

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

COMPANY APPLICATION NO.534 OF 2017

IN

COMPANY PETITION NO.570 OF 1996

Bhagwati Allied Services)....Applicant

IN THE MATTER BETWEEN :

Jaybharat Credit Limited)....Petitioner

V/s.

The Official Liquidator of Print-O-Graph Pvt.Ltd.)....Respondent

WITH

**COMPANY APPLICATION NO.460 OF 2012
COMPANY APPLICATION (L) NO.120 OF 2019**

Mr.C.N.Mehta I/by MMK Law Associate for the applicant in CA 534/2017.

Ms.Kainaz Irani I/by Goenka Law Associates for applicant in CA 460/2012.

Mr.Rakesh L.Singh I/by M.V.Kini & Co. for applicant in CAL 120/2019.

Mr.Vedchetan Patil for Official Liquidator.

Mr.Suhas P.Sawant-Dy.official Liquidator present.

**CORAM : K.R.SHRIRAM,J
DATE : 6.6.2019**

P.C.:-

COMPANY APPLICATION NO.534 OF 2017

1. This application is filed by a security agency who is on the panel maintained by the Official Liquidator of this Court and got

appointed to render security services to protect the assets of the company in provisional liquidation on behalf of the creditors and primarily secured lenders. Applicant is claiming sum of Rs.11,54,009/- for the period 1.1.2003 to 21.3.2012.

2. By an order dated 26.9.2001 passed in Company Application No.303 of 2001, this Court was pleased to appoint the Official Liquidator of this court as provisional liquidator for the company Print-O-Graph Pvt. Ltd. Pursuant thereto, provisional Liquidator took possession of the assets of the company and later appointed applicant as a security agency to protect the assets of the company from 1.1.2003. Applicant did what was required to do and raised invoices on the Liquidator. Mr.Mehta for applicant states that till date, not a farthing has been paid.

3. Ms.Irani for applicant in Company Application No.460 of 2012 states that some time in 2008 Asset Reconstruction Company (India) Limited (ARCIL), the applicant in Company Application No.460 of 2012, purchased the liabilities of the company in provisional liquidation from Development Credit Bank (DCB) with cut off date of 15.1.2008. When the issue as to who shall pay the security charges came up before this Court, by an order dated 12.12.2012 this Court,

without prejudice to the rights and contentions of the parties, directed ARCIL to deposit with the Liquidator security charges from 13.3.2008 to 29.2.2012. Ms.Irani states that ARCIL has complied with the directions and in fact, paid security charges from 15.1.2008 to 29.2.2012. Mr.Vedchetan Patil for Official Liquidator concurs.

4. The controversy is who shall pay the security charges from 1.1.2003 up to and including 14.1.2008. Mr.Singh in Company Application (L) No.120 of 2019 states according to the assignment deed entered into with ARCIL, ARCIL has taken over entire liability of DCB which would include paying the security charges. Ms.Irani disagrees and states that ARCIL is liable only from 15.1.2008 which was the cut off date.

5. In my view, there is a dispute between ARCIL and DCB with which this court is not concerned and if at all DCB has any problem, they may commence such proceeding as advised against ARCIL. It is not disputed that upto 14.1.2008 Official Liquidator has protected the assets for the secured lenders which is DCB. In fact, by a letter dated 26.2.2009 the Liquidator who was not even aware about the assignment had called upon DCB to pay sum of Rs.8,13,616/- from 20.1.2003 to 31.1.2009. Official Liquidator had also forwarded a copy

of the order dated 18.4.2007 passed by this Court. In reply, DCB informed the Liquidator that for valuable consideration they have transferred and assigned to ARCIL the financial assistance granted to M/s.Print-O-Graph Ltd., together with all underlying security interests created therein and all Bank's rights, titles and interests in all agreements, deeds and documents in relation to or in connection with the respective credit facilities under section 5 of Secutarization and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) with cut off date of 15.1.2008 and Liquidator shall communicate with ARCIL in connection with pending suit/application.

6. I am not adjudicating on the rival claims of ARCIL and DCB but in my view, DCB shall pay all security charges upto 14.1.2008 and if advised, may claim the same from ARCIL independently by commencing such proceedings as advised. This is because the Liquidator had deployed the security agency to protect the assets on behalf of DCB at that time.

7. Liquidator shall within one week from today, address a communication to DCB as to what is the amount payable upto 14.1.2008 and DCB shall within 72 hours of receiving communication

make the payment to Official Liquidator together with interest thereon @ 9% p.a. DCB shall also pay sum of Rs.1,00,000/- as costs. The costs amount shall be paid by DCB directly to the applicant by way of cheque drawn in favour of Advocate on record and this amount shall be paid within one week from today. It is open to DCB to claim these amounts from ARCIL and I am not making any observations on merit of such a claim.

8. Within one week of receiving this amount, Official Liquidator shall pay the amounts to applicant Bhagwati Allied Services as per the request to be received from the Advocate.

9. As regards the amounts deposited by ARCIL, Mr.Sawant from the office of Deputy Official Liquidator states that, that amount has been invested in fixed deposit. Liquidator shall foreclose the fixed deposit and pay over entire amount with accumulated interest to Bhagwati Allied Services as per the request to be received from Advocate Mr.Mehta. This amount shall be paid by Official Liquidator within two weeks from today. Application accordingly, stands disposed.

10. In view of the above order, Company Application No.460 of

2012 and Company Application (L) No.120 of 2019 stand disposed.

(K.R.SHRIRAM,J)