

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.387 OF 2018
IN
COMPANY PETITION NO.657 OF 2016**

Rohit Chheda and Ors.Applicants

IN THE MATTER BETWEEN :

Kishinchand R. LudhaniPetitioner

Vs.

The Official Liquidator of Kamla
Landmarc Construction Pvt. Ltd. (In Liqn.)Respondent

Mr. Malcolm Siganporia a/w. Mr. Suushant Arora and Ms. Janvi Dutt
I/b. Vigil Juris for applicants.

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

CORAM : K.R.SHRIRAM, J.

DATE : 21st AUGUST 2018

P.C.:

1 At the outset, Mr. Siganporia, counsel for applicants seeks leave
to amend the prayer clauses – (a) and (b) of the application.

2 Leave granted. Amendment to be carried out forthwith.

3 This application is for leave under Section 446 (i) of the
Companies Act 1956 to implead Official Liquidator, who has been appointed
as Provisional Liquidator of the company – Kamla Landmarc Construction
Pvt. Ltd., in the proposed suit to be filed by applicants against the company.

4 Mr. Aithe, Company Prosecutor for Official Liquidator states
that the prayer in the plaint, copy of which has been provided, is for specific
performance against the company. Mr. Aithe also states that if the Court

passes an order of winding up against the company, then the Court cannot, in the suit proposed to be filed, grant the relief of specific performance against Official Liquidator. Mr. Aithe relies on a judgment of the Supreme Court of India in *M/s. J.K. (Bombay) Private Limited V/s. M/s. New Kaiser-I-Hind Spinning and Weaving Company Limited and ors.*¹

5 I am not considering this aspect at this point of time because the company is yet to be wound up. At the same time, the other point which Mr. Aithe raised is that Provisional Liquidator does not have funds to defend the suit proposed to be filed and even some of the promoters of the company are in jail. Mr. Aithe, therefore, states that applicant should be put to terms if the Court is inclined to allow the application.

6 Having heard Mr. Siganporia and Mr. Aithe, I am inclined to grant applicant leave to implead Official Liquidator, who is Provisional Liquidator of the company, subject to following conditions :

- (a) applicant shall deposit a sum of Rs.5 lakhs with Official Liquidator towards proposed legal fees to be incurred in defending the proposed suit;
- (b) Official Liquidator shall invest this amount in fixed deposit and if necessary, break the fixed deposit at the appropriate time, to pay the fees of its advocates;
- (c) undertaking of applicant to pay further sum to Official Liquidator if called for, for paying the legal fees within two weeks of receiving a communication from Official Liquidator, is accepted;

1. AIR 1970 SC 1041

(d) if applicant succeeds in the suit proposed to be filed, applicant may apply to the Court for granting this amount paid to Official Liquidator as costs in the suit, which the said Court may consider whether to grant at the appropriate stage;

(e) if granted, applicant may claim the same from Official Liquidator in the winding up proceedings;

(f) if the company is ordered to be wound up, then applicant to apply to this Court for fresh leave to continue with the suit which shall be considered at the appropriate stage.

7 Application accordingly stands disposed.

Gauri
Amit
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(K.R. SHRIRAM, J.)