

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

**NOTICE OF MOTION NO.682 OF 2019
IN
APPEAL (L) NO.305 OF 2019
IN
COMPANY APPLICATION (L) NO.58 OF 2019
IN
COMPANY PETITION NO.550 OF 2013**

Directorate General of Hydrocarbons
(Ministry of Petroleum and Natural
Gas), Government of India ... Applicant

In the Matter Between :

Directorate General of Hydrocarbons
(Ministry of Petroleum and Natural
Gas), Government of India ... Appellant
Versus
The Official Liquidator & Liquidator
of Hydrocarbon Development Co.
Pvt. Ltd. and Ors. ... Respondents

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IN
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Directorate General of Hydrocarbons
(Ministry of Petroleum and Natural
Gas), Government of India ... Appellant
Versus
The Official Liquidator & Liquidator
of Hydrocarbon Development Co.
Pvt. Ltd. and Ors. ... Respondents

Mr.Pradeep S. Jetly with Mr.Jitendra B.
Mishra for the Applicant/Appellant.

Mr. Shyam Kapadia a/w Ms. Swati Sawant,
Akshay Patil I/b S. K. Legal Associates
L.L.P. for Respondent No.2.

Mr. S. Santhanam, Assistant Official
Liquidator present.

**CORAM :- S. C. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.**

DATE :- JULY 26, 2019

P.C. :-

1. Having heard Mr. Jetly appearing for the applicant as also the Official Liquidator and the learned advocate for the contesting respondent No.2, we are satisfied that there is sufficient cause for condoning the delay of 81 days in filing this appeal. The Notice of Motion is made absolute in terms of prayer clause (a). There will be no order as to costs.

2. With the consent of both sides, we have heard the Appeal for admission.

3. *Prima facie*, in a company under liquidation and after the winding up order has been passed so also there exists an undisputed factual position that the Production Sharing Contract dated 23rd February, 2001 is by and between the Government of India and the company in liquidation, the learned Single Judge should not have allowed the applicant/respondent No.2 in this

Appeal to invoke the arbitration agreement contained in the Sharing Contract. The finding of the learned Single Judge that the applicant shall pursue the arbitration proceedings on behalf of the Company and shall also be at liberty to take out appropriate applications under the Arbitration and Conciliation Act, 1996 as amended in any Court presupposes that the applicant is a party to the contract. Admittedly he is not. Hence, this Appeal is admitted.

4. Our attention has been invited by respondent No.2 to an order passed by the Hon'ble Supreme Court on 26th April, 2019. That is passed in Special Leave Petition (Civil) Diary No.8974 of 2019. That is arising out of a final judgment and order dated 3rd September, 2018 in Appeal No.187 of 2015 of this Court. That is an order passed on the Company Petition. There is, thus, a winding up order. All that the Hon'ble Supreme Court's interim order says is that status-quo of 26th April, 2019 ought to be maintained. The learned counsel appearing for respondent No.2, while relying upon this order of the Hon'ble Supreme Court, pertinently does not say that he will not pursue the arbitration proceedings. He says that the next date is 21st August, 2019 and the arbitration is pending. In the circumstances, we are of the opinion that a strong *prima facie* case is made out, the balance of

convenience is also in favour of the appellant and the appellant as also the liquidator of the company in liquidation would suffer irreparable loss and harm in the event order under appeal is not stayed. We, therefore, grant a stay to the execution, enforcement and implementation of the order under appeal. The stay will operate during the pendency of this Appeal.

(SANDEEP K. SHINDE, J.)

(S.C.DHARMADHIKARI, J.)