JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO.141 OF 2016

IN

COMPANY PETITION NO.28 OF 2012

The Bank of New York Mellon, London Branch ...Applicant /Original Petitioner

Versus

Zenith Infotech Ltd (in Liqn.) through the Official Liquidator ...Respondent

WITH

COMPANY APPLICATION (L) NO.140 OF 2016

Continuum Managed Services LLC & 2 Ors. ***...Applicants /Original Petitioners***

Versus

Zenith Infotech Ltd (in Liqn.) through the Official Liquidator ***...Respondent***

Mr. Janak Dwarkadas,Senior Advocate, *a/w. Mr. D. Kishore, Adv. i/b. AZB Partners for the Applicants.*
Mr.Venkatesh Dhond, ***Senior Counsel,*** *a/w. Sharan Jagtiani, & Vyapak Desai, Siddharth Rathod, i/b. Nishith Desai Associates.*
Mr. Zal Andhyarujina, *a/w. Nausher Kohli, i/b. DSK Legal.*
Mr. Akash Saraf, *for the Intervener.*

CORAM: G.S. PATEL, J.
DATED: 18th March 2016

P.C.

1. This is a Company Application seeking certain urgent directions. Mr. Dwarkadas appears for the Petitioner. Mr. Dhond appears for what is known as the "Summit Group".

2. The application today relates to a Memorandum of Understanding dated 9th September 2015, a copy of which is at Exhibit "D" to the Affidavit in Support. It also seeks directions to the Liquidator to ensure that an amount of ***USD 6 Million*** presently in escrow with the Wells Fargo Bank is transferred to the account of Company in liquidation and further that the Official Liquidator do take all necessary steps to sell the minority stake being the shareholding of Applicant No.1 held by Zenith Infotech (FZE), a wholly owned subsidiary of the Company in liquidation. The stake in question consists of 7,411,764 units in Applicant No.1. The aggregate consideration for this is USD 9,652,941.

3. Summit obtained an arbitral award in its favour in the amount of about USD 8 million. The award was confirmed by a US Court on 25th June 2014. In fact, this transaction means that in consideration of Summit not pressing for realization of this confirmed award and receiving a aggregate consideration of USD 9,652,941/- for the sale of these units, additional funds, to the tune of about USD 16 million in the aggregate, will be brought in to the hands of the Official Liquidator.

4. The Official Liquidator seeks time to file an Affidavit in Reply saying that Senior Counsel engaged by the Official Liquidator

is unavailable. I refuse to adjourn matters for convenience of Senior Counsel. The Liquidator is entitled to engage counsel who are more readily available. There is no point in telling me that these are "complicated" matters. If this is indeed so, that is all the more reason for appointed Counsel to be present, not absent.

5. An application for intervention is orally made by Mr. Andhyarujina for one of the directors. Mr. Andhyarujina not only does not have an application signed by this director, but he also does not have benefit of this director's presence in Court, since the gentleman in question seems to believe it is more important to be away at such a time. Even more importantly this director does not have anything approaching the funds required. *Au contraire*: under the stewardship of this director, from whom there is not even the barest communiqué, and his brothers in arms, the Company was run down to the waterline and cast into dire straits, resulting in its liquidation. It is only after considerable effort by others that this Memorandum of Understanding has been arrived at.

6. I have also seen Exhibit "C" to the Affidavit in Support from page Nos.110 to 148. This is a copy of the Deloitte Report dated 18th December 2015. This comprehensive and detailed report clearly establishes the sufficiency of the funds being made available.

7. The ***Company Application (L) No.141 of 2016*** is made absolute in terms of prayers (a), (b), (c) and (d). As regards prayer (b) it is clarified that the Official Liquidator is required now only to formally approve the terms of the MOU acting under this order. As regards prayers (c) and (d), the Official Liquidator will undoubtedly make the necessary reports setting out the steps taken for compliance with the order in terms of both these prayers.

(G. S. PATEL, J.)

<u>Note</u>:- This order is modified as per order dated 30th March 2016 passed on a praecipe for Speaking to the Minutes of original order.