IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

COMPANY APPLICATION (CAO) NO. 883 OF 2015
IN
COMPANY PETITION NO. 1 OF 2008

(Yeshwant Ramchandra Jadhav and others ..vs.. Official Liquidator, Adhunik Grihnirman Vittiya Corporation Ltd., Nagpur and others)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S.V. Sohoni, Counsel for the applicants,
Dr. Anjan De, Counsel for the Official Liquidator/non-applicant 1.

CORAM : ROHIT B. DEO, J.
DATED : 17-02-2021

This application is moved purportedly under Rule 9 of the Companies (Court) Rules, 1949 ("Rules" for short) read with Section 391 of the Companies Act, 1956 ("Act" for short) for recalling of the order dated 03-10-2008 rendered in Company Petition 1/2008.

2. The order dated 03-10-2008 directs appointment of the Official Liquidator to complete the process of winding up of the company.

3. Applicants 1 to 5 claim to be the erstwhile Directors of the company. Applicants 6 to 9 claim to be persons who have offered to settle the dues of the company and in the eventuality of the setting aside of the liquidation order, to function as its Directors.

4. Section 391 of the Act reads thus :

*“**391. Power to compromise or make arrangements with creditors and members. -** (1) Where a compromise or arrangement is proposed -*

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them;

the (Tribunal) may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the Liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the (Tribunal) directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed (under the rules made under section 643), by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the (Tribunal), be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or, in the case of a company which is being wound up, on the Liquidator and contributories of the company :

Provided that no order sanctioning any compromise or arrangement shall be made by the (Tribunal) unless the (Tribunal) is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the (Tribunal), by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.

(3) An order made by the (Tribunal) under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees) for each copy in respect of which default is made.

(6) The (Tribunal) may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the (Tribunal) thinks fit, until the application is finally disposed of."

5. On the face of the averments in the application, Section 391 of the Act does not come into play. Said provision is attracted only where a compromise or arrangement is proposed between a company and its creditors or any class of the creditors or between a company and its members or any class of them. Indubitably, applicants 6 to 9 are neither the creditors or class of creditors nor members of the company.

6. This application is preferred on 27-4-2015. Even after the passage of approximately six years, there is nothing on record to suggest that the applicants are

serious as regards the offer. A vague statement is made in paragraph 7 that the erstwhile Directors are ready to accept the offer of applicants 6 to 9. The details of the offer are not spelt out. It is averred in paragraph 6 that the liability of the company is between Rs.12,00,00,000/- (Rupees Twelve Crores) to 14,00,00,000/- (Rupees Fourteen Crores). Even if it is assumed that the said figure was correctly stated in April, 2015, conceivably the liability is likely to be much more as on date.

7. Were the applicants to be really serious, some concrete offer would have been made by now, in order to demonstrate the *bona fides*. This has not been done.

8. Reference to Rule 9 of the Rules which reference to the inherent powers of the Court is clearly misconceived. The reference to inherent power in the procedural rules cannot be construed to confer a power which can be exercised inconsistent with or contrary to or *de hors* the statutory scheme.

9. The application is dismissed.

JUDGE

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