

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.2295 OF 2019
IN
COMPANY PETITION NO.783 OF 2015**

Sandeep Steels

....Applicant/Petitioner

V/s.

Official Liquidator on behalf of
Pyramid Building Systems Pvt. Ltd.

....Respondent

Mr. Devendra Tiwari i/b Law Chamber of Siddharth Murarka for
applicant/original petitioner.

Mr. Shanay Shah for Official Liquidator.

Mr. Mahendhar Aithe, Company Prosecutor present.

CORAM : K.R.SHRIRAM, J.

DATED : 23rd FEBRUARY 2021

P.C. :

1 Mr. Shah appearing for the Liquidator of the company (in liquidation) states that the Liquidator does not have funds of the company to defend the suit and tomorrow after incurring cost in defending the suit filed by applicant, if the Liquidator succeeds, the Liquidator would have wasted money which would have otherwise been available to the creditors of the company (in liquidation) and Liquidator will have to chase applicant herein to recover the cost. Mr. Shah further states that anyway applicant has lodged an affidavit of proof of debt with the Liquidator which will be considered and disposed in accordance with law. Mr. Tiwari appearing for applicant states that in the suit, applicant is seeking a decree not only against the company (in liquidation) but also the Directors of the company.

2 Mr. Shah states that if the Court is inclined to grant leave under Section 446, then as it is done in many other matters, applicant should be directed to put the Liquidator in funds for defending the suit and if applicant succeeds in the suit, he may apply to the Court concerned to grant cost paid to the Liquidator to defend the action and that Court may consider whether to grant that prayer or not. In my view that is a fair suggestion.

3 Therefore, leave under Section 446 as prayed for in prayer clause – (a) of the application is granted, subject to :

(a) applicant funding the Liquidator expenses of the office of Official Liquidator in participating in suit no.623 of 2016.

(b) applicant shall deposit a sum of Rs.1 lakh initially with the Liquidator and as and when that amount gets exhausted and Liquidator sends communication for further amount, those further amounts shall be paid within two weeks of receiving communication.

4 The amounts paid to the Liquidator can be claimed by applicant as costs in the suit. If the Court grants costs, those costs can be claimed from the Liquidator along with decretal amount and the same will be considered in accordance with law.

5 Official Liquidator is permitted to engage the services of an advocate of his choice and pay the fees from the amounts to be deposited by applicant.

6 Interim application accordingly stands disposed.