IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.128 OF 2018
IN
COMPANY PETITION NO.892 OF 2014

Varun Global Limited ... Appellant
Versus
Life Insurance Corporation of India ... Respondent

WITH
INTERIM APPLICATION (L) NO.23669 OF 2021
WITH
NOTICE OF MOTION NO.253 OF 2019
WITH
NOTICE OF MOTION NO.250 OF 2019
WITH
NOTICE OF MOTION NO.252 OF 2019
WITH
INTERIM APPLICATION (L) NO.8831 OF 2020
WITH
INTERIM APPLICATION (L) NO.14871 OF 2021
WITH
INTERIM APPLICATION (L) NO.14238 OF 2021

Mr. Sharique Nachan with Mr. Aditya Khandelwal, Mr. Megh Soni i/by Crawford Bayley and Co., for Appellant.
Mr. Nishit Dhruva, Ms. Yash Dhruva Ms. Niyati Merchant i/by MDP and Partners, for Respondent.
Mr. Sharan Jagtiani, Senior Advocate with Mr. Jehangir Jejeebhoy, Mr. Aditya Pimple, for Official Liquidator.
Mr. Mahendhar Aithe, Company Prosecutor, present.
Mr. Amardev J. Uniyal, for Security Guard Board for Greater Mumbai and Thane District.

CORAM: S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.

DATE: 16th NOVEMBER, 2021

P.C.:

1. On 31st August, 2021 this Court passed the following order :

"1. The above Company Petition was admitted by this Court by an order dated 27th December, 2016.

2. Thereafter, by an order dated 1 st February 2018 passed by a Learned Single Judge of this Court, the Appellant Company was ordered to be wound up.

3. Appellant being aggrieved by the winding up order dated 01 st February 2018 ("Impugned Order"), filed Appeal No.128 of 2018. In the present Appeal, this Court passed a conditional ad interim order dated 28 th February 2018. By the said order, this Court stayed the effect, operation and execution of the Impugned Order dated 1 st February 2018 for a period of 6 (six) weeks i.e. till 11 th April 2018 subject to the Appellant depositing a sum of Rs.5,00,00,000/- (Rupees Five Crores only) within a period of 4 (four) weeks from the date of the said Order 28 th February 2018.

4. By an order dated 8 th May, 2018, this Court permitted the Respondent to withdraw the sum of Rs.5,00,00,000/- (Rupees Five Crore only) deposited by the Appellant pursuant to the order dated 28 th February, 2018 subject to the said amount being adjusted towards the amount calculated for the OTS proposal, if accepted and extended the stay on the effect, operation and execution of the Impugned Order and the same continues till date.

5. The Respondent accepted the Appellant's OTS proposal of Rs.22,75,00,000/- (Rupees Twenty-two Crores Seventy-five Lacs only) on 08th June 2020.

6. Pursuant thereto, by an order dated 13 th July 2020, this Court directed that the amount of Rs.5,00,00,000/- (Rupees Five Crores only) already withdrawn by the Respondent and the additional sum of Rs.1,00,00,000/- (Rupees One Crore only) paid as recorded in the Order of 13 th July 2020 was to be adjusted by the Respondent against the OTS amount of Rs.22,75,00,000/- (Rupees Twenty-two Crores Seventy- five Lacs only), and

the statement made by the Appellant that the balance amount of Rs.16,75,00,000/- (Rupees Sixteen Crores Seventy-five Lacs only) would be paid within 90 days from the date of the order dated 13 th July 2020 was accepted.

7. The Appellant had sought extension of time to pay to the Respondent the balance OTS amount of Rs.16,75,00,000/- (Rupees Sixteen Crores Seventy-five Lacs only) which the Respondents have agreed subject to the payment of interest.

8. The Appellant agrees and undertakes to pay the Balance amount of Rs.15,07,50,000/- (Rupees Fifteen Crores Seven Lacs and Fifty Thousand only) along with interest of Rs.50,00,000/- (Rupees Fifty Lacs only) on or before 30th September, 2021, on which date the Respondent will be entitled to encash the 10% pay orders submitted in terms of Clause 8 (a) below. The Respondent LIC shall release their charge and execute all requisite documents as may be necessary in this regard simultaneously on receipt of the entire amount of Rs.17,25,00,000/- (Rupees Seventeen Crores Twenty Five Lacs Only) on or before 30 th September, 2021. LIC will release all the security documents only upon the receipt of the entire amount of Rs.17,25,00,000/- (Rupees Seventeen Crores Twenty Five Lacs Only) on or before 30th September, 2021.

9. The Appellant undertakes to deposit in escrow with the Advocates for the Respondent, the Pay Orders aggregating to Rs.1,67,50,000/- (Rupees One Crore Sixty-seven Lacs Fifty Thousand only) on or before 15 th September, 2021 which has been retained towards the deposit of the secured assets. Upon receipt of fresh pay orders the Advocate for Respondent shall forthwith return the existing pay orders, which are presently deposited with the Advocate for the Respondent to the Advocate for the Appellant, and the Appellant undertakes to forthwith return the same to the Purchasers.

10. The parties agree that the time for payment of the balance amount of Rs.16,75,00,000/- in terms of the order dated 13 th July, 2020 stands extended up to 30th September, 2021, and the effect, operation and execution

of the Impugned Order dated 1 st February, 2018 shall be stayed till 30 th September, 2021.

11. Simultaneously with payment of the entire amount of Rs.17,25,00,000/- (Rupees Seventeen Crores Twenty Five Lacs Only), Respondent LIC shall issue a No Dues Certificate in favour of the Appellant and its Directors in respect of the above matter. LIC shall withdraw legal proceedings pertaining to this account and take all necessary steps to inform the Credit Information Bureaus/Reserve Bank Of India /any other regulatory body (if any) about the full & final settlement of all dues and liabilities by Appellant under the Term loan facility extended by LIC under the original Loan Agreement dated April 12, 2010.

12. In the event there is a default in payment of the balance amount of Rs.16,75,00,000/- alongwith lumpsum interest as fixed by the Court at Rs.50,00,000 (Rupees Fifty Lacs Only) or the amounts set out in paragraphs 13 and 15 hereunder on or before 30 th September, 2021, the Appeal shall stand dismissed and all interim orders shall stand vacated without any further recourse to this Court, and the Official liquidator shall be entitled to take further appropriate steps in terms of order dated 1st February, 2018. Further the Advocates for the Respondent shall forthwith return the pay orders referred to hereinabove to the Advocates for the Appellant and the Appellant undertakes to forthwith return the same to the Purchaser.

13. The Appellant agrees and undertakes to settle the claims of Security Guard Board for Greater Mumbai and Thane District and the claim of Datamatics Financial Services Ltd. on or before 30 th September, 2021 based on ongoing reconciliation of accounts between the parties. If there is a failure of negotiations, the Appellant shall deposit in this Court the amount claimed under protest and without prejudice to the remedies available to the Appellant in law.

14. The Official Liquidator has also received an Affidavit of Proof of Debt dated 14th August, 2021 from one Mr. Karl B. Lacerda stating that he is entitled to receive Rs.24,32,610/- from M/s. Varun Global Limited

(Company in Liquidation) being unpaid salary for the period 2013-2014 earned on Vessels, namely, M.V. Subhiksha and M.V. Sudhaksha. Since the Company was wound up by an Order dated 1st February, 2018, it appears that the claim of Mr.Karl B. Lacerda is barred by the law of limitation. In view thereof, Mr. Karl Lacerda may pursue the remedy available to him in law upon the winding up Order dated 1 st February, 2018 passed against M/s. Varun Global Limited, being set aside.

15. The Appellant also agrees and undertakes to make payment of a sum of Rs. 4,38,700/- (Rupees Four Lacs Thirty Eight Thousand Seven Hundred only) to the office of the Official Liquidator, High Court, Bombay towards legal expenses and advertising charges on or before 30 th September, 2021.

16. The undertakings recorded above are accepted.

17. Only in the event the Appellant makes payment of the entire amount of Rs.17,25,00,000/- (Rupees Seventeen Crores Twenty Five Lacs Only) as also the amounts mentioned in paragraphs 13 and 15 above, on or before 30 th September, 2021, the parties will be at liberty to apply to this Court for further orders."

2. Admittedly, there is a default in payment of the balance amount of Rs.16,75,00,000/- along with the lumpsum interest of Rs.55,00,000/- as fixed by the Court. In view thereof, as recorded in paragraph No.12 of the order dated 31st August, 2021, which is reproduced above, the above Appeal stands dismissed. All interim orders stand vacated. The Official Liquidator is now entitled to take further appropriate steps for winding up in terms of the order dated 1st December, 2018. All pending Interim Applications/Notice of Motion stand disposed of.

(MILIND N. JADHAV, J.) **(S.J.KATHAWALLA, J.)**