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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) NO.479 OF 2015

IN

SUIT NO.727 OF 1993

M/s. Space Age Engineering & Chemicals Pvt. Ltd. ...Plaintiff

vs

M/s. Hindustan Vegetable Oils Corporation Ltd. & Anr. ...Defendants

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Ms. S.I. Shah, for the Defendants.

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CORAM : S.C. GUPTE, J.

DATED: 26 MARCH, 2015

P.C. :

. This Motion is taken out by the original Defendant (Defendant No.1) for condonation of delay of 22 years in filing of the written statement and allowing Defendant No.1 to file its written statement in the suit. The affidavit in support of the Notice of Motion claims that there have been special circumstances which warrant condonation of this long delay and permission to file written statement despite such delay. It is submitted firstly that the Plaintiff herein was also a party to Suit No.1756 of 1990 filed in this Court as Plaintiff No.4. The suit was also in respect of the same liability as the suit liability herein. It is submitted that that suit was withdrawn by the Plaintiff

under an order passed by this Court on 11 July 2008. It is submitted by learned Counsel for Defendant No.1 that, having regard to the withdrawal of the suit, Defendant No.1 proceeded on the footing that the Plaintiff had given up its claim. Secondly, it is submitted that in a Company Petition filed before Delhi High Court, a Liquidator was appointed by the Court for disposal of immovable assets of the closed units of Defendant No.1 and discharge liabilities of creditors in accordance with the list to be provided to the Liquidator. It is submitted that when the Liquidator published public notices in newspapers inviting claims of creditors of Defendant No.1, the Plaintiff herein submitted its claim in response. It was the same claim as the suit claim. This claim was under consideration of the Liquidator, who examined the same and forwarded the same to Defendant No.1 for their views/opinion before taking a final decision thereon. The claim was, thereafter, deliberated upon in the board meeting held by Defendant No.1 on 3 February 2012. It was decided in the board meeting to contest the claim in the Court of law, i.e. in the suit herein. The decision of the board was communicated to the Liquidator, whereupon, the Liquidator passed an order *inter alia* noting the contention of the board of directors of Defendant No.1 that the Plaintiff had managed to obtain excess payment in collusion of ex-employees of Defendant No.1 and CBI was pursuing several criminal complaints in this behalf and that Defendant No.1 had a counterclaim against the Plaintiff. Noting these contentions, the Liquidator disposed of the Plaintiff's claim as rejected with liberty to the parties to pursue their respective contentions before the appropriate forum. It is submitted that after this order was passed by the Liquidator, the Plaintiff has taken out the present Notice of Motion for condonation of delay and

taking the written statement on record. It is submitted that these peculiar facts and circumstances call for condonation of delay and taking the written statement on record.

2. In reply, it is submitted by learned Counsel for the Plaintiff that the affidavit in support of the Notice of Motion does not make out a case for condonation of delay.

3. Having regard to the peculiar facts and circumstances of the case, in my opinion, interest of justice would be served better if the delay is condoned and Defendant No.1 is permitted to file its written statement, subject to payment of costs to the Plaintiff.

4. Accordingly, Motion is made absolute in terms of prayer clauses (a) and (b), subject to Defendant No.1 paying costs of Rs.1 lac to the Plaintiff, such costs to be a condition precedent. Defendant No.1 shall pay the costs and file its written statement after paying such costs within a period of six weeks from today. The Notice of Motion is disposed of accordingly.

(S.C. GUPTE, J.)