

IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 35 OF 2018

IN

WRIT PETITION NO. 192 OF 2018

**THE OFFICIAL LIQUIDATOR OF
NATIONAL AUTO ACCESSORIES LTD.,
THR. IFCI LTD.,**

... Applicant

Versus

**STATE OF GOA, THR. ITS CHIEF
SECRETARY AND 2 ORS.,**

... Respondents

Ms. Amira Abdul Razaq, Advocate for the Applicant.
Mr. P. Faldessai, Addl. Government Advocate for Respondent
No.1.
Mr. D. J. Pangam and Mr. Neehal Vernekar, Advocates for
Respondent Nos.2 and 3.

Coram:- R. D. DHANUKA &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 3rd May 2019

P.C.

By this Civil Application, the Applicant seeks recall of the order dated 30.10.2018 passed by the Division Bench of this Court in Writ Petition No.192 of 2018 on the ground that the Deputy Labour Commissioner cannot go into the validity of the settlement agreement arrived at between the Company in liquidation and the labour union. It is also the case of the Official Liquidator that the Official Liquidator has already rejected the claim made by the Respondent Nos.2 and 3/employees which

order has been upheld by this Court in the Company Appeal.

2. Ms. Razaq, learned counsel for the Official Liquidator strongly placed reliance on the settlement agreement arrived at between the the Company in liquidation and labour union and would submit that the said settlement agreement has attained finality. The claim of both the employees were decided under the said settlement agreement and thus what amount payable under the said settlement agreement is to be only payable to both the employees by the Company in liquidation and nothing more than that.

3. A perusal of the judgment passed by the Company Court dated 11.12.2015 in Company Appeal No.1 of 2012 indicates that the appeal filed by the employee has been rejected. This Court while rejecting the appeal filed by the employee has made it clear in paragraph 7 that the finding in the impugned order of the Official Liquidator would not come in the way of the employee to get their claims adjudicated on its own merits in accordance with law. All contentions of both the parties with that regard are left open. Pursuant to the order passed by the Company Court, the employees preferred an application under the provisions of Section 10 of the Industrial Disputes Act, 1947 before the Deputy Labour Commissioner. The Deputy Labour Commissioner rejected the said application on the ground that

the settlement has already been arrived at between the Company in liquidation and labour union. This Court while passing a detailed judgment on 30.10.2018 in Writ Petition No.192 of 2018 has set aside the impugned order passed by the Deputy Labour Commissioner holding that the Deputy Labour Commissioner could not have decided the merits of the claims while hearing the application under Section 10 of the Industrial Disputes Act, 1947. The matter came to be remanded back to the Deputy Labour Commissioner to take a fresh decision in the light of the observations made by this Court in the said judgment dated 30.10.2018. We are not inclined to accept the submission made by Ms. Razaq, learned counsel for the Official Liquidator that the validity of the settlement agreement arrived at between the Company in liquidation and labour union has to be decided by this Court. This Court while dismissing the company appeal filed by the employee has already made it clear that all contentions of both the parties are kept open. The finding in the impugned order passed by the Official Liquidator will not come in the way of the employees to get their claims adjudicated on its own merits. The order passed by this Court in the said appeal has attained finality.

4. To some extent, the learned counsel appearing for the Official Liquidator is right in contending that in view of this situation, the Deputy Labour Commissioner would not be able to

adjudicate the claim once again made by the employee.

5. The question that arises for consideration of this Court is that in this situation, whether the right of the employee to apply for adjudication of the settlement agreement between the Company in liquidation and labour union is void or null and if so, what is the remedy of the employee to seek such adjudication.

6. Since both the parties are ad idem and since this Court has already held that the Deputy Labour Commissioner could not have gone into the merits of the dispute and more particularly about the validity of settlement agreement arrived at between the Company in liquidation and labour union, in the peculiar facts and circumstances of this case, we direct the State Government to make a reference to the Industrial Tribunal under the relevant provisions of Section 10 of the Industrial Disputes Act, 1947 within four weeks from the date of communication of this order. Upon receipt of such reference from the State Government, the Industrial Tribunal shall decide the said reference expeditiously and not later than six months from the date of such reference. Neither the Applicant nor the Official Liquidator shall seek any unnecessary adjournments before the Industrial Tribunal. The contention of the Official Liquidator that there was deemed closure and not factual closure of the Company in liquidation is

kept open. It is made clear that we have not expressed any views on merits of the claim of the employees as well as the aforesaid stand taken by the Official Liquidator.

7. The Civil Application (Review) is disposed of accordingly on the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J.

R. D. DHANUKA, J.

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