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

**COMPANY APPLICATION NO. 316 OF 2013
IN
COMPANY PETITION NO. 1048 OF 2008
CONNECTED WITH
COMPANY APPLICATION NO.1090 OF 2008
IN
COMPANY PETITION NO.228 OF 1987
WITH
COMPANY PETITION NO.735 OF 2004
IN
BIFR CASE NO.57 OF 1987**

Homi Framroze Mehta & Anr. ...Applicants
VS
The Official Liquidator of M/s Gaekwar Mills Ltd. ...Respondent.

.....
Mr Priyadarshan V Shah for the Applicant
Ms Pratibha Ramaswamy, Assistant O.L. Present.
.....

CORAM : S.C. GUPTE, J.

JUNE 30, 2015

P.C. :

The Company Application is for recall of a winding up order. The basis of the application is that in pursuance of a scheme sanctioned by this Court, all the debts of the company in liquidation have either been fully repaid or secured by depositing the requisite amount with the Official Liquidator. On the last occasion, when this matter was called out, it was pointed out to the Court that there was a pending appeal before the Division Bench of this Court, filed by some of the workers of the company in liquidation, challenging the order passed by this Court sanctioning the scheme. This Court made it clear on the last occasion that though adjournments were sought earlier by the contesting workmen in the present Company Application on the ground of pendency of their appeal, unless some order has been obtained by the contesting workmen from the appellate

court either staying the further proceedings in the scheme or in the Company Application herein, no further time would be granted to any of the parties only on the ground of pendency of the appeal. With that clarification the matter was posted for final hearing today. It appears that there is no order obtained from the Appellate Court by the contesting workmen. Nothing has been brought to the notice of this Court. Today, contesting workmen are not even present before this Court. Accordingly, the Company Application is taken up for final hearing.

2 At an earlier hearing of the Company Application, on 15 January 2014, this Court noted in detail the various attempts made on behalf of the ex-directors and others for discharge of workers' dues from out of the amounts deposited with the Mamlatdar of Gandevi in Gujrat in pursuance of the sanctioned scheme. Various reports were filed from time to time by the Mamlatdar giving details of the amounts disbursed by him and the amounts that could not be disbursed despite extensive publicity given in the local media from time to time. In the premises, this Court directed that the amounts lying with the Mamlatdar, Gandevi, Gujrat should be transferred to the Official Liquidator. The Official Liquidator was required to distribute these amounts to the company's workers in accordance with the sanctioned scheme after verifying the identity and eligibility of the workers, within six months from the date of deposit of the amounts with him. It was further directed that if there were any undistributed funds with the Official Liquidator at the end of this six months' period, the same shall be returned to the company by the Official Liquidator against an undertaking by the latter to make payments of any dues found payable to any worker/s under the sanctioned scheme in the event any claim was made in that behalf after return of undistributed funds to the company. It appears that in pursuance of this order, a final public notice was issued by the Applicants, after getting a draft settled from the Official Liquidator, requiring all workers of the company in liquidation to claim their dues from the Official Liquidator within six months from the date of publication of the notice. The workmen were notified that in the event of failure to lodge their claims with the Official Liquidator within the stipulated period of six months, unclaimed amounts would be refunded to the company and in the event of such refund, the workers would have to claim the amounts directly from the

company. It appears that in pursuance of this public notice, the Official Liquidator's Office has received 8 claims from various workers aggregating to Rs.3,61,407/-. It also appears that after expiry of the period of six months, further 14 claims aggregating to Rs.7,08,739/- have been received from the workers of the company in liquidation. The total amount of these 22 claims aggregates to Rs.10,70,146/-. As against this, the Liquidator has retained an amount of Rs.20,39,712/- from out of the amount transferred by the Mamlatdar to the Liquidator's office as of 16 June 2015. The balance amount from out of the amount received from the Mamlatdar office, has already been returned to the company as un-disbursed funds in pursuance of the order passed by this Court on 15 January 2014.

3 The above narration shows that all the debts of the Company in liquidation have been duly discharged in pursuance of the scheme sanctioned by this Court, save and except the outstanding claims of workmen (22 in number) aggregating to Rs.10,70,146/-. As against this amount, the Liquidator is admittedly holding funds aggregating to Rs.20,39,712/- as of 16 June 2015. Having regard to this position there is a clear case now for recall of the winding up order and refund of the excess amounts lying with the Official Liquidator to the company.

4 In the premises, the following order is passed.

(i) The Company Application is made absolute in terms of prayer clause (a). Winding up order is recalled and the Official Liquidator is discharged subject to the following;

(a) The Official Liquidator shall disburse the workmen's claims received by the Official Liquidator, as noted above, after verifying each worker's identity and eligibility in accordance with the orders passed by this Court earlier. This exercise shall be carried out by the Official Liquidator within a period of three months from today;

- (b) The Official Liquidator shall retain the sum of Rs.11,00,000/- for discharge of the workers dues and towards the costs, charges and expenses of the Official Liquidator including the commission of the Central Government;
- (c) The balance amount shall be forthwith refunded by the Official Liquidator to the Company;
- (d) At the end of the period of three months as provided in (a) above whatever funds are lying undisbursed with the Official Liquidator, shall be refunded to the company after deducting costs, charges and expenses referred to above;
- (e) The Official Liquidator shall submit a report at the end of three months' period referred to above.
- (f) In the event any further claims are received from its workers by the company, the company shall verify those claims and disburse them in accordance with the undertaking furnished to this Court and recorded in its order dated 15 January 2014;
- (g) The Company Application is disposed of in the above terms.

(S.C.GUPTE J.)