IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1079 OF 2019

IN

COMPANY PETITION NO.361 OF 1996

Devang Vyas s/o Hemant Bhanushankar Vyas and ors.... Applicants
In the matter between-
Shri Navalkishore J. Khanna .... Petitioner
vs.
The Official Liquidator and ors. ... Respondents

Mr.Ajay Panicker i/b. M/s Ajay Law Associates for the Applicant.
Mr.A.K.Saxena for Respondent No.2.
Mr.Mahendhar Aithe, Company Prosecutor.
Ms.Chandan Bhatt, Company Registrar.

CORAM : A. K. MENON, J.
DATED : 2nd MARCH, 2022.

P.C. :

1. Called for hearing and disposal. Mr. Panicker states that the respondents have been served. He undertakes to file affidavit of service in the registry.

2. By this application, the applicants seek recall of the winding-up order dated 3rd December, 1998 passed in Company Petition No.361 of 1996 and for approval of a draft scheme of proposed revival of the company in liquidation. Consequential orders are also sought upon such revival including

discharge of the Official Liquidator, High Court Bombay. The application also includes prayer for stay of the order of winding up which has not been pressed at any stage.

3. In Company Application No.1282 of 2007, the applicants sought various reliefs including calling for meeting of directors of the company and for disclosures of the particulars. On 21st November, 2015 the court directed the original applicants to deposit in this court a sum of Rs.2 crores to show their bonafides. Pursuant thereto, the sum was deposited with Prothonotary and Senior Master and as per the usual practice, the amount stands invested. In the event of the application being rejected, meaning thereby, if the company in liquidation is not ordered to be revived, the applicants sought refund of a sum of Rs.2 crores deposited in this court, alongwith interest accrued thereof, pursuant to order dated 21st November, 2015 passed.

5. The original applicant unfortunately expired on 1st January, 2021 and the legal heirs have since been brought on record. The legal heirs are now seeking reliefs only in terms of prayer clause (d) of the Interim Application, which seeks refund of the amount in the event of non-revival of the company.

6. Mr.Panicker in support of the Interim Application states that the legal heirs are not pursuing revival of the company. He submits that he has instructions to make this statement and since the revival is not pressed and

will not be pressed hereafter, there is no justification in continuing the deposit in this court. The legal heirs therefore, claim refund of the amount with accrued interest. On 9th February, 2022, when this application was first heard, Mr.Panicker submitted that the applicant No.1 had right to represent the estate of the deceased-original applicant. Today, he submits that the Testamentary Petition is being allowed. An order for issuance of grant has already been issued on 23rd February, 2022. The learned Company Registrar in charge today of Testamentary matters confirms that the grant is being issued. At this stage I find that in the schedule of assets annexed to the petition, in particular at Item 20, the sum of Rs.2 crores is shown to be lying with the Liquidator. Mr. Panicker states that this is an inadvertent error and that he would take immediate steps to rectify this error. Accordingly, he now seeks an order in terms of prayer clause (d) directing to release of the amount.

7. Mr.Saxena on behalf of the Income Tax department objected to release of the monies. He relies upon the observations of the Tax Recovery Officer, who, in his affidavit dated 20th February, 2022, contended that there are tax arrears owing from the company in liquidation. According to Mr.Saxena, in view of the tax demand, the Department objects to the release of any monies to the applicants. It is not in dispute that the tax arrears are in respect of the taxes due to from the company in liquidation.

8. Mr.Saxena further submits that if the applicants are interested in

revival of the company, he will have no objection for revival of the company if pressed. The amount deposited by the original applicant he contends should be treated as Earnest Money and paid over to the Income Tax Department towards discharge of the tax dues of the company in liquidation.

9. The only ground that the income tax department has canvassed before the court is that the company owes the revenue an amount in excess of Rs.8.1 crores and that the present deposit made by the individual should be appropriated by the Income Tax department. The applicants before this court are the legal heirs of the deceased original Managing Director of the company in liquidation. I am unable to find any merit in the submission, because the deposit was made pursuant to an order of this court and with a specific intention of testing the bonafides of the original applicant and for enabling the court in assessing the seriousness of the applicant in attempting revival of the company. The original applicant has since passed away, the legal heirs are no longer interested in the application filed by the deceased applicant.

10. The heirs cannot be held responsible for tax arrears of the company in liquidation. On the facts in hand, it is appropriate that the amount deposited in order to test of the bonafides of the original applicant is repaid. Since a testamentary grant is being issued by the office of the Prothonotary and Senior Master. It will be appropriate that after the grant is issued, the Prothonotary and Senior Master pays over the amount of Rs.2 crores with

accrued interest to the applicants. In the circumstances, I pass the following order :-

ORDER

(i) Application is made absolute to the extent that Prothonotary and Senior Master, High Court Bombay shall refund the sum of Rs.2 crores deposited pursuant to the order dated 21^{st} November, 2015 along with all interest accrued.

(ii) The refund shall be made in the name of the petitioner in the Testamentary Petition.

(iii) Prothonotary and Senior Master shall act only after the grant is issued and subject to the amendment is carried out to the schedule of the Testamentary Petition as above.

(iv) Interim Application stands disposed of in the above terms.

(v) All concerned to act on the authenticated copy of this order.

(A.K. MENON, J.)