(Corrected as per speaking to minutes of order dated 13.10.2023.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.3663 OF 2022

IN

COMPANY PETITION NO.385 OF 2002

Grand View Estates Pvt. Ltd. … Applicant

<u>In the matter between</u>:
B.I.F.R. … Petitioner
Vs.
Official Liquidator of Svadeshi Mills Company Limited (in liqn.) and others … Respondents

ALONG WITH

INTERIM APPLICATION (L) NO.29439 OF 2021

AND

OFFICIAL LIQUIDATOR'S REPORT NO.56 OF 2022

AND

OFFICIAL LIQUIDATOR'S REPORT NO.149 OF 2023

Ms. Apurva Thipsay for Official Liquidator.

Mr. Chetan Shelke, Assistant Official Liquidator.

Dr. Virendra Tulzapurkar, Senior Counsel a/w. Mr. S. A. K. Najam-Es-Sani i/b Maneksha & Sethna for Applicant in IA No.3663 of 2022.

Mr. Amir Arsiwala a/w. Mr. Farzeen C. Pardiwalla for Respondent No.2 in IA No.3663 of 2022.

Mr. Cyrus Ardeshir i/b. Mr. Piyush Deshpande for Applicant in IAL/29439/2021 and for Respondent No.3 in IA No.3663 of 2022.

CORAM : MANISH PITALE, J.
DATE : OCTOBER 09, 2023

<u>P.C.</u> :

. The present application has been filed by the Applicant claiming to be a major shareholder and secured creditor of Svadeshi Mills Company Ltd (in liqn.) ("**Company**"), seeking an order of permanent stay of its winding-up, which was commenced pursuant to an order dated 05.09.2005 passed by this Hon'ble Court. The circumstances in which such relief is being sought have been set out in detail in the application and have been considered by a previous Bench in an order dated 21.12.2022 passed in the present application.

2. In the order dated 21.12.2022 passed in the present application, it was noted that the Applicant has made a provision for every class of stakeholder in the winding up of the Company. Particularly, the order notes that the Applicant has entered into an Agreement for Settlement on 28.02.2020 with the ex-workers of the Company through their Representative Union, Rashtriya Mill Mazdoor Sangh ("**RMMS**"), registered as such under the provisions of the Maharashtra Industrial Relations Act, 1949, which was supplemented by a Supplementary Agreement 29.06.2021. Today Mr. Ardershir appears for RMMS and extends his clients' support to the relief sought in the present application. He also points out that RMMS has received more than 2517 individual letters of support from individual ex-workers in favour of the settlement, which is more than 90% of the total ex-workers, i.e., 2814.

3. The following directions were issued in paragraph 17 of the order dated 21.12.2022:

> *"17. Hence, the following order :*
>
> *ORDER*
>
> *(i) The Applicant in IA No.3663 of 2022 – Grand View, shall deposit an amount of Rs.240 Crores with the Official Liquidator within a period of six weeks from the date of uploading of this order.*
>
> *(ii) The Applicant shall file undertakings to the effect:*
>
> *(a) that in case the amount of Rs.240 Crores, to be deposited by the Applicant with the Official Liquidator, falls short to satisfy the liabilities of the Company in liquidation, the Applicant will deposit such further amount*

as may be necessary to discharge those liabilities;

(b) that it will pay to any individual ex-worker who is not willing to accept the amount in accordance with the Agreement for Settlement, higher of the amount that may be adjudicated by the Official Liquidator in accordance with the order of the Division Bench dated 22 December 2015 and the amount which is payable under the Agreement for Settlement;

(c) that it will make necessary provision for rehabilitation of the ex-workers and/or their families who are in occupation of the residential quarters/chawls situated on the premises of the company and also those ex-workers and/or their families who were made to vacate the residential quarters/chawls, as they were rendered inhabitable and dilapidated.

(iii) The Official Liquidator shall publish a notice in two local newspapers i.e. Free Press Journal (English) and Navshakti (Marathi), inviting the attention of the stake holders of the company in liquidation to the proposal for permanent stay of the winding up order and revival of the company in liquidation and the aforesaid directions passed by this Court.

(iv) Such notices be also pasted at the premises of the company in liquidation and given to the claimants whose names are mentioned in the list of claims Exhibit S to the Application.

(v) The Applicant shall deposit a sum of Rs.1,00,000/- with the Official Liquidator for the publication of the aforesaid notices on or before 7 January 2023.

(vi) List on 8 February, 2023.

(vii) Based on the aforesaid compliances and response, if any, the Court would consider the prayer for permanently staying the winding up order and revival of the Company, and consequential reliefs."

4. The Applicant has complied with clause (ii) reproduced above by filing an Undertaking on 02.01.2023. The Applicant also complied with clause (v) above, pursuant to which the Official Liquidator caused a public announcement to be taken out in terms of clause (iii) and (iv). The Official Liquidator did not receive any objection to the proposed permanent stay of the winding up of the Company. However, a group of

34 persons claiming to be ex-workers belatedly filed an application being Interim Application (L) No. 8053 of 2023, which was disposed off by way of an order dated 13.09.2023. As such, today there is no objection to the relief sought in the present application from any stakeholder.

5. With respect to clause (i) of paragraph 17 of the order dated 21.12.2022, the time to deposit the amount of Rs. 240 Crores was extended on 01.02.2023 and then on 13.09.2023. By way of order dated 13.09.2023 in Interim Application (L) No. 18070 of 2023, the Applicant was given three weeks to comply with the direction to deposit Rs. 240 Crores with the Official Liquidator. In compliance of this direction, the Applicant has deposited the amount of Rs. 240 Crores with the Official Liquidator on 04.10.2023.

6. The Applicant also seeks an order appointing the following persons as directors in the event that an order is passed for permanent stay of the winding up of the Company:

S.No.	**Name**	**DIN**
1.	Saureen Bharat Desai	01868267
2.	Sumit Surrindar Sapru	08165677
3.	Sandeep Jaiprakash Jaiswal	09823704
4.	Dipak Kumar Sanwarmal Sharma	07214677

7. After considering the material on record, averments set out in the application, and the previous orders of this Court, Interim Application No. 3663 of 2022 is allowed in terms of its prayers as set out below:

Prayer	**Relief Sought**	**Order**
(A)	Grant of an order of permanent stay upon the winding up of Svadeshi Mills Co Ltd under section 466 of the Companies Act, 1956.	Granted from the date of this order.

(B)	Direct the Applicant to deposit an amount of Rs. 239.13 Crores with the Official Liquidator within a period of 90 days or such time period as this Hon’ble Court may direct.	Rejected as infructuous.
	As a consequence to Prayer (A), and upon the order of permanent stay of Svadeshi Mills Co. Ltd. (in liqn) taking effect:	
(C) (i)	Direct the Official Liquidator to hand over the entire undertaking of the company including all its properties (immovable and movable), assets and cash and all books of account, investment receipts, documents, paper and vouchers, articles and things, to the Applicant.	The Official Liquidator is directed to do so within four weeks of this order.
(C) (ii)	Direct the Official Liquidator to prepare a statement of accounts alongwith the Assets and Liabilities of the company as on the date of the order granting permanent stay of its winding up, and to thereafter handover the same to the Applicant alongwith the memorandum and articles of association.	The Official Liquidator is directed to do so within four weeks of this order.
(C) (iii)	Direct the Official Liquidator to address a letter to the Registrar of Companies and all such other authorities as may be required, placing on record that the order of winding up of Svadeshi Mills Co. Ltd. (in liqn.) dated 05.09.2005 has been permanently stayed by an order of this Hon’ble Court under section 466 of the Companies Act, 1956.	The Official Liquidator is directed to do so within two weeks of this order.
(D)	Declare that the Official Liquidator stands discharged as the liquidator of Svadeshi Mills Co. Ltd. on and from the date on which the order of permanent stay comes into effect.	Granted, except for carrying out the directions at paragraphs 8 (C) & (D) and 9 below.
(E)	To appoint the directors of Svadeshi Mills Co. Ltd.	Granted. The persons mentioned in paragraph 6 above are appointed as directors of the Company.

8. The following consequential directions are also issued:

A. The Official Liquidator is directed not to entertain any claim from any person including claims already dealt with in the present application, after the date of this order;

B. The Undertaking filed on 02.01.2023 is accepted as an undertaking to this Hon'ble Court and the Applicant shall remain bound by the same.

C. In case the amount of Rs. 240 Crores deposited by the Applicant with the Official Liquidator falls short of the specified liabilities of the company, the Applicant shall deposit such further amounts as may be necessary to discharge the liabilities of the company in the manner set out in the IA, within a period of 30 days of being intimated of such shortfall by the Official Liquidator.

D. In the event any individual ex-worker is not agreeable to accept the settlement amount, then they may intimate the same to the Official Liquidator within 60 days from today. The Applicant undertakes to ensure that such ex-worker is paid either the settlement amount, or the amount adjudicated by the Official Liquidator as per the order of the Division Bench dated 22.12.2015 in Appeal No. 447 of 2015, whichever is higher.

E. The Company and its appointed board of directors shall comply with all provisions of law including Companies Act, 2013.

F. The Registrar of Companies is directed to restore the status of the Company to "Active" within a period of three days from receipt of a certified copy of this order.

9. The Official Liquidator has, consequent to the deposit of Rs. 240 Crores made by the Applicant, filed Official Liquidators No. 149 of 2023 seeking consequential directions. The said Official Liquidators Report No. 149 of 2023 is allowed in terms of prayers (a), (b), (c), and (d), and Official Liquidators Report No. 56 of 2022 is allowed in terms of prayer clause (e). However, the Official Liquidator is directed to deposit the funds into an interest-bearing account instead of a Current Account as prayed for in prayer (c). Further, it is clarified that the Official Liquidator shall distribute the funds to the creditors of the Company only after handing over the Company and its affairs to the Applicant and its reconstituted Board of Directors.

10. The parties are at liberty to apply in case of any difficulty in implementing this order. Interim Application No. 3663 of 2022 and Official Liquidators Reports 56 of 2022 and 149 of 2023 are disposed off in terms of the directions issued above. Interim Application (L) No. 29439 of 2021 is dismissed as infructuous in light of the foregoing.

11. Ordered accordingly.

(MANISH PITALE, J.)

PRIYA KAMBLI Digitally signed by PRIYA KAMBLI Date: 2023.10.16 10:33:35 +0530 ***Minal Parab***