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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION (COMPANY) (L) NO.4 OF 2016
IN
COMPANY APPLICATION NO.904 OF 2015

Asset Reconstruction Company (I) Limited ...Petitioners
Versus
Official Liquidator of Uniworth Apparels Ltd., (In Liquidation) & Anr. ...Respondents

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Mr. Chetan Kapadia, *with Mr. Chirag Mody, i/b Krishnamurthy & Co. for the Petitioners.*
Mr. N.T. More, *i/b MMK Law Associates for workers.*
Ms. Shilpa Kapil, *for Official Liquidator.*

CORAM: G.S. PATEL, J
DATED: 22nd June 2016

PC:-

1. Heard Mr. Kapadia for the Review Petitioner and Ms. Kapil for the Official Liquidator.

2. The Petition seeks review of my order dated 17th March 2016. By that order I *inter alia* directed ARCIL to bring back into hands of the Official Liquidator an amount of Rs.14.40 crores, with interest earned.

3. Mr. Kapadia in fact correct in pointing out that there is an error apparent on the face of the record. This is clear from what I noted in that order, and which is even today undisputed, viz., that ARCIL is the only secured creditor of the Company in liquidation, and its claim ranks *pari passu* with the claims of workmen. The total amount of the workmens' claims is Rs.5,75,63,470/-. On adjudication, the Official Liquidator cannot possibly arrive at a higher figure for distribution; this is the maximum claim. This entire claim is fully secured by ARCIL having already brought these funds into the Official Liquidator's hands. Therefore, the direction that the additional amount of Rs.14.40 crores was required to be brought in to meet any additional claim is clearly erroneous. It requires to be reviewed and corrected.

4. I note, too, that the order of 17th March 2016 appears to be based on a concession. There is some controversy about what statement exactly was made on that day and by whom, and whether counsel for ARCIL was at all authorised to make any such statement. I must give ARCIL the benefit of doubt; it is well-settled in law that a statement or concession without authority by a lawyer cannot bind the party. Moreover, even if that concession or statement was in fact made, a matter of which I can no longer claim to have a recollection of sufficient accuracy or reliability, if that statement or concession is shown to be unnecessary, as Mr. Kapadia now does, then no order ought to have been made on it merely because the statement or concession was offered.

5. Lastly, I find from the record as it stands today that there is before the Court a completely unequivocal statement and undertaking that more than sufficiently protects the interests of all concerned.

6. After the admission of this Petition, ARCIL has filed an Affidavit dated 29th April 2016 of one Anil Kumar Dalmia that sets out the necessary particulars of interest earned on the amounts with ARCIL. In paragraph 2 of that Affidavit, on page 228 of the paperbook, it is said that as on the date of the Affidavit, the amount available for distribution was Rs.19,48,61,493/-. This is far in excess of the maximum claim by the workmen before the Official Liquidator.

7. More importantly, I note that there is an unqualified and widely-worded undertaking in paragraph 3 of this very Affidavit. It reaffirms an earlier undertaking on 28th April 2012 to bring any further monies to the hands of the Official Liquidator towards the proportionate share from the sale proceeds and interest thereon as and when demanded by the Official Liquidator for *pro rata* disbursement to workmen against their adjudicated claim. That undertaking has been adopted in the present Affidavit. The undertaking is once again accepted.

8. It needs only to be noted that ARCIL's actual claim as an secured creditor is today in excess of Rs.90 Crores. The amount of Rs. Rs.19,48,61,493/- will not meet ARCIL's claim in full. Yet ARCIL's undertaking is unqualified in respect of this amount. I must also clarify that the reason why it is this amount that is of significance and relevance is also set out in the order under review;

for it is the principal of this amount that was said to have been 'appropriated' by ARCIL towards its claim. Now the undertaking that ARCIL places on affidavit is sufficient to protect any foreseeable future claim.

9. I believe Mr. Kapadia is therefore correct in saying that this is a fit case for review, and that there is a facial error apparent. There is, after all, a reason and a well thought out purpose underlying our procedural provisions for review in Section 114 and Order 47 of the Code of Civil Procedure, 1908 ("**CPC**"). These provisions are salutary. They enable a course correction in a judicial order, but they do so in a carefully delineated framework. A primary requirement is that there be no appeal; ARCIL has withdrawn the appeal it had once filed. Read together, Section 114 and Order 47, Rule 1 make it clear that an order may be reviewed when there is an 'error apparent on the face of the record', i.e., an error or mistake that is patent and requires no intricate or long-drawn reasoning to detect, and when the other conditions in Order 47 are met (these requiring strict compliance).[1] The error, therefore, must be such that "he who runs can read",[2] one that requires "no mental elevation", something that is "as plain as daylight". I believe today that there is just such an error apparent in my order of 17th March 2016.

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1 *Satyanarayan Laxminarayan Hegde v Mallikarjun Bhavanappa Tiruymale*, [1960] 1 SCR 890; *Aribam Tuleshwar Sharma v Aribam Pishak Sharma*, (1979) 4 SCC 74; *Meera Bhanja v Smt. Nirmala Kumari Choudhary*, (1995) 1 SCC 170; *Parsion Devi v Sumiri Devi*, (1997) 8 SCC 715; *Haridas Das v Smt. Usha Rani Bainik & Ors.*, (2006) 4 SCC 78.

2 A phrase that is attributable, I believe, to Anthony Trollope in *Barchester Towers*, and to Henry David Thoreau in *A Yankee in Canada*.

10. There is yet another reason why the order of 17th March 2016 should be reviewed. That order only sought to secure a future and yet to be placed claim by directing ARCIL to bring into the Official Liquidator's hands certain further funds. The purpose cannot have been to penalize ARCIL, but only to ensure that the funds were available should they be needed. This purpose is fully met by the statements made and undertakings given on affidavit. In fact, even on 17th March 2016, all that was required was an acceptance of just such an undertaking from ARCIL. An order of bringing in the funds was neither necessary, nor, in my considered view today, appropriate. Again, that order took the form it did perhaps due to a misunderstanding as to what was being said on behalf of ARCIL.

11. Finally, Mr. Kapadia is also correct in his submission that the Official Liquidator cannot, today, adjudicate the workmens' claim in an amount higher than Rs.5,75,63,470/-, for that is the entirety of their claim before the Official Liquidator. Should the Official Liquidator, therefore, arrive at an adjudication of a figure *less* than this, the remainder or balance would have to be returned to ARCIL since it was ARCIL that brought in these funds in the first place; and, consequently, ARCIL would be within its rights to contend today, even in Review, that no further statement or undertaking for any *additional* amount was required. Despite this, Mr. Kapadia submits, for the satisfaction of the conscience of the Court and to establish its *bona fides*, ARCIL has given, and stands by, the undertaking to which I have just referred; and this time it has done so on affidavit so that there is no room for controversy. Mr. Kapadia reiterates that ARCIL stands by that undertaking. That is surely sufficient.

12. I am, therefore, unable to accept Ms. Kapil's submission that there is no ground made out for review. With her usual fairness, Ms. Kapil does accept the correctness of the figures relating to the amount of the workmens' claims and the extent of funds in the Official Liquidator's hands. In my view, the concerns of the Official Liquidator and the interests of the workmen are now more than sufficiently protected by the undertaking Mr. Kapadia gives.

13. Upon ARCIL's statements on affidavit being noted and the undertaking therein being accepted, sufficient cause is made out to review the order in question of 17th March 2016. That order is recalled and set aside. It shall be substituted by the present order containing the foregoing acceptance of these undertakings and statements made by ARCIL, particularly those in paragraphs 2 and 3 of its Affidavit dated 29th April 2016 in this Review Petition.

14. The Review Petition is disposed of in these terms.

15. Should the need arise, liberty to the parties to apply on a fresh Company Application.

(G. S. PATEL, J.)