IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.445 OF 2018
IN
COMPANY PETITION NO.593 OF 2015

Roni Abraham and Ors. ….Applicants
Vs.
Official Liquidator for Orbit Corporation Ltd. ….Respondent

WITH
COMPANY APPLICATION NO.522 OF 2018
IN
COMPANY PETITION NO.593 OF 2015

Ms. Fatima Barodawala I/b. Mr. Raval Shah for applicants in both applications.
Mr. Prathamesh Kamat a/w. Mr. T.N. Tripathi I/b. T.N. Tripathi and Company for Official Liquidator.
Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator.

CORAM : K.R.SHRIRAM, J.
DATE : 2nd NOVEMBER 2018

P.C.:

COMPANY APPLICATION NO.445 OF 2018
WITH
COMPANY APPLICATION NO.522 OF 2018

1 The company application no.445 of 2018 and company application no.522 of 2018 are for leave to proceed with suit no.492 of 2017 and suit no.31 of 2016, respectively, filed by applicants against respondent company notwithstanding the winding up order dated 12th April 2018 passed in company petition no.593 of 2015.

2 Mr. Kamat, counsel for Official Liquidator states that Official Liquidator has no funds to defend the suits and applicants should be directed to put Liquidator in funds to defend the suits and applicants may claim these amounts in the suits as costs and if applicants succeed in those

suits and if the Court grants those costs, applicants may lodge the decree with costs with affidavit of proof of debt and claim from Official Liquidator in liquidation proceedings. Mr. Kamat also states that if applicants want, they can withdraw the suits and file necessary claim with Official Liquidator, who shall consider the same and adjudicate in accordance with law.

3 In my view, that is a very valid request made by Mr. Kamat.

4 In the circumstances, applications are allowed and accordingly disposed in terms of prayer clause – (a), subject to (i) applicants depositing a sum of Rs.2 lakhs each as costs on account with Official Liquidator, (ii) Official Liquidator shall invest this amount in fixed deposit with a nationalised bank and use the amount to defray the expenses in defending the suits and (iii) applicants giving an undertaking to Liquidator to put Liquidator to such further funds as required to defend the suits once the amount of Rs.2 lakhs plus accumulated interest is exhausted and to make such payment within two weeks of receiving a communication from Official Liquidator.

5 It is clarified that all rights and contentions of Official Liquidator on behalf of the company in liquidation are kept open including raising the defence that a suit for specific performance is not maintainable against Liquidator and limitation, jurisdiction, etc.

(K.R. SHRIRAM, J.)

Gauri Gaekwad