IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.448 OF 2016
in
COMPANY PETITION NO.276 OF 2011

Shubhabrat Sudhanshu Dutta }
(Ex-director, Indo bonito Multinational Ltd) ..} Applicant

IN THE MATTER BETWEEN
State Trading Corporation of India Ltd }
a Company incorporated under the provisions
of the Companies Act, 1956 with its office at }
Jawahar Vyapar Bhavan, Tolstoy Marg,
New Delhi 110 001 }
v/s
Indo bonito Multinational Ltd, a company }
incorporated under the provisions of the
Companies Act, 1956 having its registered }
office at registered office at A-729,TTC
Industrial Area, Koparkhairane }
Navi Mumbai-400 705. .. Respondent

Mr.Mayur Khandeparkar I.b. Mr.Jamshed Ansari for Applicant
Ms.S.I.Shah I.b M/s S.I.Shah &Co for Respondent
Mr.Mahendar Aitha Company Prosecutor for Official Liquidator

CORAM: R.D.DHANUKA, J
DATE: 22 FEBRUARY 2017

ORAL JUDGMENT

1. By this application filed by the Ex-Director of the Company in-liquidation, the Applicant seeks condonation of delay in filing the Company Application and leave under section

446 of the Companies Act, 1956 to file this Company Application and seeks recall of the order dated 14 November 2014 of winding up of the Company passed by this Court.

2. On 30 July 2012 this Court admitted the Company Petition No.276 of 2014 and directed that the Petition be advertised by the Petitioner in two local newspapers. It is the case of the original Petitioner that pursuant to the said order passed by this Court, the original Petitioner effected service of notice under Rule 28 of the Companies (Court) Rules,1959 at the last known address i.e. Office No.10, 2nd floor, Dheeraj Heritage,S.V.Road, Milan Subway Junction, Santacruz (W) Mumbai-400 054. It is the case of the Applicant on the other hand, that the said address was not the registered office address of the Respondent-Company-in liquidation.The ex-Director thus, could not appear before this Court when the matter was heard on 14 November 2014 when Company Petition No.276 of 2011 filed by the original Petitioner came to be disposed of and the Respondent-Company in-liquidation is ordered to be wound up.

By the said order, this Court appointed the Official Liquidator as Liquidator of the Respondent-Company with all powers under the provisions of the Companies Act, 1956.

3. Mr.Mayur Khandeparkar learned counsel for the Applicant invited my attention to the Affidavit dated 28 September 2011 which was filed by the original Petitioner before this Court in Company Petition No.276 of 2011. Along with the said affidavit, the original Petitioner had annexed a letter addressed to the Respondent-Company-in-liquidation at the Santacruz (W) address which was returned by postal endorsement 'left'. My attention is also invited to the Affidavit of service dated 12 April 2012 which was filed by the original Petitioner before this Court and Annexures thereto. It is submitted that the original Petitioner had addressed a letter to the Registrar of Companies, Mumbai on 21 March 2012 requesting the Registrar of Companies to inform and furnish the address of the Respondent company-in-liquidation on record and also to furnish the correct registered office address of the

Respondent-Company in-liquidation. My attention is also invited to the Affidavit of service dated 13 July 2012 filed by the original Petitioner before this Court. In that affidavit, the original Petitioner has annexed Company Master details provided by the Registrar of Companies which indicates that the registered Office address of the Company is A-729, TTC Industrial Area, Koparkhairane, Navi Mumbai-400 705.

4. Learned counsel for the Applicant invited my attention to the Affidavit of service dated 17 September 2013 and submits that though the original Petitioner was aware of the registered Office address of the company in-liquidation i.e.A-729, TTC Industrial Area,Koparkhairane, Navi Mumbai-400 705, notice under Rule 28 of the Companies Court (Rules) 1959 was sent to the Company-in-liquidation at the Office address at Office No.10, 2nd floor, Dheeraj Heritage, S.V.Road,Santacruz (W) Mumbai-400 054. He submitted that admittedly, the said notice was not delivered on the Respondent-Company in-liquidation at the registered office address of the company and

the order passed by this Court on 14 November 2014 was ex-parte without complying with mandatory requirements of affecting service under Rule 28 of Companies (Court) Rules,1959 at the registered Office of the Company in-liquidation. Nobody on behalf of the company was found at that address to receive the notice.

5. Learned counsel placed reliance on the Judgment delivered by the Division bench of this Court in the case of ***MODERN DEKOR PAINTING CONTRACTS PVT.LTD VS JENSON & NICHOLSON (India) LTD and another 1983 Mh.LJ. 485*** and in particular paragraphs 12 and 16 in support of the submissions that notice under Rule 28 has to be served at the registered Office address of the Respondent-Company and any other mode of service cannot be accepted.

6. Learned counsel also placed reliance on the Judgment of this Court in ***SKEL BREWERIES LTD VS SANMAN DISTRIBUTORS PVT.LTD AIR 1999 BOMBAY 249*** and in particular paragraphs 9 and 10 in support of his submissions

that notice served under Rule 28 of the Companies (Court) Rules 1959 has to be served at the registered office address of the company-in-liquidation had not at any other informed address of the company-in-liquidation.

7. Ms.S.I.Shah learned counsel for the original Petitioner on the other hand, seeks time for filing an affidavit.Mr.Khandeparkar learned counsel for the Applicant strongly opposes the application for adjournment on the ground that this matter was already substantially argued before this Court on 8 February 2017 and though this Court had granted indulgence to file Affidavit-in-reply, no such affidavit is filed till date. He submits that the ex-parte order is passed by this Court directing winding up of the Respondent-Company.The said order is causing prejudice to the Applicant in other proceedings filed by and against the applicant Company in-liquidation. Ms.Shah learned counsel for the original Petitioner submitted that the Applicant has not explained the gross delay of 530 days in filing the Company Application in the affidavit in-support of

the Company Application. She submits that present Application filed by the ex-Director of the Respondent Company-in-liquidation is not maintainable since he has no locus to file such an application.

8. Submission of learned counsel for the original Petitioner is that notice under Rule 28 of the Companies (Court) Rules,1959 has been served upon the original Petitioner at the last known office address of the Respondent-Company and this Court was justified in passing the ex-parte order against the Company-in-liquidation in view of the Company having remained absent before this Court when the matter was called out on 14 November 2014.It is submitted by the learned counsel for the original Petitioner that since this Court has already appointed the Official Liquidator of the Respondent-company in-liquidation, notice also be issued upon the Official Liquidator to oppose this application filed by the ex-Director. It is submitted by the learned counsel that the last affidavit filed by the original Petitioner before this Court which is at page 31 of the Company

Application clearly indicates that the Applicant had made attempts to serve the Respondent-Company at the last known office address of the Company in-liquidation.

9. In so far as the first submission of learned counsel for the original Petitioner that delay of 530 days is not sufficiently explained in the Company Application is concerned, I have perused the averments made in the Company Application. The Applicant has sufficiently explained as to when the Applicant came to know about the order dated 14 November 2014 passed by this Court. It is stated in the affidavit that the Applicant came to know about the order passed on 14 November 2014 on 27 April 2016 and on 6 May 2016 the Applicant filed this Company Application inter alia praying for recall of the order dated 14 November 2014 passed by this Court. In my view, the Applicant has thus sufficiently explained the delay of 530 days days in filing the Company Application.

10. In so far as the second submission of the learned counsel for the original Petitioner that the ex-Director has no

locus standi to file the Company Application for recall of the said order is concerned, in my view, there is no substance in this submission of the learned counsel for the original Petitioner.The ex-Director of the company in liquidation is entitled to present an Application for recall of the order being an affected party. Obviously, the Official Liquidator will not apply for recall of the order passed by the Company Court.

11. In so far as the submission of the learned counsel that notice not being on affected party under Rule 28 of the Companies (Court) Rules 1959, sent at the last known address of the Respondent-Company is valid and proper notice is concerned, a perusal of the last affidavit filed before this Court indicates that it was the case of the original Petitioner that the said Santacruz (W) address was the registered Office address of the Company in-liquidation. It is clear that the Registrar of Companies had furnished Company Master Details to the original Petitioner which is annexed by the original Petitioner itself along with the Affidavit dated 13 July 2012 stating the

registered Office address of the Respondent-Company in-liquidation as A-729, TTC Industrial Area, Koparkhairane, Navi Mumbai-400 705. In my view the original Petitioner thus cannot be allowed to contend before this Court that the Santacruz (W) address i.e. Office No.10, 2nd floor, Dheeraj Heritage, S.V.Road, Milan Subway Junction, Santacruz (W) Mumbai-400 054 was the registered Office address.

12. It is clear that notice under Rule 28 of the Companies (Court) Rules 1959 has been sent to the applicant company at the address at Office No.10, 2nd floor, Dheeraj Heritage, S.V.Road, Milan Subway Junction, Santacruz (W) Mumbai-400 054 on the premise that the said address was the registered Office address of the Company in-liquidation. I am thus, not inclined to accept that the original Petitioner had served the respondent at the registered office of the company-in-liquidation.

13. The Division Bench of this Court in case of ***MODERN DEKOR*** supra has construed Rule 28 of the

Companies (Court) Rules 1959 that compliance of Rule 28 of the Companies (Court) Rules, 1959 is mandatory and service of notice has to be made at the registered Office address of the Company. It has been held that no other mode of publication would be in compliance with Rule 28 of the Companies (Court) Rules, 1959. This Court in the case of **SKEL BREWERIES LTD** supra has taken a similar view. It is not the case of the original Petitioner that the Respondent Company in-liquidation was aware of the date on which the matter had appeared for Final hearing before this Court. The judgment of this Court in the case of **MODERN DEKOR** (supra) and in case of **SKEL BREWERIES LTD** (supra) squarely apply to the facts of the case. In my view, service of notice under Rule 28 of the Companies (Court) Rules 1959 at the registered Office address of the Respondent-Company is mandatory.

14. In my view, the order passed by this Court on 14 November 2014 on the premise that the original Petitioner had made an attempt to serve the notice under Rule 28 of the Rules

at the registered Office address of the company is on the basis of the affidavit of service filed by the Applicant. In my view, the affidavit of service filed in this Court by the original Petitioner itself is on the wrong premise that the registered Office address of the Respondent Company was at Office No.10, 2nd floor, Dheeraj Heritage, S.V.Road, Milan Subnway Junction,Santacruz (W) Mumbai-400 054 and not at A-729, TTC Industrial Area,Koparkhairane, Navi Mumbai-400 705.

15. In so far as the submission of learned counsel for the original Petitioner that the Official Liquidator also should be issued a notice to enable him to oppose this application is concerned, in my view, there is no merit in this submission. The application is filed by an ex-Director for recalling of the ex-parte order passed by this Court. At this stage, the Official Liquidator has no locus to oppose the application and thus his presence is not warranted. I, therefore pass the following order :

ORDER

(i) The order dated 14 November 2014 passed in Company Petition No.276 of 2011 is recalled.

(ii) Mr.Khandeparkar learned counsel appearing for the ex-Director waives service of notice under Rule 28 of the Companies (Court) Rules, 1959.

(iii) Company Application is made absolute in terms of prayer clauses (a) (b) and (c). No order as to costs.

(iv) In view of recall of the order dated 14 November 2014 the Official Liquidator is discharged.

(v) The ex-Director of the Respondent-Company is permitted to file reply within **four weeks from today.** A copy of such reply be served on the Original Petitioner. Rejoinder if any, to be filed within a period of two weeks from the date of service of affidavit-in-reply and a copy thereof be served on the Respondent Company accordingly.

(vi) Place the matter on Board for Final hearing after two weeks of completion of pleadings.

(R.D.DHANUKA, J)