

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

**COMPANY APPLICATION (LODG.) NO. 161 OF 2018
IN
COMPANY PETITION NO. 756 OF 2014**

IDBI Bank Limited

.. Applicant

In the matter of :

Export Import bank of India

.. Petitioner

Vs.

GOL Offshore Ltd.

(Under Provisional Liquidation and
represented by the office of the
Official Liquidator)

.. Respondent

Mr. V.K. Ramabhadran, senior advocate a/w. Mr. Akshay Kolse-Patil, Mr. Naishadh Bhatia and Ms. Bulbul Singh-Rajpurohit i/b M/s. Crawford Bayley and Co. for applicant.

Mr. Mahendhar Aithe, company prosecutor for official liquidator present.

Mr. Bhushan Chandra Das-Representative of IDBI Bank present in Court.

CORAM : K.R.SHRIRAM, J.

DATE : 28TH MARCH 2018

P.C.

1. Shri Ramabhadran appearing for applicant is only pressing prayer clause (a) in the company application, i.e., leave to proceed with/commence with the filing of an admiralty suit already lodged in this Court being Admiralty Suit (Lodg.) No. 12 of 2018.

2. Shri Ramabhadran states that Section 446 of the Companies Act, 1956 provides that no suit or other legal proceedings shall be commenced if a winding up order has been made except by leave of the Court. Shri Ramabhadran states that plaintiff, in a hurry, already lodged the suit and technically it can be said that the suit was commenced without the leave of the Court and therefore seeks that this lapse on the part of plaintiff be condoned. Shri Ramabhadran states that if the Court directs plaintiff to withdraw the suit and again re-present the suit, plaintiff will be ready and willing to do so but the Court has enough powers to condone the leave because plaintiff has not proceeded with the suit. The suit has been lodged only yesterday, i.e., 27th March 2018 and simultaneously plaintiff has taken out this application for leave under Section 446 of the Companies Act, 1956.

3. The Apex Court in *Erach Boman Khavar Vs. Tukaram Shridhar Bhat & Anr.*¹ referred to *State of J & K Vs. Uco Bank*² and noted that the Apex Court in *State of J & K* (Supra) came to a conclusion that failure to obtain leave prior to institution of suit would not debar the court from granting such leave subsequently and that the only consequence of the same would be that the proceedings would be regarded as having been

1 (2013) 15 SCC 655

2 (2005) 10 SCC 331

instituted on the date on which the leave was obtained from the High Court. In paragraph 22 of the said judgement in *Erach Boman Khavar* (Supra), the Court has stated that leave of the winding up court can be obtained even after initiation of the proceeding even where an order of winding up has been passed. Paragraphs 21 and 22 of the said judgement read as under :-

“21 In State of J&K v. UCO Bank and others, while interpreting Section 446(1) of the 1956 Act, the Court opined that a suit cannot be instituted once a winding-up order is passed except by leave of the court. The two-Judge Bench referred to the earlier decision rendered in Bansidhar Shankarlal v. Mohd. Ibrahim, wherein the leave had been obtained at the time of filing of the suit and the question was whether fresh leave ought to be obtained before proceeding under Section 446(1) of the 1956 Act before institution of execution proceedings. The Court considered the contrary views expressed by different High Courts on the effect and purport of Section 446(1) of the 1956 Act and came to the conclusion that the view that failure to obtain leave prior to institution of suit would not debar the court from granting such leave subsequently and that the only consequence of the same would be that the proceedings would be regarded as having been instituted on the date on which the leave was obtained from the High Court.

21. We have referred to the aforesaid decisions solely for the two purposes. First, grant of leave of the court is not a condition precedent for initiation of a civil action or the legal proceedings. It is because the Section does not expressly provide for annulment of a proceeding that is undertaken without the leave of the court. There can be no shadow of doubt that leave of the winding up court can be obtained even after initiation of the proceeding. The second, the seminal object behind engrafting of the said provision is to see that the interest of the company is safeguarded so that it does not face deprivation of its right and claims are adjudicated without the knowledge of the company court and further the court has a discretion to see whether leave should be granted and, if so, with what conditions or no condition. That apart, the court may grant leave if it felt that the company should not enter into unnecessary litigation and incur avoidable expenditure.”

Hence leave granted.

4. Shri Ramabhadran, on instructions from Mr.Ashar, Partner of Crawford Bayley and Co., who on instructions from Shri Bhushan Chandra Das, representative/authorized signatory of plaintiff, who is present in Court, states that plaintiff, as mortgagee of the vessels, viz., M.V. MALAVIYA THIRTY THREE, TUG RISHABH, TUG ANASUYA, TUG KUMARI TARINI, TUG VAHBIZ, TUG JYOTSNA S and TUG BIRSINGHA, will take over all seven vessels and manage the vessels and keep them safe and secured. Plaintiff also states that they will also comply with the requirements of the office of the Director General of Shipping in taking over and managing the vessel including filing DOC. Shri Bhushan Chandra Das, representative/authorized signatory of plaintiff personally undertakes for himself, on behalf of plaintiff and on behalf of each of the Directors in the Board of Directors of plaintiff-bank that they shall be personally liable to ensure the safety of the seven vessels and crew, if any, and marine life and will be accountable to the official liquidator and Director General of Shipping. Shri Ramabhadran further states that they will take over all the vessels by 5th April 2018.

5. Company Application disposed with liberty to take out fresh application, if advised.
6. All concerned to act on an authenticated copy of this order.

(K.R. SHRIRAM, J.)