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

COMPANY APPLICATION NO.464 OF 2011
IN
COMPANY APPLICATION NO.161 OF 2002
IN
COMPANY PETITION NO.521 OF 1992

Henkel Chemicals Limited)....Petitioner
V/s.
Garware Nylons Limited)....Respondent
And
Vinod V.Desai and Ors.)....Applicants
V/s
Official Liquidator of Garware Nylon)
Limited and Ors.)....Respondents

Ms.Karuna Yadav i/by N.M.Ganguli for the applicants.
Mr.Amar Mishra, AGP for State of Maharashtra-respondent no.2.
Mr.Vishal Kanade i/by Lalita Panchakshari for respondent no.3.
Mr.J.P.Sen, Senior Advocate a/w Mr.Onkar Chandurkar for Official Liquidator.
Mr.Pola Raghunath-Deputy Official Liquidator present.

CORAM : K.R.SHRIRAM,J
DATE : 29.1.2018

P.C.:-

1 This application is filed by 4 workmen for the following reliefs :-

> *"(a) That the Hon'ble Court may be pleased to direct independent enquiry into the compliance of the order dated 22.1.2008 passed in Company Application Nos.823, 829 of 2007 ;*
>
> *(b) That on the basis of the findings of the enquiry in*

> *terms of prayer (a) the workmen of Garware Nylon Limited (in Liquidation) may be granted appropriate reliefs as regards the gratuity payable to them ;*
>
> *(c) For costs of an incidental to the Company Application and of the Applicants ;*
>
> *(d) For such further and other reliefs, orders and directions as the nature and circumstances of the case may require or justify or as this Honourable Court may deem just and proper."*

2 The applicants are workmen-employees who were employed with Garware Nylon Limited (in liquidation). By an order dated 18.12.1998 the company was ordered to be wound up and the Official Liquidator was appointed as liquidator of the company. The workmen filed their claim under Section 529A of the Companies Act. One of the claims was for gratuity payable under the Gratuity Act. The management of the Company had created a Trust to meet the liability arising out of the payment of Gratuity Act. The Garware Employees Union is a recognized union of the company (in liquidation) that had head office at Bombay and factory at Pimpri. Official Liquidator took charge of whatever funds from the trustees and distributed 20% of the amount as gratuity as interim dividend. Official Liquidator also paid 18% interim dividend towards the rest of the claim of the workmen pari passu with the secured creditors.

3 A Company Application No.161 of 2002 was pending as the trustees had not made over the entire records to the liquidator and certain amounts were lying in fixed deposit and pending distribution among the workmen. During the pendency of this Application No.161 of 2002, some workmen of the company approached this court by filing Company Application Nos.822/2007, 823/2007 and 824/2007 challenging the competence of the liquidator to adjudicate and distribute the amount of gratuity to workmen. As according to them only the competent authority under the Gratuity Act alone was competent to adjudicate the claims of the workmen and sought a direction to transfer of funds to controlling authority, Pune before whom the claims of the workmen have been adjudicated.

4 By an order dated 22.1.2008 this court directed the Official Liquidator to remit all the records and claims of the workmen to controlling authority, Pune for adjudication and payment to the workmen. It is stated in the affidavit in support that the controlling authority without the applicants therein having sought leave under section 446 of the Companies Act 1956 and without inviting claims from all the workmen either with its jurisdiction or outside its jurisdiction, adjudicated claims of only about 120 workmen who are parties in the Company Application Nos.823/2007 and distributed the

entire amount available with him to the 120 workmen. The amount was in fact handed over to respondent no.3 who claimed to have authority from the said 120 workmen. The amount paid to respondent no.3 was Rs.41,96,577/-. It is the case of the applicants that this amount of Rs.41,96,577/- in fact represented the claim of 1270 workmen employed at Pimpri, Sarole, Ahmednagar, Mumbai and Surat and controlling authority ought to have distributed only proportionate amounts to the said 120 workmen keeping aside balance amount for distribution to the rest of 1150 workmen. Admittedly, respondent no.3 has received this amount of Rs.41,96,577/- but in the affidavit in reply he states he was only helping 120 workmen.

5 Company Application No.824/2007 was filed by respondent no.3 with 4 others and the affidavit in support was filed by respondent no.3 seeking dismissal of Company Application No.161/2002 in respect of the gratuity matters of ex-employees of the respondent which according to him was fraudulent in nature and for other reliefs for payment of the gratuity amounts.

6 When the Company Application No.823/2007 was taken up for hearing along with Company Application No.161 of 2002 and

other applications, counsel for respondent no.3 who was the applicant in Company Application No.823/2007 informed the court that 210 workmen including 120 workmen of the company in liquidation are desirous in taking over MIDC plot in Ahmednagar district, have received from the controlling authority sum of Rs.41,97,000/- and if the said amount exceeded their claim and in fact constitutes dues of the workmen of the company in liquidation then that deposit would be made good and 210 workmen make statement before this court that they will duly forward this amount if called upon by the controlling authority and the amount will be made good from the amount of Rs.41,97,000/- It will be useful to reproduce paragraph-12 of the order dated 26.6.2008.

> *"Mr.Grover in all fairness states that about 210 workmen of the company in liquidation who are desirous of taking over the MIDC plot in Ahmednagar district and are taking steps to organise themselves in that behalf have received from the Controlling Authority a sum of Rs.41,97,000/- and if the said amount exceeded their claim and in fact constitute the dues of the workers of the company in liquidation as represented by Garware Employees Union, then, that deficit will be made good and 210 workmen make a statement before this Court that they will duly forward the amount, if called upon, by the Controlling Authority. However, the amount would be made good from the amount of Rs.41,97,000/-. Needless to state that this does not mean that if other sums have been appropriated or adjusted by these 210 workmen, then, their act cannot be challenged or questioned by the*

> *applicant Union or its members and all proceedings in this behalf can be instituted, civil and criminal, in which contentions are kept open."*

7 Therefore, in effect respondent no.3 has given an undertaking to this Court, because the affidavit in support of the application is also filed by respondent no.3, to bring back the excess in Rs.41,97,000/- that he had taken from the competent authority and the undertaking has been noted by this Court in its order dated 26.6.2008.

8 Mr.Sen for the Official Liquidator states that respondent no.3 therefore, should be directed to bring any excess amount that he took from the competent authority and according to Official Liquidator amount is Rs.38,03,405.40.

9 Before going into details of the matter, this court did ask Mr.Kanade counsel for respondent no.3 as to whether respondent no.3 would be inclined to bring the money back so that court may not take any action for breach of undertaking and other steps for recovering the money from respondent no.3. The application was adjourned on 3 occasions for counsel to take instructions. Even today counsel stated that respondent no.3 is not inclined to deposit any

amount with the court because according to respondent no.3 the amount received has been distributed to 120 workmen.

10 The case as presented by respondent no.3 is that the controlling authority was pleased to grant gratuity amount of Rs.41,93,577/- to the 120 workmen and as the 120 workmen had given him authority, the cheque for Rs.41,93,577/- was issued in favour of respondent no.3. In addition to 120 workmen, 90 other workmen also joined respondent no.3, making it total of 210 workmen, who purchased Ahmednagar factory of the company in liquidation for Rs.6,01,00,000/- pursuant to court auction. As the respondent no.3 and 210 workmen were in need of funds, they found other investors to pay the difference. It is stated that the property was purchased in the name of respondent no.3 and 209 employees of the company in liquidation and the deed of assignment was signed by respondent no.3 & Official Liquidator. The amount of Rs.6,01,00,000/- including gratuity amount of Rs.41,93,577/- was paid to the Official Liquidator. Mr.Kanade on instructions states that as respondent no.3 was unable to run the factory with the workmen, he sold the Ahmednagar unit to one Classic Wheels Pvt. Ltd. for Rs.9,25,00,000/- (Rs.9.25 crores) thereby making a profit of Rs.3.24 crores. It is stated in the affidavit dated 11.12.2017 of respondent

no.3 that the property was transferred by way of deed of assignment signed by respondent no.3, Official Liquidator and Classic Wheels through its director and each of the employee was paid gratuity amount plus 30%.

11 Mr.Sen submits that if each of the employee has been paid the gratuity amount plus 30%, still it can be only Rs.41,93,577/- plus 30% therein which would work out to about Rs.55 lakhs only. Mr.Kanade clarifies that amount of Rs.41,93,577/- has to be reduced by Rs.64,257 because that amount was paid back to the competent authority. Mr.Kanade states that out of Rs.9.25 crores, workmen were paid Rs.53,68,123/-. There is nothing coming out from respondent no.3 as to who took the balance almost Rs.8.60 crores.

12 Respondent no.3 has given an undertaking as recorded in the order dated 26.6.2008. The stand of respondent no.3 is that the calculation of Rs.41,93,577/- to be paid to 120 workmen was made by the competent authority under the Gratuity Act and when that amount was received, he took the money away. Mr.Sen in fairness stated that if the respondent no.3 brought back Rs.38,03,405.40 together with interest, at what rate the court may decide, then Official Liquidator will not be pressing for any further investigation or reliefs.

Since respondent no.3 has firmly stated through the counsel that he is not inclined to fulfill the undertaking given to this court, I pass the following order :-

ORDER

(i) Show Cause Notice returnable on 7.3.2018 be issued to respondent no.3 Pravin Mahadeo Dhole, residing at 1206, Laxmi Apartment, Sadashiv Peth, Pune, as to why he should not be held guilty of contempt of court for breach of undertaking given to this court ;

(ii) Official Liquidator is directed to lodge FIR/complaint against respondent no.3- Pravin Mahadeo Dhole, residing at 1206, Laxmi Apartment, Sadashiv Peth, Pune, and 120 workmen who gave authority to respondent no.3 and others, under the relevant provisions of law ;

(iii) FIR/Complaint to be filed with the concerned police station within 4 weeks from today ;

(iv) Police to start investigation immediately on receiving the FIR/complaint from Official Liquidator ;

(v) Respondent no.3- Pravin Mahadeo Dhole to surrender his passport with the Official Liquidator within one week from today.

13 Application accordingly disposed.

14 Notwithstanding the above order, if respondent no.3 deposits in this court an amount of Rs.38,03,405.40 which is the excess amount collected by respondent no.3, than what the 120 workmen were entitled to, together with interest thereon @ 9% p.a. from the date the amount was paid over to him, i.e., 8.3.2011 until 31.1.2018, the Official Liquidator need not take the steps as directed in para 12 (ii) and (iii) above.

(K.R.SHRIRAM,J)