

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.200 OF 2019
IN
COMPANY PETITION NO.593 OF 2015**

Sujal Developers Private LimitedApplicant

IN THE MATTER BETWEEN :

Nina Concrete System Private LimitedPetitioner

V/s.

Official Liquidator on behalf of Orbit
Corporation LimitedRespondent

**WITH
COMPANY APPLICATION NO.202 OF 2019
IN
COMPANY PETITION NO.593 OF 2015**

Mr. Shyam Dewani a/w. Mr. Chirag Chanani and Ms. Heena Kapoor i/b.
Dewani Associates for applicant.

Mr. Shanay Shah for Official Liquidator.

Mr. Mahendhar Aithe, Company Prosecutor present.

**CORAM : K.R. SHRIRAM, J.
DATED : 19th JANUARY 2021**

P.C. :

COMPANY APPLICATION NO.200 OF 2019

1 This application is for leave under Section 446 of the Companies Act, 1956 to prosecute the suit already filed by applicant against the company (in liquidation) being Commercial Suit No.844 of 2018. Though in the affidavit in support, it says suit for specific performance but a copy of the plaint annexed to the application provides for claim of damages in the alternative as prayer clause – (e).

2 Applicant had booked a residential flat pursuant to Agreement for Sale dated 26th December 2012. It is stated that the agreement has been

registered and stamp duty and registration charges have also been paid.

3 I am inclined to grant leave under Section 446 of the Companies Act, 1956 subject to certain conditions. This is because Mr. Shah also submitted that tomorrow, if applicant does not succeed in the suit, the Official Liquidator would have spent time and money in defending the suit out of the funds which could have been used for paying other creditors and Official Liquidator may find it difficult to recover those costs from applicant. Therefore, applicant is directed to deposit a sum of Rs.1 lakh with the Official Liquidator within 15 days from today. Official Liquidator shall engage advocate/counsel of his choice to defend the suit and use this amount to disburse/pay the fees and expenses. Once this amount is exhausted, applicant shall put the Official Liquidator in further funds as requested by the Official Liquidator within one week of receiving a communication from the Official Liquidator. If these conditions are not met, leave granted will stand revoked without further reference to this Court.

4 If applicant succeeds in the suit, it is open to applicant to press for cost including the cost paid to the Official Liquidator and if the Trial Court grants those costs, applicant may claim the same from the Official Liquidator alongwith affidavit of proof of debt.

5 This Court has not made any observations on the merits of the suit.

6 Company application accordingly stands disposed.

7 All rights and contentions of the Official Liquidator are kept open to be raised in the suit.

COMPANY APPLICATION NO.202 OF 2019

8 This application is for leave under Section 446 of the Companies Act, 1956 to prosecute the suit already filed by applicant against the company (in liquidation) being Suit No.816 of 2018. Though in the affidavit in support, it says suit for specific performance but a copy of the plaint annexed to the application provides for claim of damages in the alternative as prayer clause – (e).

9 Applicant had booked a residential flat pursuant to Agreement for Sale dated 29th November 2012. It is stated that the agreement has been registered and stamp duty and registration charges have also been paid.

10 I am inclined to grant leave under Section 446 of the Companies Act, 1956 subject to certain conditions. This is because Mr. Shah also submitted that tomorrow, if applicant does not succeed in the suit, the Official Liquidator would have spent time and money in defending the suit out of the funds which could have been used for paying other creditors and Official Liquidator may find it difficult to recover those costs from applicant. Therefore, applicant is directed to deposit a sum of Rs.1 lakh with the Official Liquidator within 15 days from today. Official Liquidator shall engage advocate/counsel of his choice to defend the suit and use this amount to disburse/pay the fees and expenses. Once this amount is

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12 This Court has not made any observations on the merits of the suit.

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Gauri A.
Gaekwad
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Gauri A.
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(K.R. SHRIRAM, J.)