

IN THE HIGH COURT OF BOMBAY AT GOA
COMPANY APPLICATION NO. 17 OF 2018
IN
COMPANY PETITION NO. 21 OF 2001

SIMPLEX INFRASTRUCTURES LTD., REP.
BY ITS ASSISTANT GEN. MANAGER, JOY
MUKHERJEE.,

... Applicant/
Petitioner

V e r s u s

FALCON ABODES PVT. LTD.,

... Respondent

Mr. Ashwin D. Bhobe, Advocate for the Applicant/Petitioner.

Mr. A. F. Diniz, Advocate with Mr. Ryan Da Piedade Menezes,
Nigel Fernandes and Ms. Gina Almeida, Advocates for the
Respondent-Director of Company.

Ms. Amira Razaq, Advocate for the Official Liquidator.

Coram :- C. V. BHADANG, J.

Date :- 14th March 2019.

P.C.

1. This is an application for recall of the order dated 06.06.2003 passed by this Court in Company Petition No.21 of 2001 and to permit the petitioner to withdraw the said Company Petition.

2. The petitioner had filed the aforesaid Company Petition for winding up of M/s. Falcon Abodes Private Limited, (the Company, for short). This Court by an order dated 06.06.2003

had allowed the petition appointing Mr. Ahmed Kunju as the Official Liquidator and further directing compliance with Rule 113 of the Companies (Court) Rules 1959, by advertising the Order of winding up in two newspapers. It appears that the matter was accordingly advertised. However, no formal winding up order has been drawn by the Registrar, as per Rule 37 of the Company (Court) Rules 1959.

3. The present application is filed by the original petitioner claiming that its dues have been paid in full and the petitioner has irrevocably confirmed in writing to the Company under its letter dated 02.08.2018 that the petitioner has accepted and received payment in full and final settlement of all the petitioner's claims against the Company. It is in these circumstances that the petitioner has sought recall of the order dated 06.06.2003 and for withdrawal of the Company Petition.

4. In this case, by an order dated 11.10.2018, the present application was directed to be advertised, calling for any objections or claims to be made before the Official Liquidator within a period of four weeks.

5. The Official Liquidator in para 12 of the affidavit in reply has set out certain claims at serial nos.3 to 16. It is also

claimed that an amount of Rs.73,58,519/- is due from the Company to the State Bank of India towards the secured loan and the unsecured loans amounting to Rs.62,91,688/- reported as due to the other unsecured creditors. The Official Liquidator however has stated that on perusal of the records maintained by the ROC Goa, it is seen that the secured loan of Rs.80,00,000/- and charge created in favour of State Bank of India has been satisfied and Form No.17 (Memorandum of Satisfaction of Charge) under Section 138 of the Act was filed vide receipt no.31560 dated 23.11.2001.

6. The affidavit filed by the Official Liquidator also shows an amount of Rs.5,64,90,000/- which is payable to the EDC Limited. However, there is a letter dated 27.07.2018 on record issued by the General Manager (Recovery) of EDC Limited addressed to the Company which shows that in view of the "No Dues Certificate" issued confirming the settlement of all dues payable towards redemption of mortgaged property, the said properties are released in favour of the Company.

7. The Company has filed an affidavit of Mr. Clinton Fernandes alias Anthony Fernandes and in para 7 has made a statement as under :

"(7) With respect to the persons, alleged by the Official Liquidator in paragraph 12 of his reply from serial Nos.3 to 16, stated to be holding claims, I say that I dispute that such persons hold any valid or legal or subsisting claims. I say that no such persons have, in fact, made or raised any such claims to the Official Liquidator, prior to the date hereof, and/or in response to the public notices published earlier and recently. Without prejudice to the above position, I say that I am attaching copies of demand drafts, as Annexure A3 Colly, drawn in favour of the Registrar of this Hon. Court, for each of the amounts said to be due to the each of said persons, and I may be permitted to deposit the demand drafts with the Registry of this Hon. Court, and the amount be invested in fixed deposits in a bank (the number of fixed deposits corresponding to the number of the Demand Drafts), for such reasonable time as this Hon'ble Court may deem fit, to settle legal and valid dues of such persons, if any, and in case such claim is made within the said period. I submit that if no such claims are made during such period, the amount, may be returned to me. Alternatively, I submit that, if the Company produces before this Hon'ble Court writings from any such persons confirming that they have no claim, then the relevant amount alleged to be due to such persons may be returned to me with accrued interest. I also undertake to settle any

future claims that are valid, legal and subsisting that pertain to the Company (under liquidation).”

8. Mr. Fernandes has produced in all 15 Demand Drafts in favour of Registrar (Judicial) of this Court towards securing the claims as set out at serial nos.3 to 16 in paragraph 12 of the affidavit filed by the Official Liquidator.

9. Mr. Diniz, the learned Counsel for the Company submitted that notwithstanding the production of the 15 Demand Drafts, the Company shall obtain and produce individual statements on affidavit of the persons as set out at serial nos.3 to 16 in Para 12 of the affidavit filed by the Official Liquidator, to the effect that their claims have been satisfied and they have no outstanding dues against the Company. He submits that such individual statements shall be produced within three months from today whereupon this Court may pass appropriate orders regarding refund of the amount deposited before this Court to the Company. The statement is accepted.

10. The respondent is permitted to deposit the Demand Drafts with the Registrar (Judicial) of this Court who shall encash the Demand Drafts and keep the amounts in

separate fixed deposit with any Nationalised Bank initially for a period of one year.

11. Having heard the learned Counsel for the parties and further having regard to the fact that the claim of the applicant has been satisfied in full and the Company has secured the claim as stated at serial nos.3 to 16 in para 12 of the reply filed by the Official Liquidator, I find that the application can be allowed in terms of prayer clause (i). Order accordingly. This shall be subject to the statement on behalf of the Company in para 7 of the affidavit-in-reply.

12. Stand over to 13.06.2019 for reporting compliance.

C. V. BHADANG, J.

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