

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

INTERIM APPLICATION NO.3713 OF 2022
IN
COMMERCIAL SUIT (L) NO.367 OF 2020

Ocean Deity Investment Holdings Ltd, PCC ... Applicant/Plaintiff No.1

Versus

Sarang Wadhawan & Ors. ... Defendants

Mr. Rohan Rajadhyaksha a/w Mr. Vividh Tandon and Mr. Prakshal Jain
i/by Trilegal for Applicant/Plaintiff No.1.
Mr. Vinay J. Bhanushali for Defendant No.5.

CORAM : R.I. CHAGLA, J.

DATED : 12th OCTOBER, 2022

ORDER :

1 Heard learned counsel for Applicant/Plaintiff No.1.

2 By this Interim Application, the Applicant/Plaintiff No.1 is seeking restoration of captioned Commercial Suit (L) No.367 of 2020 as well as Interim Application filed therein.

3 Further relief is sought for extension of time to remove office objections identified by the Registry in the captioned Commercial Suit (L)

No.367 of 2020 within a period of two weeks from the date of uploading of the order.

4 The Applicant/Plaintiff No.1 has stated that the Commercial Suit was filed in August 2020 (incorrectly mentioned as August 2022 in the Interim Application). The objections were raised by the Registry on 2nd September, 2020.

5 The Applicant/Plaintiff No.1 has relied upon the Covid-19 pandemic and due to which the Applicant/Plaintiff No.1 were unable to approach the Registry to clear the objections in the Commercial Suit. In or above August 2021, the Advocates for Applicant/Plaintiff No.1 met the concerned Court Receiver to discuss the objections and were in the process of clearing all objections to obtain final numbering of the Suit.

6 The Applicant/Plaintiff No.1 has relied upon NCLT proceedings and orders passed by the NCLT commencing CIRP of Plaintiff No.2 under the IBC. Two Appeals were filed before the NCLT against the NCLT order by Plaintiff No.2 and the same are pending before the NCLT. It is stated that in view of the NCLT order and subsequent moratorium imposed under Section 14 of IBC, the Advocates for the Applicant/Plaintiff No.1 did not take any further steps in respect of the Suit, including but not limited to clearing of office objections. The

Applicant/Plaintiff No.1 has relied upon other related Suits filed before this Court challenging similar agreements for sale and that one of the Suits being Commercial Suit No.115 of 2021 being listed before this Court on 23rd November 2021. This Court had after hearing the Advocates for the Applicant/Plaintiff No.1 and being informed about the passing of the NCLT order in respect of Plaintiff No.2 and the further order passed by the NCLT had taken note of the same and adjourned the matter.

7 The Applicant/Plaintiff No.1 has stated that in or about 15th June 2022, the Advocates for the Applicant/Plaintiff No.1 noted that the Suit had been disposed of on 13th June 2022. The Applicant has stated that this was in terms of practice Note No.60 issued by the Chief Justice of this Court on 7th June 2022. Accordingly, the present Interim Application has been filed.

8 The learned Counsel appearing for Defendant No.5 has relied upon affidavit in reply dated 22.08.2022 wherein objection is taken to the grant of relief sought for in the Interim Application including objection that writ of summons have not been served on Defendant No.5. In that view of the matter, the objections raised on behalf of Defendant No.5 is noted. However, in view of the findings in order dated 30.08.2022, I do not find any merit in the objections taken and relief sought for requires to

be granted.

9 I have considered the averments in the Interim Application as well as noted the fact that the Suit had been filed in August 2020 during the Covid-19 pandemic and objections were raised by the Registry on 2nd September, 2020, it appears that there was default on the part of the Advocate to comply with the office objections. Further notice is taken of the NCLT proceedings, though it pertains to Plaintiff No.2, against whom CIRP was initiated under the IBC and moratorium was imposed.

10 By order dated 23rd November 2021, notice of the NCLT proceedings were taken and the fact that the Resolution Professional had been appointed for Plaintiff No.2 and the counsel had required time to take necessary instructions insofar as Plaintiff No.2 was concerned. Notice was also taken of the further order passed by NCLT directing the resolution professional not to participate in the CIRP till the next date. Accordingly, the Interim Application was to stood over to 12th January 2022.

11 Having considered these averments in the Interim Application, a liberal view is required to be taken as the Applicant/Plaintiff No.1 should not be made to suffer due to the default of the Advocate for the Applicant/Plaintiff No.1 in complying with the office

objections. Further, it appears that the Suit was rejected on 13th June 2022 and this is in view of Notice issued by this Court on 6th May 2022 for compliance of office objections in the Commercial Suits including those filed in the year 2020. Thus, the relief sought for in the Interim Application is required to be granted. Hence, the following order is passed:-

- (i) The captioned Commercial Suit (L) No.367 of 2020 is restored to file by recall of the rejection order dated 13th June 2020.
- (ii) The Applicant/Plaintiff No.1 is permitted to remove office objections identified by the Registry in the captioned Commercial Suit (L) No.367 of 2020 within a period of three weeks from the date of uploading of this order, failing which the captioned Commercial Suit (L) No.367 of 2020 shall stand rejected without further reference to the Court.
- (iii) The Interim Application is disposed of in the above terms.

(R.I. CHAGLA, J.)

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by WAISHALI
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