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

COMPANY APPLICATION (LODGING) NO.239 OF 2019
IN
COMPANY PETITION NO.1049 OF 2015

Cello Pens & Stationery Pvt. Ltd. ...Applicant

IN THE MATTER BETWEEN :

Lakshadhandi Housing & Infrastructure Pvt. Ltd. ...Petitioner
V/s.

The Official Liquidator of -
Gigaplex Developers Pvt. Ltd. (In Liqn.) ...Respondent

Dr.Birendra Saraf with Ms.Krushni N. Barfiwala i/b M/s.Parinam Law Associates for the Applicant.

Mr.Aditya Pimple for the Official Liquidator.

Mr.Mahendhar Aithe, Company Prosecutor for the Official Liquidator present.

CORAM : R.D. DHANUKA, J.
DATE : 12TH DECEMBER, 2019.

P.C. :-

1. By this company application, the applicant seeks leave under section 446 of the Companies Act, 1956 to proceed with the commercial suit against the Official Liquidator appointed by this Court vide order dated 2nd February, 2018 and to permit impleadment of the Official Liquidator in the said suit as a party defendant.

2. The application for leave under section 446 of the Companies Act is opposed by the Official Liquidator mainly on the ground that the prayers sought to be made in the proposed suit is

totally vague and has no merit. It is also contended in the affidavit in reply filed by the Official Liquidator that the entire claim proposed to be claimed by the applicant is barred by law of limitation and has no merit of any nature whatsoever.

3. While granting leave under section 446 of the Companies Act, this Court is not required to go into the merits of the claim proposed to be made against the respondent company. The applicant has set out the grounds on which the applicant seeks to file a suit against the company in liquidation.

4. The company application is accordingly made absolute in terms of prayer clause (a). It is made clear that this Court has not gone into the issue whether there is any merit in the suit proposed to be filed by the applicant pursuant to the leave granted by this Court. This Court has also not gone into the rival contentions raised by the Official Liquidator in the affidavit in reply on the other issues on merits raised in the affidavit in reply. All such issues shall be considered by the Court as and when the suit is filed and if any written statement is filed by the Official Liquidator in the said suit.

5. Dr.Saraf, learned counsel for the applicant on instructions agrees to deposit the amount requisitioned by the Official Liquidator for the purpose of defending the said suit. The applicant is directed to deposit a sum of Rs.1,00,000/- initially with the Official Liquidator within two weeks from today. As and when any further requisition is

made by the Official Liquidator, the said amount shall be deposited by the applicant with the Official Liquidator within two weeks from the date of such communication, without fail. Any amount that would be paid by the applicant to the Official Liquidator pursuant to this order shall be subject to the out come of the suit proposed to be filed by the applicant.

6. The company application is disposed of on aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)