

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO. 605 OF 2014
IN
COMPANY PETITION NO. 342 OF 1980

Laxminarayan K.Daga
through Constituted Attorney
Mr.Madhusudan L.Daga

..... Applicant

IN THE MATTER BETWEEN

M/s.Ramchandar Shivnarayan

..... Petitioner

VERSUS

M/s. Rungta & Daga Investment Pvt.Ltd.

..... Respondent

Mr.Chirag Balsara, i/b. Mr.Satyan Israni for the Applicant.

Mr.Mahendhar Aithe, Company Prosecutor for the Official Liquidator present.

CORAM : R.D. DHANUKA, J.

DATE : 20th JANUARY, 2017

P.C.

By this application, the applicant seeks recall of the order dated 24th June, 1981 passed by this court passing an order of winding up of the applicant company.

2. The applicant has applied for revival of the respondent company on the ground that the applicant is now in a financial stronger position to help and revive the respondent company and also to pay all outstanding claims against the respondent company. The respondent company and its directors have also entered into a one time settlement with the Bank of Baroda and has settled its entire claim amount.

3. Mr.Balsara, learned counsel for the applicant submits that the applicant is ready and willing to deposit an amount of Rs.27,48,864/- towards 11 claims received by the Official Liquidator from various claims received by the Official Liquidator pursuant to the notice inviting claims by the Official Liquidator pursuant to the order dated 18th June, 2003 passed by this court. He submits that the applicant also undertakes to pay the other claim amount if any, against the respondent company in future if any, received by the Official Liquidator. Undertaking rendered by the learned counsel for the applicant is accepted.

4. Pursuant to the order passed by this court on 16th November,2016, the applicant has issued individual notices upon the 11 creditors and has filed affidavit of service on 5th January,2017. A perusal of the affidavit indicates that out of the 11 claimants, 3 are served. Some of the claimants have left. In respect of two of the claimants, the packet is returned with endorsement 'not known'. In respect of one of the claimant, the packet is returned. It is submitted by the learned counsel that no claims are received by the applicant pursuant to the said individual notices issued by the applicant.

5. The Official Liquidator also has filed an affidavit dated 20th December,2016 which indicates that pursuant to the order dated 16th November,2016 passed by this court, the claims were invited from the workmen/creditors by publishing a notice in the two newspapers on 25th November,2016. The learned company prosecutor informs the court that no claims are received by the Official Liquidator pursuant to the said two public notices. Affidavit of proof of publication is taken on record. The statement made by the learned company prosecutor is accepted.

6. In my view since the applicant has agreed to deposit an amount of

Rs.27,48,864/- and has further undertaken before this court to pay the further amount if any, arising out of the claims if any, received by the Official Liquidator against the respondent company, within one week from the date of communication of the demand from the Official Liquidator, I am inclined to grant reliefs as claimed in the company application. The undertakings rendered before this court by the learned counsel on behalf of the applicant are accepted. The applicant is directed to deposit the said amount of Rs.27,48,864/- to the Official Liquidator within one week from today without fail. The applicant shall also pay the further amount of claim if any, received by the Official Liquidator and adjudicated upon by the Official Liquidator within one week from the date of communication of such demand.

7. Learned company prosecutor states that since the company petition is pending for more than 34 years, the applicant be directed to pay the reasonable cost to the Official Liquidator which shall be credited to the Office expenses account. In my view the request of the learned company prosecutor is reasonable. Mr.Balsara learned counsel for the applicant states that his client has no objection if the reasonable amount of cost is awarded against the applicant.

8. The applicant is directed to pay cost of Rs.1 lakh to the Official Liquidator within one week from today which amount shall be credited to the Office expenses account of the Official Liquidator.

9. The applicant is also directed to pay Rs.31,019/- to the Official Liquidator towards advertisement expenses incurred by the Official Liquidator for publication of the notices in the two newspapers described in the affidavit of service dated 20th December,2016 within one week from today.

10. Mr.Balsara, learned counsel for the applicant invited my attention to the order dated 18th April, 2007 passed by this court thereby dismissing the company petition for want of prosecution. It appears that none of the parties including the Official Liquidator brought to the notice of this court the order passed by this court on 24th June, 1981 making the said company petition absolute. In my view the order passed by this court subsequently dismissing the petition for want of prosecution is of no significance.

11. Company application is accordingly made absolute in terms of prayer clauses (a), (b) and (c) subject to the payment as directed aforesaid.

12. The Official Liquidator to act on the authenticated copy of this order.

(R.D.DHANUKA, J.)