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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 512 OF 2018
IN
APPEAL NO. 163 OF 2016
IN
COMPANY APPLICATION NO. 620 OF 2011
IN
COMPANY APPLICATION NO. 593 OF 2011
IN
COMPANY PETITION NO. 778 OF 2005

Kamani Employees' Union

.. Applicant/
Org. Appellant

In the matter between

Kamani Employees' Union

..Appellant

Vs.

The Official Liquidator and the
Liquidator of KMA Ltd. And ors.

..Respondents

WITH
NOTICE OF MOTION LODGING NO. 326 OF 2018
IN
APPEAL LODGING NO. 255 OF 2016
IN
COMPANY APPLICATION NO. 620 OF 2011
IN
COMPANY PETITION NO. 778 OF 2005

1. M. Prakash and ors.

.. Applicants

In the matter between

KMA Workers and Staff Union

.. Appellants

Vs.

1. Official Liquidator and ors.

.. Respondents

Ms. Meena Doshi for applicant/appellant.
Mr. L. T. Satelkar for Official Liquidator.
Mr. Shailesh Naidu I/by B. S. Nayak for applicant in NMAL/326/18.
Mr. S. B. Rao I/by Gauri Rao for appellant in APPL/255/2016.

CORAM: NARESH H. PATIL &
G. S. KULKARNI, JJ.

JULY 13, 2018.

P.C.

1. We have heard the respective learned counsel on Notice of Motion No. 512 of 2018. We have perused the orders passed by the learned Single Judge as well as the orders passed by the Division Bench of this Court.

2. The Appeal No. 163 of 2016 is directed against order dated 6/1/2016 passed by the learned Single Judge (Coram: S. G. Gupte,J.) in Company Application Nos. 593 and 620 of 2011. The learned counsel appearing for applicant in Notice of Motion No. 512 of 2018 prayed for following relief :-

- (a) That pending hearing and final disposal of the Appeal this Hon'ble Court be pleased to direct the Official Liquidator

to remit to the Applicant / Appellant Union an amount of Rs.13,84,65,470/- from the interest bearing No Lien Account with the Bank of Baroda within such time as this Hon'ble Court may deem fit for distribution of the said amount to the employees (excluding the dissenting workmen) as per Consent Terms, which are set out in the statement at Exhibit "H" to the Affidavit in Support of the Notice of Motion;

- (b) That pending hearing and final disposal of the Appeal, this Hon'ble Court be pleased to set aside the adjudication, carried out by the Official Liquidator in respect of the dissenting workmen in Company Application No. 593 of 2011 and 620 of 2011 as the same is not in consonance with the Consent Terms;
- (c) That the present Notice of Motion be heard along with the Notice of Motion (L) No. 529 of 2016;
- (d) That interim reliefs in terms of prayer clauses (a) to (c) above;
- (e) That such other and further reliefs as the nature and circumstances as this Hon'ble Court may deem fit and proper.

3. Ms. Doshi, learned counsel, further submits that in accordance with the consent terms, the residue amount to the extent of Rs. 13,84,65,470/- has to be distributed to the workers of the Union.

Admittedly, there is dissenting group of workers who are 87 in number. Those workers are represented by learned counsel Mr. Naidu in Appeal Lodging No. 255 of 2016. Mr. Naidu, the learned counsel submits that in accordance with the directions given by the learned Single Judge, the Official Liquidator has undertaken an adjudication. Ms. Doshi, objects that in the Notice of Motion (L) No. 326 of 2018 filed by the applicants – M. Prakash and others, no relief is required to be granted as the issue is to be adjudicated finally.

4. Mr. Naidu, learned counsel submits that pending final adjudication in the appeal, the dissenting group of the workers is at least entitled to the amount which has been adjudicated by the Official Liquidator. It is submitted that in accordance with the consent terms, full amount has been already received by the Union and 75% of the amount has been received by the dissenting workers.

5. We have perused the record placed before us. The Appeal No. 163 of 2016, along with connected appeals, has been admitted by this court (Coram: Dr. Manjula Chellur, C.J. & M. S. Sonak,J.) on 20/10/2016. We have perused the orders passed by the learned Single Judge and the

Division Bench from time to time. Perused the affidavits, charts annexed to the Notice of Motion. We have also perused the consent terms annexed at Exh. “D” to the Notice of Motion.

6. The learned counsel appearing for the Official Liquidator and the learned counsel appearing for the other parties submitted that consequent to the order passed by the learned Single Judge (Coram: S. C. Gupte,J.), Official Liquidator had adjudicated the claim. So far, the said adjudication has not been challenged in appropriate forum by the parties, more particularly the applicant in Notice of Motion No. 512 of 2018 i.e. Kamani Employees' Union. In the Notice of Motion No. 512 of 2018 we may not address the issue in respect of adjudication of the claims individually.

7. It seems that a chart annexed at page 53 in the Notice of Motion No. 512 of 2018 and chart in respect of calculation of amount annexed to the affidavit forming part of the consent terms has been prepared by the applicant-Union. In the facts, we are not inclined to grant prayer of the applicant – Union in the Notice of Motion No. 512 of 2018.

8. While perusing the consent terms we also noticed that an amount of Rs.4475.28 lakhs is to be distributed between Bank of Baroda, Syndicate Bank, Dena Bank, Canara Bank and IFCI. An amount of Rs.3759.14 lakhs was kept aside for employees/workers. Under the consent terms, the entire amount has been received by the employees. The Union is disputing the disbursement of remaining amount, apart from 75% amount, which dissenting group of the workers received.

9. We clarify that applicants in Notice of Motion (L) No. 326 of 2018 may take appropriate steps in respect of their claim/withdrawal of amount as per the adjudicated claim in appropriate proceedings.

10. In view of the above, Notice of Motion No. 512 of 2018 stands rejected.

11. By keeping all issues on merits open, Notice of Motion (L) No.326 of 2018 stands disposed of. The applicants – M. Prakash & others are at liberty to raise their claim before the appropriate forum.

Pravin
Dasharath
Pandit

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by Pravin
Dasharath Pandit
Date: 2018.07.17
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(G. S. KULKARNI J.)

(NARESH H. PATIL,J.)