

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**OFFICIAL LIQUIDATOR REPORT NO. 168 OF 2023
IN
COMPANY PETITION NO. 792 OF 2015**

In the matter of The
Companies Act, I of 1956;

AND

In the matter of Fourcee
Infrastructure Equipments
Pvt. Ltd. (in liquidation)

Standard Chartered Bank

... Petitioner

Mr. Rushabh Sheth for the Official Liquidator.

Mr. Chandan Kumar, Official Liquidator.

Mr. Prathamesh Kamat a/w Kayush Zaiwalla i/by Mrs. M. P.
Thakur a/w Akshay Pansare for Security Guards.

**CORAM: MANISH PITALE, J.
DATE : 16th FEBRUARY, 2024**

P.C. :

. Heard learned counsel for the parties.

2. By this Official Liquidator Report (OLR), the official liquidator has sought directions in terms of prayer clauses (a) and (b), which read as follows :-

“a) In view of the submissions made in para(9) of this report, whether this Hon'ble Court be pleased to direct

the Police Inspector of Anjar Police Station, Kutch, Gujarat to submit the investigation report in respect of the FIR lodged by the said security agency regarding theft of 6 (Six) containers and remit the amount of Rs.9,18,000/- (Rupees Nine Lakhs Eighteen Thousand Only) and to handover the cutted scrap materials of 8304 Kg. of stolen containers which have been taken into the custody and the same are kept in the premises of Anjar Police Station to the Official Liquidator;

b) In view of the submissions made in para (11) and (12) of this report, whether this Hon'ble Court be pleased to de-panel the Security Agency namely Kushang Security & Protection Services from the Panel of the Security Agency of the Official Liquidator and also to permit the Official Liquidator to withhold the payment of the said Security Agency. Further this Hon'ble Court to permit the Official Liquidator to appoint new Security Agency from the Panel of office of Official Liquidator to protect/safeguard the assets of the Company (In Liquidation) situated at Survey No.199/1-P, Anjar Mundra Road, Village-Bhuvad, Taluka- Anjar, Kutch, Gujarat.”

3. As regards directions at prayer clause (a), in the order dated 12th January, 2024, this Court granted liberty to the official liquidator to approach the jurisdictional Magistrate for appropriate directions and in that light, prayer clause (a) stood disposed of by the said order itself. Therefore, today this Court is called upon to consider the directions sought in prayer clause (b).

4. In the said order dated 12th January, 2024, this Court took note of the fact that the directions at prayer clause (b) would have

a bearing on the security agency i.e. Kushang Security & Protection Services. In that light, this Court granted an opportunity to the security agency to file its reply affidavit to the present OLR. The security agency has filed its affidavit in reply seeking to give its explanation with regard to the incident leading to the official liquidator approaching this Court for appropriate directions.

5. The learned counsel appearing for the official liquidator invited attention of this Court to the said order dated 12th January, 2024, passed by this Court, particularly, a paragraph 3 thereof, to indicate the incident that took place six months prior to 16th July, 2022, whereby certain containers from the premises of the company in liquidation were moved out. He then invited attention of this Court to the First Information Report (FIR) dated 26th August, 2023, registered at the behest of the proprietor of the said security agency in the Police Station at Anjar, Dist. Kutch. He submitted that the contents of the information reduced into writing in the said FIR, shows that according to the proprietor of the security agency, who was the first informant in the said FIR, on the date of the subsequent incident i.e. 12th August, 2023 to 13th August, 2023, two security guards of the security agency were not on duty. One of the security guards claimed ill-health for leaving the place of duty and the other security guard stated that he was feeling sleepy, and therefore, he went to the adjoining premises and slept. In the midnight of 12th August, 2023 and 13th

August, 2023, as many as six containers belonging to the company in liquidation were removed from the premises of the company and the lock on the main gate was found to have been removed. The learned counsel for the official liquidator then invited attention of this Court to the affidavit in reply filed in the present OLR, wherein, the explanation for absence of security guards of the security agency on the date of the incident was found to be completely at variance with the statement recorded in the FIR. It was submitted that in the affidavit in reply, the proprietor of the security agency stated that due to heavy rains and absence of any refuge or shelter, the security guards were missing from their place of duty. On this basis, it was submitted that the casual approach of the security agency was evident. It was submitted that such a security agency ought not to continue on the panel of the official liquidator and this would amount to putting the premises of other companies in liquidation also at risk.

6. On the other hand, the learned counsel appearing for the security agency submitted that if this Court peruses minutes of order recorded on 26th September, 2023, at Exhibit 'D' to the OLR, it would become evident that the statement made in the affidavit in reply was on the basis of statements made by the said security guards when the aforesaid minutes were recorded. It was indicated that, therefore, it could not be alleged that the proprietor of the security agency had made any false statement on affidavit. Further, it was submitted that the incident in question

cannot be denied. But, action against the security guards was not taken because the security agency was informed that their presence would be necessary during the course of enquiry and investigation pertaining to the said incident. It is submitted that the security agency is ready to take appropriate action against the said security guards. It is further submitted that removing from the panel of the official liquidator would have a drastic effect akin to black listing, as the services of the security agency on the premises of other companies in liquidation will also stand withdrawn. This would adversely effect the employees of the security agency. On this basis, it was submitted that this Court may consider issuing a warning or any other action to be taken, instead of permitting the official liquidator to remove the security agency from the panel.

7. This Court has heard the learned counsel for the rival parties in the light of the material placed on record. A security agency like the one before this Court in the present proceeding is engaged for the purpose of ensuring security of premises and in this case, premises of the company in liquidation, wherein plant and machinery and other valuable material is stored. The purpose of engaging such security agency is to ensure that the assets of the company in liquidation are not at the risk of loss and damage, particularly, for the reason that the assets of the company in liquidation can be utilized for payment of dues of workers, secured creditors and others.

8. A perusal of the material placed on record shows that in the order dated 12th January, 2024, this Court recorded the casual approach of the security agency when it responded to communication sent by the official liquidator in respect of incident of illegal removing of containers that took place in the year 2022. The relevant portion of the said order, reads as follow :

“3. In Official Liquidator’s Report No.7 of 2023, a copy of a letter dated 22.07.2022 is annexed. It was addressed by the official liquidator to the said security agency, informing the agency about the information received on 16.07.2022 from the security personnel of the said security agency that about six months prior to the said date, certain movement of containers was noticed by the villagers. It is the case of the official liquidator that certain containers were found missing from the property and the deficiency in the service provided by the security agency, was evident from the said incident.

4. In this context, the learned counsel appearing for the official liquidator invited attention of this Court to the response letter dated 29.07.2022, sent by the security agency to the official liquidator. This Court has perused the contents of the said letter, which show the casual approach of the security agency, particularly in the light of the statements made in paragraphs (a) and (d) of the said letter.”

9. In the present case, a perusal of the FIR shows that according to the proprietor of the security agency, at the time of the incident, the two security guards who were placed on duty for the night shift, left the premises of the company in liquidation.

One security guard gave the reason of ill-health and other stated that he was feeling sleepy. This clearly indicates the casual approach of the security guards engaged by the security agency and gross negligence on their part. The security agency cannot wash its hands off the conduct of its security guards. This Court is not concerned with the nature of action, if at all, taken or proposed to be taken by the security agency against the said security guards. What is alarming is the statement made in the affidavit in reply at paragraph 5, which reads as follows :-

“5. On the day of the incident, our security guards deployed at the site and were duly present when our supervisor visited the site. At that night there was heavy rains at the site. There was no place for the security guard to take refuge, therefore, I was informed (much later i.e., after the incident by the supervisor) that the security guards deployed by us left the site due to heavy rains and due to non-availability of shelter as the said property was open to sky.”

10. The aforesaid reason given in the affidavit in reply is completely contradictory to the information given by the proprietor of the security agency himself, which led to registration of the said FIR. It appears that, in the affidavit in reply, the proprietor of the security agency has sought to give the reason that would, in a manner of speaking, reduce the blame on the conduct of the security guards engaged by the security agency. Reliance placed on the minutes dated 26th September, 2023, at Exhibit ‘D’, cannot come to any assistance of the security agency, simply for

the reason the said minutes were recorded after a month of registration of the FIR dated 26th August, 2023.

11. Such contradictory statement in the affidavit in reply further compounds the misdeeds of the security agency. The fact that subsequently certain persons were arrested in respect of the incident in question and some amount was recovered from them, cannot take away the fact that such an incident did occur due to gross negligence on the part of the security agency, or even worse, complicity with the persons responsible for such an incident.

12. In such a situation, the official liquidator is justified in expressing lack of faith in the security agency by refusing to continue it any further on the panel for providing security services to companies in liquidation.

13. The learned counsel for the official liquidator is justified in submitting that the loss caused to the company in liquidation, effectively has resulted in reducing the assets available with the company in liquidation for satisfying the dues of creditors and also workers. It is also indicated that, in the light of liberty granted by this Court in the order dated 12th January, 2024, the official liquidator would be approaching the jurisdictional Magistrate for recovery of scrap of stolen containers, etc., which would also entail expenses that could have been avoided and such expenses are also detrimental to the funds available with the official

liquidator.

14. In view of the above, this Court is of the opinion that the direction sought at prayer clause (b) can be granted. A perusal of the same shows that apart from seeking removal of the security agency from the panel of the official liquidator, permission is also sought to withhold the payment to the said security agency.

15. The learned counsel for the official liquidator clarifies that the said direction for withholding payment to the security agency is restricted to the services provided by the security agency in respect of the company in liquidation in this case i.e. Fourcee Infrastructure Equipments Private Limited. Considering the loss caused to the assets of the company in liquidation and the approach adopted by the security agency, in the light of such a serious incident, this Court is inclined to grant permission to the official liquidator for withholding such payment in respect of the aforesaid company in liquidation.

16. In view of the above, the OLR is disposed of by allowing prayer clause (b), which has been quoted herein above.

MANISH PITALE, J.

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