

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 445 OF 2019
IN
COMPANY APPLICATION NO. 222 OF 2019
WITH
NOTICE OF MOTION NO. 907 OF 2019
IN
APPEAL NO. 445 OF 2019

Oriental Bank of Commerce ...Appellant

Versus

The Official Liquidator of Vadraj Cement Ltd ...Respondents
(Formerly known as ABG Cements Ltd) & Anr

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Mr Prakash Shinde, with Niyati Merchant & harsh Sheth, i/b MDP
& partners, for the Appellant.
Mr Shanay Shah, for the Official Liquidator.

CORAM G.S. Patel &
Gauri Godse, JJ.

DATED: 25th August 2022

PC:-

1. The Appeal is directed against a six-line order of 12th June 2019. The Applicant was the present Appellant, Oriental Bank of Commerce (“OBC”) now taken over by Punjab National Bank

(“PNB”). OBC sought a recall of an order dated 23rd August 2018 directing the winding up of the company, ABG Cements Ltd, now Vadraj Cement Ltd. OBC then sought that it be allowed to prosecute a Company Petition before the National Company Law Tribunal, Mumbai (“NCLT”), also for winding up of ABG Cement, and a permanent stay on this court’s winding up order of 23rd August 2018.

2. By the impugned order, the learned single Judge, KR Shriram J, correctly noted that since the company had already been ordered to be wound up by the 23rd August 2018 order, there was no question of recalling that order to permit the OBC to pursue its own winding up Petition under Section 7 of the Insolvency and Bankruptcy Code 2016. He, therefore, dismissed OBC’s application — and in our view correctly.

3. On 8th July 2022, Mr Shah on behalf of the Official Liquidator pointed out to us that PNB, which now holds OBC, participated in the winding up proceedings before this Court and our Official Liquidator. This is not disputed. A consortium of banks moved for, and participated in, a sale of the assets of the company in liquidation. This is noted *inter alia* in an order of 24th November 2021 of BP Colabawalla J in paragraph 6. We were shown this on the last occasion as well.

4. It is entirely unsustainable for OBC to pursue this Appeal and to contend that KR Shriram J was wrong in dismissing its application, or that the learned single Judge ought to have recalled

the very winding up order pursuant to which the Appellant has participated in winding up. The application before the learned single Judge was thoroughly misconceived, as is this Appeal.

5. The Appeal is without merit. It is dismissed. No costs.

(Gauri Godse, J)

(G. S. Patel, J)