

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 588 OF 2014

IN

COMPANY PETITION NO.250 OF 2010

Mr Surendra Parikh

... Appellant

v/s

Official Liquidator of Surendra Engineering
Corporation Ltd. and anr.

... Respondents

Mr Prathamesh Kamat with Mr Zueb Cutlerywalla i/b M/s ALMT Legal
for Appellant.

Mr L.T. Satelkar for Official Liquidator.

Mr Shiraz Quraishi for Sudan Sugar Co.Ltd. (Claimant).

Mr S.K. Krishnan i/b Ms Prachi Manekar for Intervenors.

**CORAM: MOHIT S. SHAH, C. J. &
B.P.COLABAWALLA, J.**

DATE : 8 JANUARY 2015

P.C.:

1. This Appeal is directed against the order dated 12 September 2014 of the learned Company Judge for winding up of the Appellant – Surendra Engineering Corporation Ltd.

2. The gravamen of the impugned order clearly appears that the order for winding up was passed because none appeared for the Appellant – Company nor any affidavit in reply was filed opposing the winding up petition. After admission of the Petition, the learned Company Judge concluded that the Company was unable to pay its debt.

3. The case of the Appellant is that the Appellant was Director of the Company under liquidation and on account of negligence of the Directors, the Company was not represented before the learned Company Judge resulting into winding up order. When the Official Liquidator had convened a meeting on 8 October 2014 for discussion regarding liquidation of the Company and to take possession of the movable and immovable assets, the Appellant attended the meeting and came to know about the impugned order. The appellant expressed his willingness to make payment of the entire claim amount of US \$ 206,403.67 in a single installment and this was indicated at the time of hearing of the Appeal on 10 October 2014. When the appeal came up for hearing on 17 November 2014, again statement was made that the amount will be paid by 8 December 2014. Ultimately, the appellant paid the entire amount as reported in our order dated 15 December 2014.

4. However, since the notice of admission of winding up petition was published in newspapers, the Appellant agreed to publish the notice in newspapers, one in English and another in Marathi seeking withdrawal of the winding up petition. The said notice has been published in “Free Press Journal” in English and “Navshakti” in Marathi on 16 December 2014. The Official Liquidator has filed report dated 23 December 2014 indicating that pursuant to the said advertisement, the Official Liquidator has received the claims and Official Liquidator has also received certain mail addressed to the Office of the Company in liquidation and directed to the Official Liquidator.

5. The learned counsel for the Appellant invited our attention to the Appellant's affidavit dated 8 January 2015. On perusal of the aforesaid report dated 23 December 2014 and the affidavit of the Appellant, it is clear that the appellant has settled the claim of most of the claimants such as M/s V.S. Projects and System Engineers Pvt.Ltd., Mr Ramchandra Pathare and also some other creditors. It appears that however, some parties have lodge claims against the Company in liquidation. These claims are contested. We have heard the learned counsel for the Appellant

and the learned counsel for the Official Liquidator as well as the learned counsel for M/s B.K. International Inc., one of the parties who have lodged a claim with the Official Liquidator and which claim is seriously contested by the Company in liquidation (through the Appellant).

6. Having heard the learned counsel for the parties, we find that the claims of M/s B.K. International Inc. and certain other claimants are seriously disputed by the appellant on behalf of the Company in liquidation. In the facts and circumstances of the case, we are of the view that the interest of justice would be served if the claimants are granted liberty to take out appropriate proceedings in respect of their claims against Surendra Engineering Corporation Ltd. As and when such proceedings are taken out, the concerned Courts will deal with such claims in accordance with law. We do not express any opinion regarding the genuineness or otherwise of such claims. Subject to the above liberty, Appeal is allowed and the impugned order dated 12 September 2014 is set aside and Company Petition No.250 of 2010 is dismissed. The Official Liquidator is discharged.

7. Since the Official Liquidator is not in possession of the assets

of the Company, no further directions are required to be given except directing the appellant to pay costs of the Official Liquidator quantified at Rs.25,000/-.

8. The parties to act on the copy of this order duly authenticated by the Associate.

CHIEF JUSTICE

B.P. COLABAWALLA,J.