

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPLICATION (LODG.) NO. 615 OF 2017
IN
COMPANY PETITION NO. 113 OF 2010**

Surprati Plastics Ltd.

.. Applicant

In the matter of :

SICOM Ltd.

.. Petitioner

Vs.

Suprapti Plastics Ltd. & Anr.

.. Respondents

Mr. Madhu Rai i/b PRS Legal for applicant.

Mr. Prakash Panjabi for original petitioner.

Mr. Mahendhar Aithe, company prosecutor for official liquidator.

CORAM : K.R.SHRIRAM, J.

DATE : 19TH DECEMBER 2017

P.C.

1 This application is taken out for leave under Section 279 of the Companies Act 2013 (U/s. 446 of the Companies Act, 1956) to file Misc. Application for review of the order dated 19th May 2017 passed by the Customs Excise & Service Tax Appellate Tribunal, West Zonal Bench at Mumbai.

2 This Court in an unreported order dated 20.1.2016 in Company

Application No.429 of 2013 in Company Petition No.353 of 2003 along with Official Liquidator's Report dated 17.8.2011 in paragraph nos. 5, 6 & 7 has held as under :-

“5. This Court in the winding up order dated 23.10.1997 of *Firth (India) Steel Co. Ltd. (in liquidation)* concluded that the expression ‘legal proceedings’ in Section 446(1) and the expression ‘suit or proceedings’ in Section 442 under Chapter II of Part VII of the Companies Act does not include criminal complaints filed under Section 138 of the Negotiable Instruments Act.

6. The Foreign Exchange Management Act, 1999 is also is a complete Code in itself. The company court cannot perform the functions of adjudicating authority/the Enforcement Directorate and invest in itself, the power of the adjudicating authority to levy penalty where, in his opinion, under law, the circumstances of the case require him to do so. The company court cannot try the contravention of provisions of Section 8 of FEMA, 1999. The expression “suit” or “other legal proceedings” in Section 446(1) and the expression “suit or proceedings” in Section 442 of the Companies Act, cannot include adjudication for contravention of provision of Section 8 of FEMA, 1999. The expression “legal proceedings” would mean only those proceedings which have a bearing on the assets of the company in winding up or have some relation with the issue in winding up. It cannot include criminal or quasi-criminal proceedings where the company was liable to be presented for, which has no bearing to the issue in winding up.

7. I, therefore, agree with the submissions of Shri Jagtiani that the expression ‘legal proceedings’ under Section 446(1) of the Companies Act will not include the adjudication being done by the adjudicating authority under FEMA, 1999 and leave under Section 446 was not required for the Directorate of Enforcement.”

3 The Division Bench of this court while considering in appeal in ***Indorama Synthetics (I) Ltd. Vs. State of Maharashtra***¹ in paragraph nos.24, 30 & 36 has held as under :-

“24. Thus, the sum and substance of all these judicial decisions is that the provisions of Section 446(1) of the Companies Act are to be invoked

1 2016(4)Mh.L.J. 249

judiciously only when it has got any concern with either the winding-up proceedings or with the assets of the Company. The expression “suit or other proceedings”, therefore, as used in Section 446(1) of the Companies Act, has to be construed accordingly and not to be interpreted so liberally and widely so as to include each and every proceeding of whatsoever nature initiated against the Company, including even the criminal proceedings like for the offence under Section 138 of N.I. Act, which has got no bearing on the winding-up proceedings of the Company and are not concerned with, directly with the assets of the Company, but are mainly dealing with the penal and personal liability of the Directors of the Company.

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30. Thus, there is a long line of decisions making the position clear that the expression 'suit or legal proceedings', used in Section 446(1) of the Companies Act, can mean only those proceedings which can have a bearing on the assets of the companies in winding-up or have some relation with the issue in winding-up. It does not mean each and every civil proceedings, which has no bearing on the winding-up proceedings, or criminal offences where the Director of the Company is presently liable for penal action.

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36. In our considered opinion, having regard to the earlier decisions referred above, taking a consistent view, which is in consonance with the spirit, purpose and object of the provisions of Section 446(1) of the Companies Act and Section 138 of the Negotiable Instruments Act, we uphold the view taken by the Single Judge in the matter of Firth (India) (Supra) and accordingly proceed to answer the Reference placed for our consideration, as follows :-

“The expression “suit or other proceedings” in Section 446(1) under chapter II of Part VII of Companies Act, 1956, does not include criminal complaints filed under Section 138 of the Negotiable Instruments Act, 1881.”

4 In view of the above, no leave is required. Company Application accordingly, disposed.

(K.R. SHRIRAM, J.)