

IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 3 OF 2020

IN

COMPANY APPLICATION NO. 56 OF 2001

SHIPRIYAN M.RODRIGUES.,

... Applicant

Versus

BHARATIYA DEVELOPMENT FINANCE LTD.
REP., BY OFFICIAL LIQUIDATOR AND 2
ORS.,

... Respondents

Mr. Prashil Arolkar, Advocate for the Applicant.

Applicant present in person.

Ms. Amira Razaq, Advocate for Respondent No.1.

Coram:- M. S. SONAK, J.

Date:- 10th January, 2020

ORAL ORDER:

Heard Mr. Prashil Arolkar for the applicant and Ms. Amira Razaq for the official liquidator.

2. This is an application for modification of decree dated 29.09.2006 passed by this Court in Company Application No.56/2001 directing the applicant to pay a sum of Rs.1,20,903.55 with pending interest @ 20% p.a. and future interest @ 8% p.a.

3. The execution of the decree is pending. During the pendency, this application has been taken out by the applicant

pleading that he has an acute financial crises in the family and his occupation as a tailor has also been severely affected. Mr. Arolkar, on behalf of the applicant, who is present in the Court, states that if two months time is granted, the applicant, will somehow or the other arrange to pay to the liquidator an amount of Rs.1,50,000/- in full and final satisfaction of the Judgment and Decree dated 29.09.2006. He relies upon certain orders made by this Court, where, in similar circumstances, the original decree came to be modified.

4. Ms. Razaq, learned counsel for the official liquidator, points out that in terms of the decree an amount of Rs.70,0000/- and thereabouts has been paid by the applicant and the total outstanding now comes to about Rs.3.87 lakhs or thereabouts.

5. Upon taking into consideration the facts and circumstances as pleaded as also orders made in somewhat similar circumstances, this is a fit case where some indulgence is liable to be shown to the applicant. This is more so because the applicant, who is present in person, has offered willingness to file an undertaking before this Court that an amount of Rs.1,50,000/- will be positively paid to the official liquidator within a period of two months from today.

6. In granting the aforesaid indulgence, cognizance is also

necessary to be taken of the fact that the applicant has already paid an amount of Rs.70,000/- and the offer now is to pay further amount of Rs.1,50,000/-.

7. Accordingly, subject to the applicant filing an undertaking in this Court within two weeks from today that he will pay to the official liquidator an amount of Rs.1,50,000/- within a period of two months from today without seeking any extension of time, the Judgment and Decree dated 29.09.2006 is modified and it is directed that if the applicant pays to the official liquidator an amount of Rs.1,50,000/- within two months from today, then, the said decree, shall stand fully satisfied.

8. However, it is made clear that if no such undertaking is filed within two weeks from today, this company application shall be deemed to have been dismissed without any further reference to this Court. Further, if, consistent with the undertaking, if filed, the applicant fails to pay to the official liquidator the amount of Rs.1,50,000/- within a period of two months from today, even then, this application shall be deemed to have been dismissed without any further reference to this Court and the decree dated 29.09.2019 will revive in its unmodified form. Further, this shall be without prejudice to the liberty to the applicant to face action for breach of the undertaking given to this Court. The undertaking, if given within two weeks, will be deemed to have

been accepted by this Court as an undertaking given to this Court. Copy of the undertaking to be furnished to the learned counsel appearing for the respondent before the same is filed in the Registry.

9. This application for modification is disposed of in the aforesaid terms.

M. S. SONAK, J.

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