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

**COMPANY APPLICATION NO.1282 OF 2007**
**WITH**
**COMPANY APPLICATION NO.139 OF 2016**
**IN**
**COMPANY APPLICATION NO.1282 OF 2007**
**IN**
**COMPANY PETITION NO.361 of 1996**

Hemant Kumar B.Vyas & Anr. )....Applicants/Petitioners
V/s.

The Official Liquidator, High Court, Bombay)
[Silk Mills Ltd.] and 3 Ors. )....Respondents

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Mr.Rahul Narichania, senior Advocate a/w Mr.Ajay Panicker I/by Ajay Panicker for applicants in both the applications.
Mr.Kunal Dwarkadas a/w Mr.P.Fernandes I/by Dave and Girish and Co. for respondent no.2.
Ms.Priyanka Patil I/by Itralegal for claimant no.1 in CA 139/2016-Punjab National Bank.
Mr.Ashok Kotangle I/by Padma Divakar for Income-tax department.
Mr.Rakesh Reddy for Official Liquidator.
[Mr.Mahendhar Aithe-Company Prosecutor for Official Liquidator present].

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**CORAM : K.R.SHRIRAM,J**
**DATE : 17.10.2018**

**P.C.:-**

**COMPANY APPLICATION NO.139 OF 2016**

1. It is the case of the applicants that before the Official Liquidator passed adjudication order on the claims made by Punjab & National Bank, Canara Bank and Income Tax Authorities, the ex-

directors were not heard. Mr.Narichania, senior Advocate appearing for the applicants states that if these 3 adjudication orders can be set aside and remanded to Official Liquidator for *denovo* consideration, at which time the applicants will make submissions and the Official Liquidator can pass a fresh adjudication order after taking into consideration the submissions made by the applicants as well.

2. Mr.Reddy appearing for Official Liquidator agrees to the extent that the applicants were not heard by the Official Liquidator before the adjudication order was passed. Mr.Reddy also states that Liquidator can be directed to consider the claim of Punjab & National Bank, Canara Bank and Income Tax Authorities, *denovo*.

3. Mr.Dwarkadas appearing for respondent no.2 however, submits that paragraph 13(b) of the affidavit in reply filed by S.Ramakantha-Official Liquidator and affirmed on 16.11.2015, it gives an impression that the applicant was given an opportunity but failed to make its submissions and therefore the Liquidator cannot be found fault with for not hearing the applicant. Mr.Dwarkadas also states that the Company Court Rules 1959 does not prescribe the applicant or any ex-director to be heard by the Official Liquidator. The order dated 14.7.2011, copy whereof is at Exh.H to the application states

"……………… The Applicant is at liberty to make his submissions before the Official Liquidator." The applicant in that order is the applicant in the present application also. Therefore, in my view, Official Liquidator should have given notice to the applicant to make his submissions and also given notice of any personal hearing. It has to be remembered that Official Liquidator is a total stranger to the dealings of the company and only ex-directors will be able to give factual evidence regarding any transaction. Moreover, Rule 160 of the Company Court Rules 1959 provides for the Official Liquidator's right to summon any person who he may deem capable of giving information respecting the debts to be proved in liquidation. He also has power to require such person to produce any documents in his custody or power relating to such debts. Therefore, as noted earlier, as the ex-directors will be in a better position to assist the Official Liquidator in adjudicating the claim made by any creditor, in my view, in the interest of all the creditors of all the companies, ex-directors are also being summoned by the Official Liquidator to assist him. Mr.Reddy states that as a matter of course in every adjudication matter, Official Liquidator requires presence of the ex-director so that claims could be properly adjudicated.

4. Mr.Ashok Kotangale for Income-tax department has no objection if the adjudication orders are set aside and remanded to the

Official Liquidator for *denovo* adjudication. Ms.Priyanka Patil for Punjab & National Bank has also no objection.

5. In the circumstances, the adjudication orders passed by the Official Liquidator with regard to claims made by Punjab National Bank, Canara Bank and Income-tax Authorities, are set aside and remanded to Official Liquidator for *denovo* adjudication.

6. Mr.Narichania states that the applicants have copies of all the proof of debt submitted by Punjab National Bank, Canara Bank and Income-tax Authorities but do not have a copy of the original application lodged by Punjab National Bank. Ms.Patil for Punjab & National Bank states copy will be provided within one week to the Advocates for the applicant. Statement accepted. Mr.Narichania states that within 4 weeks from today, the applicant will give his written submissions to the Official Liquidator with regard to the claims of Punjab National Bank, Canara Bank and Income-tax Authorities with copies to the Advocate representing these three parties. Official Liquidator to give notice of personal hearing to all the four parties. No adjournment should be granted for the convenience of the Advocates or the parties.

7. Official Liquidator is directed to complete re-adjudication within 8 weeks from today.

Application accordingly disposed.

**COMPANY APPLICATION NO.1282 OF 2007**

1. Mr.Narichania states that so far as prayer (a) is concerned, he will withdraw this application with liberty to file fresh application after the adjudication process as directed in the order passed in Company Application No.139 of 2017 is over.

So far as prayer clause-(b) is concerned, the applicant may file his affidavit of proof of debt within 4 weeks from today and Official Liquidator shall consider the same in accordance with law.

Mr.Narichania states that the applicant when he takes out fresh application under Section 466 of the Companies Act 1956, the applicant should be permitted to take benefit of Rs.2 crores which he has deposited with the Prothonotary & Senior Master, High Court, Bombay, pursuant to the liberty granted by this court. It is open for the applicant to raise all these contentions and the applicant will certainly be entitled to benefit of having deposited the amount.

**(K.R.SHRIRAM,J)**