

Varsha

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 271 OF 2019
IN
COMPANY PETITION NO. 385 OF 2014
WITH
INTERIM APPLICATION (L) NO. 29990 OF 2021

Atlanta Ltd	...Appellant
<i>Versus</i>	
Agarwal Industrial Corporation Ltd	...Respondent

Ms Aparna Deokar, i/b M P Vashi, for the Appellant.
Mr Omkar S Paranjape, for the Respondent/Applicant in
IAL/29990/2021

CORAM G.S. Patel &
Gauri Godse, JJ.
DATED: 21st July 2022

PC:-

1. The Appeal is against an order of 26th November 2015. By that order, the learned Single Judge directed the admission of the winding up Petition against the Respondent Company Atlanta Limited. The Petition was ordered to be advertised. There was no order of appointment of provisional liquidator.

2. In Appeal, two orders came to be passed. By the first order of 27th October 2016, an interim order staying the learned Single Judge's impugned order was continued subject to the Appellant depositing an amount of Rs. 30 lakhs. This amount has been deposited directly in Court and has been invested. Then there was an another order of 11th August 2020. This time, the Division Bench directed the Appellant to deposit a fix deposit receipt in the amount of Rs. 50 lakhs. The fixed deposit was to be maintained with the Nationalized Bank.

3. The claim of the Original Petitioner was in the amount of Rs. 1,07,65,641.10 with interest at the rate of 18% per annum. On a careful reconsideration, and having obtained instructions, the learned Advocate for the Respondent to the Appeal (Original Petitioner before the Company Court namely Agarwal Industrial Corporation Ltd) submits that continuing with the Company Petition may not finally sufficiently protect its interest. It is, after all, an unsecured creditor. Even if the Appellant Atlanta Limited is ordered to be wound up, the Petitioning Creditor would be ranked with other unsecured creditors and would not enjoy a priority.

4. At the same time, the Respondent to the Appeal recognizes that there is at least some degree of protection in the form of these deposits that have been made. The learned Advocate's instructions are to say that the Appeal can be disposed off by permitting the Respondent to file a suit on the Original Side of this Court. The amount that is already deposited, or its equivalent security in the form of an unconditional bank guarantee can be taken as security to

the credit of that suit. We believe this is a reasonable suggestion. Ms Deokar for the Appellant has no objection. She submits that since the two deposits are in two different forms (one as a cash deposit in Court and one as a fixed deposit with Nationalized Bank), she may be permitted to furnish an unconditional bank guarantee of a Nationalised Bank to the satisfaction of the Prothonotary & Senior Master. We accept that the Bank guarantee will have to be in the amount that is now lying to the credit of these proceedings, i.e inclusive of all interest earned upto date and unconditionally covering further interest as well.

5. Accordingly we disposed off the Appeal in the following directions:

- (a) The Respondent to the Appeal, Agarwal Industrial Corporation Limited will file a suit for recovery of its claim within six weeks from today.
- (b) All contentions are kept open in the suit including as to a saving of the bar of limitation on account of present proceedings.
- (c) The entire amount deposited with accrued interest will stand transferred to the credit of that suit once that suit is filed.
- (d) Upon that suit being instituted, the Appellant Atlanta Limited will be at liberty to furnish an unconditional

bank guarantee of a Nationalized Bank in the aforesaid terms and on furnishing that unconditional bank guarantee, will be at the liberty to withdraw the amount deposited and take back the fixed deposit receipt as well.

- (e) If the suit is not filed by that within six weeks, Atlanta Limited is not required to furnish the bank guarantee and will then be entitled to withdraw the amount deposited and take back the fixed deposit.

6. As to the question of expediting the suit, we believe this may not be necessary. The suit evidently will to be filed in the Commercial Division of this Court which itself provide fast track procedure. Parties will undoubtedly have regard to the special provisions of the Commercial Courts Act including newly added Order XIII-A. We make it clear that the requirement under Section 12A of the Commercial Courts Act is not a pre-requisite in the facts and circumstances of this case since the matter has come as high as the Appeal Court. There is no question therefore of now requiring parties to go to pre-suit mediation. Having said that, it is always open to the parties to work out a commercially prudent resolution.

7. In view of this, the Interim Application does not survive and it is disposed of as infructuous.

(Gauri Godse, J)

(G. S. Patel, J)