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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION NO. 171 OF 2015
IN
COMPANY PETITION NO. 549 OF 2012

Sandeep Steels through Mr Bhavin Mehta ...Applicant/Petitioner
vs
M/s Vijaya Housing Developers Pvt. Ltd. ...Respondent.

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Mr Siddharth Murarka a/w Vinay Kanodia i/b Law Chamber of Siddharth Murarka for the Applicant.
Mr Sharan Jagtiani, Advocate a/w Nirman Sharma as Amicus Curiae

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CORAM : S.C. GUPTE, J.

SEPTEMBER 29, 2015

P.C. :

The Company Application seeks two reliefs. Firstly, it seeks a returnable date for publishing the notice of admission in the Maharashtra Government Gazettee and secondly, it seeks an order for refund of deposit of Rs.10,000/- made towards the publication costs in terms of the order passed by this Court at the time of admission of the Petition. The first relief has already been granted. The Company Application was kept pending only to consider the second relief, namely, for refund of deposit. This Court had appointed an amicus curiae for assisting the Court in the matter, since the Respondent would hardly be interested in contesting the issue. Accordingly, I have heard Mr Murarka, Advocate for the Applicant and Mr Sharan Jagtiani, Advocate, as Amicus Curiae.

2 The question, with which we are essentially concerned in this matter, is whether or not there is a power in the Company Court to order deposit of an appropriate amount to cover the publication costs for advertisement of the admission order in a company winding up petition. It is not a matter of serious contest that such orders of deposit have been passed since mid 1990 by this

Court. Since, however, the power of the Court to do so has not been questioned so far, I have thought it fit to hear Counsel on the broader issue and test the source of the power.

3 The prosecution of company matters is covered by rules framed by the Supreme Court of India after consulting High Courts in exercise of powers conferred by sub-section (1) and (2) of Section 643 of the Companies Act, 1956 ("Act"), and all other powers enabling it to do so. These rules are the Company Court (Rules), 1959("Rules"). The relevant rules in this behalf are Rules 6, 9, 24, 31, 96, 99, 100, 101 and 115. At the outset, it needs to be noted that save as provided by the Act, and the Rules, and the practice and procedure of the Court, the provisions of the Code of Civil Procedure are, far as applicable, apply to all proceedings under the Act and the Rules (Rule 6). The Rules also save inherent powers of the Courts to give directions or pass orders (Rule 9). What this means is that in addition to the specific powers reserved for the Company Court by the Rules, inherent powers of the Court that a Court ordinarily exercises to secure the ends of justice or to prevent abuse of its process, can always be exercised by the Company Court. A Petition for winding up presented by creditors of a company is a special remedy provided under the Act. It is a peculiar remedy in the sense that, so far as the Company Court is concerned, the creditor presents himself as a representative of the whole class of creditors for whose benefit the Company Court exercises its jurisdiction to wind up a company on various grounds including on the ground of the company's inability to pay its debts. Such order, as and when passed, enures to the benefit of the entire class of creditors. Various provisions of the Act and the Rules make this clear in different ways. Firstly, every petition to wind up a company, upon its admission by the Court, needs to be advertised. The Company Court usually in its order provides for the mode and manner of this advertisement. The Rules make it clear that in a case of a winding up petition, the Company Court shall not dispense with advertisement required by the Rules. This underlines the importance of advertisement of the company petition for winding up. The Rules also provide that the Company Petition, once advertised after the admission order, cannot be withdrawn by the petitioning creditor except by leave of the Court. The application for such leave is provided

under Rule 100. The Rule provides that such application shall not be heard at any time before the date fixed in the advertisement for hearing of the petition. The reason for this can be seen in the immediately following Rule, namely, Rule 101, which provides for substitution of the creditor or contributory in certain circumstances. These circumstances include the situation, where the petitioner fails to advertise his Petition within the time prescribed for by the Rules or by an order of the Court or within such extended time as the Court may allow, or consents to withdraw the petition, or allows it to be dismissed, or does not apply for an order in terms of the prayers of the petition. Considering these Rules, it hardly needs to be emphasized that the Company Court ensure in every case that a petition, which is admitted, is advertised for the benefit of the entire class of creditors and contributories. The order seeking deposit of publication charges by the petitioning creditor or contributory is merely to ensure that the petition is advertised in accordance with the Rules and orders of the Court. In the event, the petitioning creditor fails to advertise the petition, the Company Court has an option to secure advertisement of the petition for the benefit of the whole class of creditors. The source of this power may be traced to Rule 31 of the Companies Court (Rules) 1959. In default of compliance of the requirements of the Rules or directions of the Company Court, as regards the advertisement and service of the petition, the Company Court has an option either to dismiss the petition or to give such further directions as it thinks fit. The Company Court, in pursuance of both its inherent powers contained in Rule 9 or in pursuance of its specific powers contained in Rule 31, could always give further directions as to deposit of a sum from the petitioning creditor to ensure advertisement of the winding up petition for the benefit of the entire class of creditors and contributories. If the Company Court could issue such directions upon a default on the part of the petitioning creditors to advertise and serve the petition, there is no reason why, at the time of making of an admission order, the Company Court may not insist upon deposit of publication charges by the petitioning creditor. In the event, the petitioning creditor, after deposit of publication charges, advertises the petition in accordance with the Rules or directions of the Company Court, upon proof of such advertisement, these publication costs deposited with the Court are ordinarily refunded. By means of this procedure, which is evolved by this Court through the last 20 years, the Company Court ensures that the interests of the entire class of the creditors and contributories are protected in the event the petitioning creditors, either due to lack of diligence or a clandestine understanding with the company, default in complying with the Rules or orders of the Court. There is nothing, therefore, wrong on principle if the Court were to pass such order on the basis of a convention or practice of the Court to that effect.

4 Once it is understood that as a matter of principle the order of deposit could lawfully be made, the questions such as the quantum of such costs or the manner of refunding of such costs to the petitioning creditor after compliance of the court orders, are matters to be decided in individual cases. The amount of costs ordered to be deposited currently, which is in the sum of Rs.10,000/-, is on the basis of current advertisement expenses for issuing an advertisement in accordance with the Rules and orders of the Court. I am told that currently the costs of advertisement are in the range of Rs.9000/- to Rs.10,000/-, in that case deposit of Rs.10,000/- seems to be in order. If and when the Court finds that such costs are inadequate to take care of the expenses of advertisement, the Court may order such other costs to be paid as if may think fit. That is for the individual court to decide and there cannot be any inflexible rule in that behalf.

5 Learned Counsel for the Applicant refers to certain difficulties faced by advocates in complying with the orders of deposit of costs. I am not impressed by these contentions. There is hardly any administrative inconvenience involved in deposit of these costs or refund of the costs upon production of proof of advertisement. It is open to the Company Court to order such refund to the advocates for and on behalf of their respective clients or work out any other appropriate means to achieve the result.

6 In that view of the matter, there is nothing wrong with the order passed by the Court regarding deposit of costs. Learned Counsel for the Applicant submits that in the event an advocate of this Court submits a personal undertaking to issue advertisement and comply with Rules or orders of the

Company Court relating to advertisement and service of the petition, the Company Court may not insist on deposit of publication charges. That is for the individual court in an individual matter to be decide and there cannot not be any inflexible rule in that behalf. Anyway it is not for me to judicially pronounce on a matter such as this.

7 The application is disposed of accordingly. Place this petition for hearing on 19 October 2015.

(S.C.GUPTE J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/ Order.