

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

**INTERIM APPLICATION NO.1392 OF 2020**  
**IN**  
**COMPANY PETITION NO.947 OF 2014**

|                                     |               |
|-------------------------------------|---------------|
| M/s. Premier Shield Private Limited | ...Applicant  |
| <i>In the matter between</i>        |               |
| Maharashtra Savings                 | ...Petitioner |
| vs.                                 |               |
| Mantri Realty Limited               | ...Respondent |

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Mr. Bernardo Reis a/w. Mr. Pradyumna Sharma i/b. D.H. Sharma,  
for the Applicant.  
Mr. Prathamesh Kamat a/w. Ms. Arpeeta Panvalkar and Mr. Osama  
Butt i/b. Renata Partners, for the Liquidator.  
Mr. Sanskar Marathe, for Respondent No. 2- Society.

**CORAM : N. J. JAMADAR, J.**  
**DATE : OCTOBER 19, 2022**

**P.C.:**

1. This application is preferred seeking a direction to the Official Liquidator to pay the charges of M/s. Premier Shield Private Limited, the applicant, a security service provider.

2. The substance of the application is that the applicant was appointed as a security service provider to safeguard the assets of Mantri Realty Limited , the company in liquidation, situated at Special Area Development Authority (SADA), Gwalior, Madhya Pradesh vide letter dated 9<sup>th</sup> February, 2016. The appointment came to be reflected in the Minutes of the Meeting dated 10<sup>th</sup>

February, 2016 wherein the area to be secured and the number of security personnel to be deployed were also indicated.

3. The applicant claimed to have provided the security services and raised invoices during the period 1<sup>st</sup> March, 2016 to 1<sup>st</sup> March, 2017. An aggregate amount of Rs.16,43,928.40/- against the said invoices remained outstanding. The applicant repeatedly called upon the Official Liquidator to pay the said charges. However, the Official Liquidator, failed to discharge the said liability incurred during the process of liquidation. Hence, this application.

4. Though there is not much resistance from the Official Liquidator, the Residents' Association Gwalior, comprising of the persons who had either entered into agreement for purchase of residential or commercial units or paid advance for the said purpose or both, and were vitally interested in the completion of the project, has resisted the prayer of the applicant. It was denied that the applicant ever deployed any personnel at site. In contrast, the Residents' Association claimed that the residents had deployed their own guards.

5. The respective stands of the applicant, Official Liquidator and

of the Residents' Association, however, appeared to be ambiguous and unclear. Therefore, by an order dated 8<sup>th</sup> January, 2021, this Court, inter alia directed as under:-

10] It goes without saying that the Residents' Association's deposit of Rs. 1.5 crores is not being subjected to the claim by the Premier Shield at all. That simply cannot be. That deposit was made for the protection of the residents and for furthering their proposal to complete the project with an infusion of funds. It is not meant to clear company debts. That payment of Premier Shield's claim, if accepted can only come out of company assets

11] I will, therefore, now require, in these circumstances, Affidavits from all three parties in the following manner:

(a) Premier Shield will file an Affidavit disclosing all invoices, reminder emails, reminder letters and showing details of any payments received. I will require copies of the documents as also a comprehensive tabulation summarizing all this;

(b) The Official Liquidator will, from and only from, his official records, file an Affidavit disclosing what invoices of Premier Shield the Liquidator submitted and which the Official Liquidator's office received, and what payments were made. Copies of the covering letters forwarding payment are also to be disclosed. Any correspondence between Premier Shield and the Liquidator regarding reminders and payments of these invoices is also to be disclosed;

(c) The SADA Residents Association must now file not only a proper letter of authority to the deponent as an annexure to a Further Affidavit but also must file an Affidavit by somebody who has personal knowledge of the situation at site with complete particulars of date and time with a report of what was observed on site. Nothing short of this will do.

12. Indeed, having given the clarification above that the funds placed in Court by the Residents' Association are not being subjected to the claim of

Premier Shield, I do not honestly see what role the Residents' Association has to play in this matter any further at all. I will, however, give the Residents' Association one further opportunity to place whatever it wants to say on Affidavit but with these particularization.

13. All these Affidavits are to be filed and served on or before 25<sup>th</sup> January 2021. There are to be no Replies or Rejoinders.

6. In adherence to the aforesaid direction, the applicant has filed an additional affidavit. It is categorically asserted that the applicant has raised invoices on the Official Liquidator, on a monthly basis. All the necessary particulars of the invoices along with the supporting documents like attendance sheet of the security personnel, which were forwarded to the office of the Official Liquidator, are furnished in the affidavit. Copies of the invoices and a table indicating the aggregate due amount are annexed to the affidavit. The applicant has made a categorical statement that no amount has been paid by the Official Liquidator towards any of the invoices.

7. In response, in the additional affidavit dated 29<sup>th</sup> January, 2021, the Official Liquidator concedes in no uncertain terms that the statement made on behalf of the Official Liquidator before the Court on 8<sup>th</sup> January, 2021 that some payments were made towards the invoices raised by the applicant was factually incorrect. No payment has ever been made to the applicant. The Official

Liquidator further asserts that the applicant was appointed vide letter dated 9<sup>th</sup> February, 2016 to provide security services and the said fact is also recorded in the Minutes of Meeting dated 10<sup>th</sup> February, 2016. The fact that multiple invoices were raised and on umpteen occasions the applicant had addressed communications and reminders demanding the payment is unequivocally admitted by the Official Liquidator.

8. The following averments in the additional affidavit make the position abundantly clear.

46] In view of the aforesaid documents, it is clear that the Office of the Official Liquidator received timely invoices and reminders which was indicative of the fact that security guards were placed by the Applicant at the site in Gwalior. However, a contrary stand has been taken by SADA Residents' Association that there were no security guards placed by the Applicant at the site.

47] Owing to the aforesaid facts and circumstances which give rise to the contrary stands, the Office of the Official Liquidator was in no position to determine if the security guards were present at the site as corroborated by the periodic invoices and timely reminders for payment.

48] The physical absence of the representatives of the Office of the Official Liquidator at the site for verification and the stand taken by SADA Residents' Association is contrary to the invoices issued by the Applicant.

49] Thus, no payments were sanctioned to the Applicants by the Office of the Official Liquidator, though periodic invoices and timely reminders were received from the Applicant.

9. In view of the aforesaid stand of the Official Liquidator, it becomes explicitly clear that the applicant was duly appointed as a security service provider, the terms of the engagement were settled and the applicant did render services in accordance with the terms of the engagement. There is contemporaneous material to show that the applicant has periodically raised the invoices and left no stone unturned to make the Official Liquidator pay the security charges. The applicant relentlessly persued the matter with the Official Liquidator. In a sense, there can be no resistance to the claim of the applicant by the Official Liquidator and, in fact, there is none.

10. The stand of Residents' Association that the applicant had not deployed the security personnel has not been substantiated by filing affidavit in terms of the aforesaid order. In any event, since this Court has clarified that the amount to be paid to the applicant towards security charges can only come out of the assets of the company in liquidation and the amount of Rs. 1.5 Crore deposited by the Residents' Association shall not be burdened with the said claim, at this juncture and in this proceeding, it may not be necessary to delve deep into the claim of the Residents' Association that it had deployed its own personnel. I am, therefore, inclined to allow the application.

Hence, the following order.

**ORDER**

1] The Official Liquidator shall pay the security charges quantified at Rs. 16,43,928.40/- to the applicant out of the assets of the company in liquidation.

2] It is however made clear that no amount deposited by the Residents' Association shall be used to defray the aforesaid charges.

3] In the event the amount standing to the credit of the account of the company in liquidation is not sufficient to meet the liability of payment of security charges of the applicant, the said amount be paid as and when the Official Liquidator receives the assets of the company in liquidation and, for that purpose, the aforesaid security charges shall be construed as liquidation expenses and paid out first.

Application stands disposed.

**(N. J. JAMADAR, J.)**