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

COMPANY APPLICATION NO. 947 OF 2015
IN
COMPANY PETITION NO. 163 OF 1998

The Bombay Mercantile Co-operative
Bank Limited .. Applicant

<u>In the matter between :</u>

Maharashtra Apex Corporation Ltd. .. Petitioner
Vs.
The Official Liquidator,
High Court, Bombay of Prudential
Polyweb Private Limited & Ors. .. Respondents

Ms. Sapna Rachure i/b T.N. Tripathi & Co. for applicant.

Ms.Yogini Chauhan, Asstt. O.L. present.

CORAM : K.R.SHRIRAM, J.
DATED : 16TH DECEMBER, 2015

P.C.

1 This application is to direct respondent no.2-SICOM to pay to the applicant its proportionate share being 31.23% of sale proceeds of Rs.1.01 crores amounting to Rs.31,54,230/- together with accrued interest in the same proportion from the date of receipt of sale proceeds till payment.

2 This Court, while permitting SICOM to dispose the asset vide its order dated 5.12.2003, had directed SICOM not to disburse any amount to

IDBI, MSFC and the applicant herein since it will be necessary for the Court to be satisfied, upon an application being made by those institutions of existence of a charge in their favour. The Court further stated that it will also be necessary for the Court to impose a condition on those institutions as well as filing an undertaking before this Court to bring back such amount as may be found due pro rata from them upon adjudication of the workmen's claim.

3 The applicant has an award in its favour against the company in liquidation and its directors. That award is dated 29.06.2013 passed by the Arbitrator appointed under the Multi-State Co-operative Societies Act 2002.

4 The liquidator has filed an affidavit dated 3.09.2014 in Company Application (Lodg.) No.307 of 2014 in which the Liquidator has also stated that SICOM be allowed to appropriate and adjust the net sale proceeds against the dues payable to SICOM and to proportionately distribute the same to the other secured creditors such as MSFC, IDBI and the (applicant) Bombay Mercantile Co-operative Bank Limited and the share of the applicant herein would be 31.23 %.

5 In the said affidavit, the liquidator has also confirmed once again that the applicant herein has pari-pasu charge on the sale proceeds. The liquidator has also issued a letter dated 13.07.2015 to the applicant whereby the liquidator has informed the applicant that their claim has been allowed for a sum of Rs.2.90,82,767.97 as a secured creditor against their claim for Rs.18,60,55,757.84. The applicant, therefore, submits that their prayer in the application be granted.

6 Nobody is appearing for respondent nos.2 or 3 or 4, though served. The counsel for the applicant tenders an affidavit of one Javed Patel, Officer of the applicant affirmed on 2.12.2015 in which it is stated that SICOM has no objection in giving the applicant its share in the sale proceeds after deducting the expenses incurred by them as and when directed by this Court. A copy of letter dated 18.11.2015 from SICOM to the applicant is also at Exh.1 to the said affidavit.

6 In the circumstances, SICOM to pay a sum of Rs.31,54,230/- together with accrued interest to the applicant after deducting the applicant's proportionate shares in the expenses, if any. The counsel for the applicant also states that the applicant will give an usual undertaking as required under Section 529(a) of the Companies Act, 1956 as per the usual format of

the official liquidator to bring back money if there is any claim of workmen against the company in liquidation and that the undertaking will be filed within two weeks from today. The statement of the counsel is accepted.

7 The company application accordingly stands disposed.

(K.R. SHRIRAM, J.)