

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.1717 OF 2020
IN
COMPANY PETITION NO.108 OF 2008**

Vijay Ekanath Jam and Ors.

... Applicants

Versus

M/s. Patheja Forging and Auto Parts Manufacturers
Limited

... Respondent

Mr. Manoj Vishwakarma i/by MVK Juris, for Applicants.
Mr. Aditya Pimple, for Respondent.

CORAM: N.J.JAMADAR, J.

DATE: 30th AUGUST, 2022

P.C.:

1. The Applicants who claim to be the workmen of M/s. Patheja Forgings and Auto Parts Manufacturers Ltd. (in liquidation) have preferred this Application seeking, inter alia, the following reliefs :

“(a) That this Hon’ble Court be pleased to seek information from the Official Liquidator whether they have sold the movable and immovable assets of the company i.e. M/s. Patheja Forging and Auto Parts Manufacturers or not in the interest of justice;

(b) That this Hon’ble Court be pleased to seek information from the Official Liquidator if they have sold the movable and immovable assets of the company i.e. Patheja Forgings and Auto Parts Manufacturers than whom and what consideration in the interest of justice;

(c) That this Hon’ble Court be pleased to direct to the Official Liquidator to stop the construction works going upon the land of the

company i.e. M/s. Patheja Forgings and Auto Parts Manufacturers situated at A/20, MIDC, Bhosari, Pune 411 026 till the pendency of the present Application, in the interest of justice;

(d) That this Hon'ble Court be pleased to direct to the Official Liquidator to settle the claims amount of the workers within three months from the date of order of this Hon'ble of the Company i.e. M/s. Patheja Forgings and Auto Parts Manufacturers in the interest of justice”

2. An Affidavit in Reply is filed by the Official Liquidator.

3. Paragraph No.2 of the Affidavit in Reply reads as under :

“2. That after liquidation order passed by the Hon'ble Court, the Official Liquidator deputed his representative to take inspection of documents / records of the company in liquidation maintained in the Office of Registrar of Companies, Maharashtra, Mumbai and it was found that they company was having following properties :

a. Bombay Corporate Office : situated at 399A, Vitthalbhai Patel Road, Congress House, Mumbai – 400 004 (tenanted premises handed over to the landlord prior to winding up order).

b. Thane Office : situated at Siddhanchal – Phase – II Co – Operative Housing Society Ltd., Flat No.702, Building No.11, Vipulgiri, Off. Vasant Vihar, Pokharan Road No.2, Thane (West), Pin – 400 10 (possession is with DRT Receiver).

c. Thane office : Siddanchal – Phase II Co-operative Housing Society Ltd. Flat No.702, Building No.12, Kailashgiri, Off. Vasant Vihar, Pokharan Road No.2, Thane (West), PIN – 400 610 (possession is with DRT Receiver).

d. Thane Office : Siddanchal – Phase – I, Co-operative Housing Society Ltd., Flat No.303, Building No.2-A, Rajgiri, Off. Pokharan Road No.2, Thane (West), Pin – 400 610 (possession is with DRT Receiver).

e. Thane Office : Siddhanchal Phase I, Co-operative Housing Society Limited, Flat No.404, Building No.2-B, Rajgiri, Off. Pokharan Road No.2, Thane (West), Pin – 400 610 (possession is with DRT Receiver).

f. At Bangalore, Karnataka : Flat No.A-1, Chandan Apartment (Area) 2503 sq.ft. + car parking and private terrace of 154 sq.ft. Bangalore, Karnataka State (possession is with DRT Receiver).

g. At Tamil Nadu : Wind Mill Project situated at Village – Karungulam and admeasuring to 6.96 acres) and village Pazhavur (admeasuring to 32.15 acres) in Nellai Kattabomman District, State – Tamil Nadu (possession is with IFCI).

h. At Pune : 250A, Boat Club Road, Sangamwadi, Pune – 411 001 (possession is with DRT Receiver).

i. At Aurangabad : Plot No.H-17/1/2, MISC Industrial Area, Walunj, Aurangabad (possession is with DRT Receiver).

j. At Pune : Plot No.F-II/7, MISC, Pimpri, Pune – 411 018 (possession is with DRT Receiver).

k. At Pune E-20, MISC, Bhosari, Pune – 411 026 (possession is with DRT Receiver) .

That the property mentioned in Sr. No.(a) is in the possession of the landlord and Sr. No.(g) is in the possession of IFCI and all remaining properties as mentioned above are in the possession of M/s. Khade Bapat, Kabe and Sinha Association appointed as Receiver by the Hon’ble Debt Recovery Tribunal in Recovery Proceedings No.136 of 2002. The Receiver was appointed by the Hon’ble Debt Recovery Tribunal prior to the winding up. Hence, Official Liquidator could not take possession of the assets of the company (in liqn.).”

4. As regards the grievance of the Applicants that the construction activity is underway at the property of the company (in liquidation), the Official Liquidator

contends as under :

“8. I once again deny each and every averment, allegation contained in the Interim Application filed by the Applicant. The Official Liquidator is not aware whether any construction is going upon land of the company (in liqn.) because all immovable and movable property are in the possession of M/s. Khade, Bapat, Kabe and Sinha appointed as Receiver by the Hon’ble Debt Recovery Tribunal.”

5. Heard the learned Counsel for the Applicants and the learned Counsel for the Official Liquidator.

6. So far as prayer clause (d) is concerned, the Official Liquidator can be directed to adjudicate the claims of the workmen within a stipulated period. The Official Liquidator is, therefore, directed to adjudicate the claims of the workmen which have been lodged with the office of the Official Liquidator till date, within a period of two months from today.

7. As regards the rest of the prayers, the learned Counsel for the Applicants submitted that despite the Official Liquidator having repeatedly informed that a third party is in possession of the property of the company in liquidation and certain activities are being conducted thereat, no action has been taken by the Official Liquidator; which is causing serious prejudice to the claim of the workers.

8. The learned Counsel for the Official Liquidator, by making a reference to the order passed by the Debt Recovery Tribunal appointing M/s. Khade Bapat, Kabe

and Sinha as Receiver, submits that the Official Liquidator could not take possession of the properties of the company and put the movable and immovable assets for sale. Therefore, the Official Liquidator at this stage is not in a position to initiate action.

9. Since the fact that the assets of the company in liquidation, except the properties mentioned at Sr. No.(a) and (g) extracted above, are in the custody of the Receiver appointed by the DRT, namely Khade Bapat, Kabe and Sinha, the inability expressed by the Official Liquidator to take possession of those assets and put them to sell to realize the proceeds for the purpose of liquidation, appears genuine. However, it appears that the said Receiver have submitted a report seeking discharge, in High Court Suit No.13 of 2010 in the matter of Sahjun Impex Trading Pvt. Ltd. V/s. The Official Liquidator for Patheja Forging and Manufacturing Ltd. and Ors., as is evident from the communication dated 27th January, 2022 addressed by Khade Bapat, Kabe Sinha and Associates.

10. The Official Liquidator is, therefore, directed to move in the said suit and make an endeavour to obtain possession of the assets of the company in liquidation.

11. By way of abundant caution, it is clarified that the Official Liquidator is permitted to seek possession of the assets of the company in liquidation in the said Suit by filing an appropriate proceedings.

12. Four weeks time is granted to the Official Liquidator to move an

appropriate application in the said suit.

13. A comprehensive report be filed by the Official Liquidator within a period of three months thereafter indicating the action taken pursuant to aforesaid directions.

14. The Application, thus, stands disposed with the aforesaid directions.

(N.J.JAMADAR,J.)