawyers that if their clients are ready and willing to purchase the properties on the market value, then they may come out with the offer so that process of converting the property into cash starts. It was submitted by the learned lawyers that if two weeks' time is given, the occupants would submit their offers and, thereafter, the Court may grant them time to make deposits."*
>
> *"15. In the meanwhile, all the persons who are interested in purchasing the property on the market value must submit their offers to this Court through the official liquidator. It goes without saying that immediately on completion of 15 days, the official liquidator*

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shall scrutinize all such offers and place a list before this Court. It is further made clear that offers of only such persons would be considered who are in a position to bring on record orders of valid allotment. The offers of sub-tenant, sub licensees and sub allotees or relation of the original allotees will not be accepted."

"16. I may also state that a school is being run in the premises belonging to the company and vast of the properties are given to the school for its activities. If the school administration is interested in purchasing the properties then it may also give its offer. In case such offers are not received, then the Court will be left with no option but to ask the D.G.P. to have a camp of Police of 1000 guards so that all the houses are freed from the clutches of the encroachers and persons who are not ready and willing to purchase the property."

"20. I must remind everybody that company under liquidation is not like a dead animal flesh of which is to be eaten by the vultures, jackals and dogs. If the company is treated to be a dead animal, then in a civilised society it is entitled to ceremonious and decent burial."

9. On 24.09.2004 order no. 280 the court observed as under-

"The official liquidator informs that he has received 2088 applications/forms for purchase of the house of the company. According to him, the number

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of the houses belonging to the company are 2094. His further statements is that the person who have applied and who have offered for purchase the house have not informed the official liquidator as to how they came in possession, what was the order of allotment and who allowed them to remain in possession. He submits that not even a single person is ready and willing to inform the official liquidator that on what rent he got the premises and up to what particular date the rent has been paid. Let the official liquidator at the cost of the company again publish a news in the local newspaper that such persons who have applied and who have offered to purchase the premises in accordance with the earlier directions of this Court are obliged to annex with their applications the order of allotment/authority or rent agreement. They shall also be obliged to inform this Court that if those persons are in possession of the property for a particular period then for what period they have paid rent, they would also be obliged to annex copies of the receipts to inform this Court that the rent in accordance with the terms has already been paid by them. It may be made clear in the advertisement that if by the next date such persons in their independent applications do not give the further details and the price for which they are ready and willing to purchase the house and in what manner they shall pay the price, then this Court shall proceed further and may evict all such persons from the premises."

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10. This Court having noticed the aforesaid order named it appropriate to go through the various orders passed by the predecessors in relation to the disposal of quarters of the company in liquidation. From the overall perusal of the various orders, this Court finds the view taken on 24.09.2004 has been time and again reiterated by the company judge who have been in charge in relation to the company in question. The companies quarters, were from time to time put under auction and the person who have in possession of the concerned quarters were allowed to participate in the auctions. On 28.04.2006, one applicant prayed to hand-over the possession. However, the Court insisted and passed a following order “The applicant should first vacate the quarters and they are at liberty to participate in the auction as and when held. The official liquidator shall ensure their eviction by taking assistance from District Administration”. In one other application “Flag 707(1)” applicant prayed to allow him to continue in the quarter which was earlier under occupation of his father who expired before his dues could be finalized by the company liquidation.

11. In the circumstances, the Court was pleased to direct the S.D.M. to enquire into whether he was himself occupying the quarter or had sublet the same to any other person

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and further directed that if he was himself residing, he would be allowed to reside till his father's dues are cleared.

12. It appears that on 14.05.2010, the then Official Liquidator has submitted a report stating that large number of employees of the company have been approaching this Court showing their interest in purchasing the quarters where they are residing. Apart from employees, large number of outsiders are also occupying the quarters and recovering rent from them would be a herculean task. It was reported that the quarters are required to be sold in order to realize the value and in order to pay the out-standings of the creditors. A suggestion was made by the then Official Liquidator to negotiate with the employees who are interested in purchasing the said properties. With the said purpose, the Court vide its order dated 14.05.2010 directed to form a one man commission to be headed by a retired judge of this Court namely Justice P.K. Sinha to look into the entire issue of sale of quarters to the employees who are in occupation of the same. A committee was formed of the Official Liquidator and two representatives of the secured creditors to look into the issue vide another order dated 22.07.2010, the scope of the commission was enlarged to examine the entire issue of sale of all the 2048 quarters of the company in question.

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The one man commission submitted its report on 10.08.2010. It received memorandum from some of the employees as well as resolution passed by them and also noticed that five D-type quarters had already been sold earlier and suggested that the same may be sold to the ex-employees or his heirs. The said report was not accepted by the Court as it is and no further action has been taken till date on the said report. A formula was also suggested by the said commission for assessing the valuation of the quarter by calculating 52 percent depreciation of the property.

13. The learned counsel appearing for the petitioner submits that the report may be accepted with the required changes as of now and the ex-employees or their relatives or the outsider occupants and sold to at the referred price. I have carefully gone through the commissions report. Para 13 of the said report reads as under :

> *" **13. [A]** The delegation pointed out that orders about selling of the quarters to the employees had been coming in since long. Under order dated 08.09.2004 in course of hearing of the matter, the Hon'ble Court had invited offers from the ex-employees who were in occupation of the quarter as valid allotees, showing their intention to purchase the quarters which was complied with by*

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the ex-employees, but in their replies they had not submitted the consideration amount for purchasing the said property.

When this was pointed out by the OL to the Hon'ble Court, then, in pursuant to order dated 24.09.2004, an advertisement was issued dated 01.10.2004 under the authority of the OL, whereafter the ex-employees submitted their offers as consideration amount as per value fixed for different categories of quarters by the Company in the year 1986. However, when the matter came up again before the Hon'ble Court it was contended on behalf of the OL that the valuation as given by the ex-employees was very low. In view of such stand by the OL, the ex-employees vide I.A. No. 1010 of 2006, dated 27.02.2006, submitted before the Hon'ble Court that the employees were willing to revise their offers and were ready to purchase their respective quarters on the basis of the report [of the official valuator] at the prices fixed by him. It was contended that the official valuator was appointed under the orders of the Hon'ble Court dated 01.01.1996.

[B] *The delegation before me stressed that they were without employment since long and most of them had reached the zenith of their lives who were maintaining themselves and their dependents with difficulties. They stressed that, therefore, while fixing the price of the properties leniency should be shown to them.*

[C] *The delegation submitted that they were still ready to purchase the quarters on the basis of the valuation fixed for such quarters under different categories, by the official valuator in the year 1996 [one sheet of which is at Flag 'C'].*

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[D] *I had discussed earlier this point, which I had anticipated would come from the ex-employees, with the OL and the two learned counsels, the members from the Committee. I had impressed upon them that if such an offer is made it would be difficult to accept the same because the houses were, indisputably, old ones, hence their depreciation value, which had been last assessed in the year 1996, would have further enhanced. But the official liquidator while making valuation of the property had taken into consideration only the built-up area of a particular type of quarters, totally omitting the valuation of the land attached to a particular type of quarters. It is well known that whereas the valuation of a built up house would depreciate with the passage of time, the price of land would have escalating tendency. At some places, depending upon the status of the place and the purchasing power of people in and around the area, the escalation of land price would either be steep or a bit slow but, almost invariably, it would escalate.*

[E] *I also explained to the members of the delegation that though we had every sympathy over their plight, but the price had to be fixed keeping in view practical aspects as the amount so received would be utilized in repaying the huge debts incurred by the then company. Therefore, the fixation of price cannot be totally divorced from reality.*

[F] *I also explained to them that at the time of registration, the registration fee will have to be paid fixing the price of the property [i.e. land] minimum at the official price fixed for it. I explained to them that it would be very difficult for an official*

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body to show the price at a higher level in the registration deeds, but in its books to show the receipt of actual price at a lower level, as it would be very difficult for that official body to explain the deficit in between the two amounts. Therefore, it was made clear to the delegation that the minimum price fixed by the Government per decimal of land will form the basis of fixing the price of the land to which the price of the quarter, built thereupon, as determined by the official valuator, with further depreciation cost as about 14 years have passed since the valuation was made would be added and, thus, the total minimum price would be fixed.

[G] *After discussions on this point the delegation also came round to this view but said that none of the quarters were situated, what could be called, at 'Pradhan Path' or 'Mukhya Path'. To bring in uniformity in this matter it was decided, with consent of the representatives present in the meeting and the members of the delegation plus those ex-employees who were not members of the delegation but had come nevertheless, that the price of the land per decimal, i.e. per 435.6 sq.ft, should be fixed at the rate of Rs. 95,000/-.*

[H] *Now, coming to the valuation of the quarters, learned counsel for I.D.B.I. suggested that the depreciation cost in the year 2010 may be assessed at 50% of the original price of the a particular type of quarters as fixed by the official valuator in the year 1996. How the valuation was fixed in the year 1996 was explained by me to the members of the delegation also. However, the members of the delegation requested that since 14 years have passed since the year 1996, and the quarters have become more dilapidated, the total*

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depreciation should be 60% of the original price fixed by the official valuator. They also submitted, as they also had mentioned in their memorandum [Flag 'F'] that the factory premises at Dehri-on-Sone spread over 219 acres of land with machineries, etc., though valued at Rs. 200/- crores for the sake of sale, was sold to the Indian Railways at a price of Rs. 140/- crores only, i.e. , a shortfall of about 30% over the price so fixed. However, as I also told the delegation that, this plea can hardly be applied here because that was a purchase in bulk and the factory premises were sold to a department of Government of India, i.e., to the people of India at large. That did not benefit any individual. However, with the sale of quarters here the properties would go to individuals whose heirs would have inheritable rights over the purchased property.

[I] *We were also told that the Company had spent crores of rupees over security, etc. which made a dent in the liquid property of the Industries, but the price which would be paid by the individual ex-employees would add to the coffers of the Industries.*

However, this example is hardly worth consideration because, though the Company is closed since long, its properties including machineries, houses and land, etc. had remained which had to be guarded over, hence expenses on security were necessary.

[J] *Before proceeding further on this point it may be mentioned that vice random example of 'D' type quarters [at Flag 'C'], as taken by me would show, as stated earlier, that for 86 number of quarters in 'D' type, total built-up price*

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[@ Rs. 410/- sq. ft.] came to Rs. 3,49,07,400.00 [for 85140 sq. ft.]j with the houses at that time found to be 35 years old, with expected future life of 35 years more. Over this, in the year 1996 the depreciation amount was fixed to be at Rs. 1,57,08,330.00. This would show that this depreciation cost calculated at that time was around 44.99% of the actual cost assessed for the property. This meant that each of the 86 quarters, each having 1120 sq. ft. of land and built-up area of 990 sq.ft. [vide Flag 'A'], were valued, after deducting depreciation cost, at Rs. 2,23,245.00 [Rupees Two Lakhs Twenty Three Thousand and Two Hundred Forty Five] only, which totally excluded the valuation of the land.

[K] *Now, coming to the total price of the land with each 'D' type quarter, per Flag 'A', it is for 1120 sq. ft. This would come to about 2.57 decimals of land. As already stated, and agreed to by the three members of the Committee, the land should be assessed @ Rs. 95,000/- per decimal. Therefore, the price of 2.57 decimal [1120 sq.ft.] at this rate, would come to Rs. 2,44,150.00.*

But the value of each built-up quarter should be taken to have been further depreciated within the last 14 years [i.e., from 1996 to 2010]. Shri Jitendra Kumar Roy, learned counsel for IDBI in course of talks with the delegation had offered them an overall depreciation of 50% against the value of a quarter fixed by the official valuator. However, the members of the delegation insisted that this depreciation should be at least 60% of the valuation made in the year 1996.

[L] *When the age of a quarter was assessed to be of 35 years, the valuator had*

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assessed the depreciation rate at 44.99% [45% in round figure]. In my opinion, a further depreciation of 10% [10.1% to be exact] would serve the ends of justice keeping in view that even by the standard taken by the official valuator, the houses at present are 49 or 50 years old, though the members of the delegation insisted that the quarters were much older. However, this depreciation, if calculated upon the basis of the depreciation if had been calculated in the preceding year, percentage wise would come to more than 10% since such depreciation is assessed over the depreciation cost assessed during the last or two years ago. The 55% depreciation would make the cost of a 'D' type quarter to be Rs. 1,82,655.00. When this price is added to the price of land [Rs. 2,44,150/-], the total price of the quarter with land would come to Rs. 4,26,805.00.

[M] *However, the second alternative which may be considered, is to assess the cost of the quarter with 52% depreciation over the total price of the quarters as assessed by the valuator. If the total price so evaluated by the valuator is calculated with 52% depreciation [52% equals to Rs. 18151848.00 for built-up area of all 86 quarters], the total price of 86 quarters would come to Rs. 16755552.00 and the price of one quarter would come to Rs. 1,94,832.00. Thus, with 52% depreciation the price of the property [land plus quarter] would come to Rs. 4,38,982.00. Therefore, the difference in price of one 'D' type quarter with 55% and 52% depreciation, respectively, would roughly come to about Rs. 12,000.00. However, keeping in view the age of the quarters I would recommend calculation of the depreciation cost in the year 2010 @ 55% of the total cost assessed in*

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the year 1996. The price of a quarter with 55% depreciation, as we will see hereinafter, would be about Rs. 28,000.00 less than the average price of 'D' type quarters sold in the open market in the year 2005 [Flag 'B']. Similarly, with 52% depreciation, the difference would come down to about Rs. 16,000.00 per quarter.

These figures are given for kind consideration of the Hon'ble Court and a final decision may be taken by the Hon'ble Court as to whether the rate of calculating depreciation would be 55% or 52% or some other percentage.

***[N]** The members of the delegation, while requesting to increase the depreciation cost substantially had in the last agreed that this should be fixed by the Commission as it deemed proper."*

***20.** Some members of the delegation submitted that some of such ex-employees are living in multi-storey apartments which have become more dilapidated and are very small ones. It was submitted on their behalf that such employees living in such multi-storey apartments if wish to purchase an independent quarter, they may be permitted to do so after paying the price fixed for that independent quarter. This proposal is also worth consideration. In this regard, I recommend that if any ex-employee living in a multi-storey apartment expresses his willingness to purchase an independent quarter, and if there be any vacant quarter in the category which he intends to purchase, then the same may be ear-marked for selling to a person showing such intention. If there be more such ex-employees and lesser number of vacant quarters then such ear-marking may be made*

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on the basis of either "first come first serve basis", or by lottery in presence of the intending purchasers. In such cases it should be the absolute discretion of the OL to so earmark a particular type of quarter which may be vacant for such sale. If there be any difficulty in this process, then that may be decided by the OL in his discretion, unless the Hon'ble Court otherwise may direct in any particular case/cases. But such intending purchasers could make offer for only such a vacant quarter having only such numbers of living + bed rooms as in the apartment quarter presently in their occupation.

It may be made clear here that discussion about 'D' type quarters is just as an illustration. But same procedure may be applied to the quarters of other types also."

14. The report thus goes proceeds with the presumption that the property of the company can be sold to an individual occupant of the said property by this Court which goes contrary to the provisions of Section 471 of the Companies Act 1956. On further perusal of the aforesaid report(supra), this Court finds that the commission has proceeded to assess the cost of the quarters by calculating the cost or depreciation value of the quarter. While the rooms and the building may have depreciated the cost of land has appreciated more than ten times. If the land rates of the area are to be judged, this Court finds that

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recently an auction was conducted by this Court on 06.07.2022 and for an area of land and the land of some quarters was jointly auctioned, measuring 173.619 decimal or 1.73619 acres. In an open auction, the land fetched a value of Rs. 19,40,00,000.

15. Keeping in view above, the present valuation of properties, this Court rejects the suggestions made by the one man commission formed way back in the year 2010. Disposal of the assets of a company liquidation are governed by the provisions of the Companies Act 1956 and therefore it would be appropriate to quote the said provisions as under :

> *"**S.456 Custody of company's properties**- (1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator [or the provisional liquidator, as the case may be,] shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.*
>
> *[(1A) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the*

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District Magistrate may thereupon after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

[(1B0 For the purpose of securing compliance with the provisions of sub-section (1A), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.]

(2) All the property and effects of the company shall be deemed to be in the custody of the court as from the date of the order for the winding up of the company.

S.457(1) Powers of liquidator-

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels.

S.477 Power to summon persons suspected of having property of company, etc.-

(6) If, on his examination, any such officer or person admits that he has in his possession any property belonging to the company, the court may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the court may seem just.

S.531 Fraudulent preference.-

(1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act

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relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly:

Provided that, in relation to things made, taken or done before the commencement of this Act, this sub-section shall have effect with the substitution, for the reference to six months, of a reference to three months.

(2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual

S.531A Avoidance of voluntary transfer.-

Any transfer of property movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by or subject to the supervision of the court or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.]

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As per rule, the company court rules 1959 also provide under Rule 273 as under:

> " ***SALES BY THE OFFICIAL LIQUIDATORS***
>
> ***R.273. Procedure of sale*** *– Every sale shall be held by the Official Liquidator, or, if the Judge shall so direct, by an agent or an auctioneer approved by the Court, and subject to such terms and conditions, if any, as may be approved by the Court. All sales shall be made by public auction or by inviting sealed tenders or in such manners as the Judge may direct."*

16. Keeping in view aforesaid provisions, this Court is of firm view that the only method and manner in which the properties of the company can be disposed of are by way of auction . While this Court would not go into the question whether the properties of the company could have been rented out by the Official Liquidator after it had taken possession thereto, it is appearing that those properties which are in occupation with any of the ex-employee or his heir or representative or by way of subletting, has to be handed over to the Official Liquidator once the winding of order has been passed finally. After 1984, no officer of the company or the provisional liquidator had an authority to enter the properties of the company in liquidation.

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17. Having concluded as above, the Court would only have to look into one aspect and that is with regard to the continued occupation of the properties in question by the applicants for several years and whether any preferential right or claim can be said to be made out in their favor. While the mode of disposal of properties by auction is a forebound conclusion, in the opinion of this Court, the ex-employees or their legal heirs or representatives occupying the said quarters/houses form a separate class and for disposal of the property, an auction of the properties amongst themselves alone can be organized without intervention of any third person. In other words an open auction amongst the same class of persons can be conducted by the Official Liquidator. For the said purpose, the Official Liquidator shall be required to take following steps :

(A) As observed earlier, all the occupants shall have to vacate and hand-over the possession of the quarters of the company. The Official Liquidator shall prepare a list of quarters which are occupied by the ex-workers their relatives, heirs or representatives. Such quarters shall be kept separately for auction amongst the set of ex-employees or their legal heirs alone, no third person would be entitled to participate in auction relating to those properties. It is made clear that a person who

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had occupied quarter no. A would also be entitled to participate in auction for quarter no. B and vice-versa.

(B) The valuation of the quarters to arrive at the minimum auction price, and EME, shall be done by the valuer of the Official Liquidator and shall be displayed/published in the auction notice. Any person who has not handed over the possession, would be ineligible/dis-entitled to participate in the auction. Such quarters shall be separately earmarked as official company quarters.

18. As regards the other quarters which are occupied by outsiders are concerned, they shall be put to auction as an open auction for one and all. The occupants are liable to vacate and hand-over possession to the Official Liquidator within one month failing which they shall be evicted by taking help of the local administration and police authorities by the Official Liquidator. No Civil Court or Tribunal shall have any jurisdiction to entertain any suit or application with regard to possession or claim relating to the properties.

19. The claim of the applicants for allowing them to continue on the properties of the company in question on rent and for allowing them to purchase the properties, is accordingly decided as above. The order passed by the Court earlier dated

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24.06.2022 directing the Official Liquidator to submit his proposal and report accordingly shall be complied with in aforesaid terms.

20. The application stands disposed of.

(Sanjeev Prakash Sharma, J)

Sachin/
Item No. 74

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