

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA
COMPANY APPEAL NO. 8 OF 2012
WITH
COMPANY APPLICATION NO. 41 OF 2017

1. Andrew Lawrence Hosking,
2. Kevin John Hellard,
3. Nicholas Steward Wood.

All major age, of Grant Thornton
UK LLP, 30, Finsbury Square,
London, EC2P 2YU, (in their capacity
as Joint Trustees of the estate of
Maythem Muhamad Al-Ansari).

..... Appellants

Versus

1. M/s. Shekhar Electricals,
through its proprietor
Shekhar Shirodkar, resident of
Curtorim Goa.
2. M/s. Falcon Retreat Private Limited,
A Company incorporated under
the Companies Act, 1956,
having its registered Office at
Falcon Resorts, Naika Vaddo,
Calangute, Goa 403 506,
through its Managing Director
Mr. Anthony Rosario Fernandes,
3. Economic Development Corporation,
through its Managing Director,
having Office at EDC Complex,
Dada Vaidya Road, Panaji, Goa.

4. The State Bank of India,
Commercial Branch,
Patto Plaza, Panaji, Goa.

5. The Registrar of Companies &
Official Liquidator,
Patto Plaza, Panaji, Goa.

(Respondents No. 3 to 5 added as
per Order dated 12/09/2012).

..... Respondents.

COMPANY APPLICATION NO. 41 OF 2017

The State Bank of India,
Commercial Branch,
Patto Plaza, Panaji, Goa

..... Applicant.

1. Andrew Lawrence Hosking,
2. Kevin John Hellard,
3. Nicholas Steward Wood.
All major age, of Grant Thornton
UK LLP, 30, Finsbury Square,
London, EC2P 2YU, (in their capacity
as Joint Trustees of the estate of
Maythem Muhamad Al-Ansari).

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through its Managing Director
Mr. Anthony Rosario Fernandes,

3. Economic Development Corporation,
through its Managing Director,
having Office at EDC Complex,
Dada Vaidya Road, Panaji, Goa.

4. The State Bank of India,
A Corporation constituted under the
State Bank of India Act, 1955,
with its Local Head Office at Mumbai
and one of its Branch Office at
Commercial Branch, "SBI-STC Bldg."
Patto Plaza, Panaji, Goa.

5. The Registrar of Companies &
Official Liquidator,
Office of the Registrar of Companies,
Patto Plaza, Panaji, Goa.

6. M/s. L.K. Trust,
A Trust incorporated under the
Indian Trust Act, 1882, having
registered Office at
Brewery House, 7th Mile,
Kanakpura Road,
Bangalore 560 062.

..... Respondents.

Mr. H. D. Naik, Advocate for Appellants.

Mr. V. Rodrigues, Advocate for the Respondent No.1.

Mr. A. F. Diniz & Ryan Menezes, Advocates for the Respondent
No.2.

Mr. D. Pangam, Advocate for Respondent No.3-Applicant in COAP No.41/2017.

Ms. Amira Razaq, Advocate for Respondent No.5.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 12 December 2017.

ORAL JUDGMENT : (Per N.M. Jamdar, J.)

When the Company Application No.41 of 2017 filed by the State Bank of India, had come up for consideration, an order was passed on 6 December 2017, as under :

“The learned counsel for the Appellant submits that the grievance made by the Appellant in the appeal can be redressed by continuing ad-interim order granted in appeal for a period of three months so that the Appellant would take suitable steps in respect of its claim. This submission appears to be fair. We are of the prima facie opinion that the Appeal can be disposed of by continuing the interim order by a period of three months leaving the Appellant to pursue his remedy as per law. Stand over to 12 December 2017.”

Accordingly, the Company Appeal No.8 of 2012 is taken up for consideration.

2. The Appellants challenge the order passed on 27 July

2012 in Company Application No.5/2012 by the Company Judge. Company Application No.5/2012 was filed by the Appellants in the capacity of joint trustees of the estate of Maythem Muhamad Al-Ansari, inter alia, for impleadment in Company Petition No.19/2006. Company Petition No.19/2006 is filed for winding up of the Respondent No.2-Falcon Retreat Private Limited. The said Company is wound up and the Official Liquidator has been appointed as Liquidator. The learned Company Judge, by an order dated 17 July 2012, came to the conclusion that no case was made out by the Applicant for impleadment and the application was rejected. The Company Appeal by the Appellant challenging the order dated 17 July 2012 was admitted on 1 October 2013. Earlier, by an ad interim order, further proceedings in Company Petition No. 19 of 2006 were stayed. This ad interim order was continued and by further order dated 23 October 2012, directions were given to the State Bank of India, and other parties, styled as 'Secured Creditors' in respect of the amounts of the Company with them.

3. As stated earlier, when the Company Application and the Company Appeal had come up for consideration on 6 December 2017, a grievance was made by the Secured Creditors that they are outside the winding up and need not be restrained from recovering their dues. It is the case of the Appellants that the Appellants have

certain rights qua the amounts which are with the Secured Creditors.

4. On the last occasion, after the matter was argued for some time, the learned Counsel for the Appellants had taken time to take instructions and had submitted that whatever rights and disputes the Appellants have against these Secured Creditors-Respondents, the Appellants will take necessary steps. As far as the contention of the Appellants that they have certain dues payable by the Company, if the Appellants are creditors, then they can always stand in line with other Creditors by applying so to the Official Liquidator. The learned Counsel for the Company, on the other hand, points out that in the impugned Order, the learned Company Judge has held that the Appellants are not Creditors. Be that as it may, what we find is that continuation of the Appeal, at the behest of the Appellants in these circumstances, is not necessary, since whatever rights that the Appellants may have, the Appellants have adequate remedy and, therefore, proceedings in the Company Petition need not be stayed any further. Only by way of sheer indulgence and that there was an ad interim order operating in this Appeal and that the Appellants have chosen not to press the Appeal on merits if the Order is continued for sometime, without expressing anything on merits, we propose to extend the ad interim order for sometime.

5 . In the Order dated 6 December 2017, submission of the Appellants for continuation of the ad interim order for a period of three months was recorded which we thought at that time was prima facie adequate. The learned Counsel for the Respondents take exception for a period of three months being granted to the Appellants stating that it is too long. Considering the facts and circumstances of the case and the rival contentions and the Courts will have vacation, we propose to extend the interim order by ten weeks from today. Accordingly, the interim order dated 23 October 2012 will continue for a period of ten weeks from today. The learned Counsel for the parties agree that it is not necessary to stay further proceedings in the Company Petition No.19 of 2006 and the interim order granted staying the proceedings in the Company Petition stands vacated.

6. The Company Appeal and the Company Application stand disposed of in the above terms.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.