



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 16 May 2024**

Judgment pronounced on : 24 July 2024

+ **CO.PET. 145/2014**

SMT. USHA JAIN & ANR. Petitioners

Through: Mr. Piyush Sanghi, Ms. Khushbu Sahu, Mr. Nikhil Singh, Mr. Sahil Pahwa, Mr. Priyadarshi Gopal and Ms. Megha Kapoor, Advs.

versus

M/S VIGNESHWARA DEVELOPWELL P. LTD.

..... Respondent

Through: Mr. Sumit K. Batra, Standing Counsel for OL

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

CO.APPL. 784/2023 (For release of amount)

1. The instant application has been preferred under Section 151 of the Code of Civil Procedure, 1908 on behalf of the applicants/petitioners, who are stated to be Non-Resident Indians, seeking release of an amount of Rs. 44,41,250/- in terms of order of this Court dated 24.04.2014.

2. Briefly stated, the petitioners herein jointly applied for allotment of a commercial unit admeasuring 500 sq. feet in a Technology Park Project being developed by the respondent company in Gurgaon, at the rate of Rs. 5500 per sq. foot. Pursuant to the same,



the petitioners deposited a sum of Rs. 27,50,000/- as full and final payment and receipt of the said amount was acknowledged by the respondent company *vide* a receipt dated 09.04.2010. Subsequently, the parties entered into a Developer-Anchor Option Agreement (hereinafter referred to as the '*Buy Back Plan*') on 04.04.2010, the relevant clause of which has been reproduced hereinbelow:

"2. TERMS OF INVESTMENT

2.1 The anchor has made investment on the assurance by the Developer to provide him a option of buying back allotted unit at the rate of Rs. 8882.5/- per square feet after a period of thirty months from the date of this agreement, irrespective of the market price prevailing at the time of exercise of this option.

2.3 Where the anchor unit opts to exercise its option to return back the allotment at the price stated hereinabove as buy back price, it shall make a written request to Developer intimating his intention of exercising the option.

2.4 The Developer shall then be liable to pay the amount due towards the promised price at the rate mentioned above and thus the allotment of the unit shall be back with developer, who shall be free to use the unit at his own discretion and all rights relating to that property shall vest back to the Developer"

3. Thereafter, by way of letter dated 20.08.2012 addressed to the respondent company, the petitioners exercised the option to return the allotted unit in terms of Clause 2.4 of the Buy Back Plan and claimed a sum of Rs. 44,41,250/- from the respondent company, as provided under Clause 2.1 of the agreement. Another letter dated 26.04.2013 was sent by the petitioners, seeking the claimed amount. However, since the respondent company gave no reply to the said letters, the petitioners preferred the present company petition, bearing CO.PET. 145/2014, seeking winding up of the respondent company.

4. Although the amount sought to be released was acknowledged



to be due and payable by the respondent company, as reflected in the order dated 24.04.2014, it was stated on behalf of the respondent that certain issues under the FEMA¹ may arise, insofar that the petitioners would have to secure an appropriate certificate to receive the amount; and further that a certain amount of service tax may be recoverable from the petitioners, which aspect came to be recorded in the order dated 24.04.2014, and therefore, the respondent was accordingly directed to deposit the said amount of Rs. 44,41,250/- with the Court.

5. The respondent company, however, sought more time to make the required deposit as directed by this Court, on 26.05.2014 as also 16.07.2014. Subsequent thereto, the amount of Rs. 44,41,250/- was deposited by the respondent before the Registrar General of this Court in two instalments of Rs. 20,00,000/- and 24,41,250/-, which came to be recorded in the order dated 28.08.2014. The amount so deposited has since been ordered to be invested in an interest-earning fixed deposit with UCO Bank, and interest to the tune of Rs. 38,18,325/- has since been accrued, as recorded in the order of this Court dated 01.04.2024.

6. At this juncture, it is pertinent to mention that evidently, several other winding up petitions had been instituted against the respondent company, one of which, being CO.PET. 885/2015 titled '**Col. P.K. Uberoi v. Vineshwara Developwell Pvt. Ltd. and Ors.**' was admitted and the Official Liquidator was appointed as a Provisional Liquidator to the respondent company *vide* order dated 22.07.2016. In view of the same, by the same order, the instant company petition was

¹ Foreign Exchange Management Act



disposed of as withdrawn, along with the other pending winding up petitions, and parties were directed to place their respective claims before the Official Liquidator.

7. It is the case of the petitioners that they were misinformed and misguided by their previous counsel, as a result of which they were not in the know of these proceedings or aware of the disposal of CO.PET. 145/2014, which was moved on their behalf. It is stated that they only became aware of these developments on a recent visit to India. It is urged on their behalf that their claim for the amount stated became crystalised on the instance of the respondent company acknowledging the sum of Rs. 44,41,250/- to be due and payable, which was recorded in the order dated 24.04.2014, and therefore, there was no occasion for the petitioners to file a claim before the Official Liquidator, which fact they could not bring to the attention of this Court on account of the unprofessional and inefficient conduct of their previous counsel.

8. The learned counsel for the applicants/petitioners has placed reliance on the decision of the Bombay High Court in the case **Nahar Builders Ltd. v. Housing Development and Infrastructure Ltd.**², wherein a dispute arose between the rival parties and subsequent to institution of arbitration proceedings, an award came to be passed in favour of the petitioner, directing the respondent to pay a sum of Rs. 8 crores along with due interest, which amount had earlier been deposited with the Court by the respondent. In opposing the application for release of the amount, it was urged on behalf of the

² 2020 SCC OnLine Bom 2522



respondent that a moratorium has since been placed on the company since it is undergoing insolvency proceedings, and that the sum is a 'property of the company' as provided under Section 14 of the Insolvency and Bankruptcy Code, 2016. The said contention was not countenanced by the Bombay High Court, and the following observations were made:

“7. The opposition from HDIL is that since there is a moratorium that has come in to play in view of the insolvency proceedings under the Insolvency & Bankruptcy Code, 2016, the amount of Rs. 8 crores deposited in this Court is 'the property of HDIL' within the meaning of Section 14 of the IBC. That submission does not commend itself. Once an amount is deposited in this Court, it is placed beyond the reach of either party without permission of the Court. It is, therefore, not 'the property of either party pending an adjudication as to entitlement by the Court. Once the Arbitrator held that it was Nahar Builders that was entitled to this amount, and that award became enforceable as a decree of this court, then no question remained of the amount being claimed by HDIL. In another manner of speaking, from the time the deposit was made until the time withdrawal is ordered, that amount is not the property of either party to the dispute.

8. It is true that an execution against HDIL is presently stayed but this is not an application for execution, nor is it, within the meaning of Section 14(1)(d), an application for 'the recovery of any property by an owner or lessor where such property is occupied by or is in the possession of corporate debtor'. To read only the words 'recovery of any property' as Ms. Patil does, but not to read the rest of clause (d) is materially incorrect.

9. The provisions regarding a moratorium cannot possibly apply to such cash deposits made in this Court. As Mr. Dwarkadas for Nahar Builders put it, money has no colour. Once it is deposited in Court no party can automatically claim any right to it without an adjudication by a Court. There is no dispute that there is an unchallenged and unsatisfied award in favour of Nahar Builders against HDIL. There is also no dispute that an amount of Rs. 8 crores is available with this Court.”

9. Learned counsel for the petitioners has also cited an order passed by the Supreme Court in the case **Hanjer Biotech Energies**



Pvt. Ltd. v. Paryavaran Mitra (Janvikas)³, whereby the court granted the release of a sum deposited with the Collector of Rajkot observing that the amount was deposited by the company concerned, prior to going into liquidation.

ANALYSIS & DECISION:

10. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties at the Bar. I have also perused the relevant record of the case.

11. At the outset, although, there is merit in the plea advanced by the learned counsel for the applicants that the right of the petitioners to seek refund of their investment in terms of the 'buy-back' clause in the contract dated 04.04.2010 with the respondent company had crystallized on 24.04.2014, much before the winding up order was passed appointing a Provisional Liquidator on 22.07.2016. However, what turns the table against the petitioners is the fact that they neither furnished the requisite certificate from FEMA nor came out with the plea that such certificate was not required, and thereby evidently delaying the release of the amount deposited with the Registrar General of the High Court, on their own fault.

12. A perusal of the record shows, that CO. APPL. 2459/2014 came to be moved on behalf of the applicants requesting that the amount deposited with the Registrar General of the High Court be invested in Fixed Deposits and such application was allowed on 10.05.2014. The petitioners confounded the issues when they joined in the batch of winding up petitions pending against the respondent company, which

³ Order dated 07.05.2024 in Civil Appeal No. 3191/2014.



is reflected *vide* Annexure 'A-10', wherein the following order dated 22.07.2016 was passed:

"All these petitions seeking winding up of the respondent company, VIGNESHW ARA DEVELOP WELL PVT. LTD., are, inter alia, predicated on the alleged non-payment of various sums of money, which according to the petitioners, have remained unpaid despite service of notice of winding up on the registered office of the respondent company; and to which, no reply has been given by the respondents.

Counsel for the Official Liquidator, who is present in Court, points out that in another Co.Pet. No.885/2015, titled *COL. P.K. UBEROI (RETD.) & ANR. v. VIGNESHWARA DEVELOPWELL PVT. LTD & ORS.*; also seeking winding up of the respondent company, the Official Liquidator attached to this Court has been appointed as the Provisional Liquidator of the company.

Under the circumstances, no further orders are required to be passed in these matters.

Counsel for the petitioners seek to withdraw their respective petitions, and to file an appropriate claims before the Official Liquidator as and when such claims are invited. They are permitted to do so.

At the same time, it would be open to the petitioners to take recourse to Rule 101 of the Companies (Court) Rules, 1959 in case they are so advised. It would also be open to the petitioners to intimate the Official Liquidator about the relevant particulars of the petitioners' dues from the respondent company in each of the matters with a view to assisting the Official Liquidator in finalizing the statement of affairs of the company in liquidation and carrying out his duties; whilst making it clear that any such information to the Official Liquidator by the petitioners in these matters would not *ipso facto* amount to the institution of any claim before the Official Liquidator; and it can only be filed in accordance with the relevant Rules and at the appropriate stage.

All the petitions, along with interim applications, stand disposed off."

13. Thus, it is borne out from the aforesaid order that all the claimants/investors including the learned counsel for the petitioners acknowledged that they would file their claim before the Official Liquidator. Evidently, thereafter no action was taken on behalf of the



petitioners. To be specific, no action was taken on their behalf since the date relief was granted to them initially *vide* order dated 24.04.2014, and it was only as late as 16.09.2023 that the present application was instituted wherein wild allegations have been levelled about the incompetent and unprofessional advice on the part of their counsel who was representing them earlier.

14. The plea advanced by the learned counsel for the petitioners blaming the previous counsel is clearly not palatable. It is manifest that the amount towards investment had been deposited with the Registrar General pursuant to the directions dated 24.04.2014, but the petitioners also failed to comply with the necessary formalities, and eventually waived their rights in lieu of placing a claim for the said amount before the Official Liquidator. The fact that no claim is lodged before the Official Liquidator is another story. Indeed, the amount is lying deposited in this Court out of the reach of the stakeholders. However, since much water has flown over the last ten years or so, the amount deposited should rather be utilised for satisfying the claims of the secured creditors.

15. In view of the foregoing reasons, the present application is dismissed. The amount, which has been deposited with the Registrar General, may be reclaimed by the Official Liquidator with accrued interest and the same may be brought within the corpus of the funds of the company (in liquidation) to be utilised for satisfaction of the claims of the secured stakeholders in accordance with law. The petitioners shall be at liberty to file their claim with the Official Liquidator within thirty days from the date of this judgement. Delay



occasioned in filing the claim is hereby condoned in the interest of justice.

16. The application is dismissed accordingly.

DHARMESH SHARMA, J.

JULY 24, 2024
Sadiq

Signature Not Verified

Digitally Signed By: PRAMOD
KUMAR VATS CO.PET. 145/2014
Signing Date: 24.07.2024
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