IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 158 OF 2024

IN

APPEAL (L) NO. 421 OF 2024

WITH

INTERIM APPLICATION (L) NO. 730 OF 2024

IN

APPEAL (L) NO. 421 OF 2024

Bipin J. Bagadia and Anr. ...Applicants
In the matter between
Bipin J. Bagadia and Anr. …Petitioners
Versus
Grand View Estates Private Limited and Ors. …Respondents

Mr Mohit Khanna, *i/b Vaibhav Jagdale, for the Applicants.*
Mr Virag Tulzapurkar, Senior Advocate, *a/w Amir Arsiwala, Fardeen Paroiwalla, for Respondent No.3.*
Mr Cyrus A., *i/b Yash Jariwala, for Respondent No.4 in Appeal (L) No.. 421 of 2024*

CORAM M.S. Sonak & Kamal Khata, JJ.
DATED: 1st August 2024

PC:-

INTERIM APPLICATION NO. 158 OF 2024

1. Heard learned counsel for the parties.

2. This is an application for condoning the delay in instituting an appeal against the order dated 09 October 2023 by which the learned Company Judge has allowed the application under Section 466 of the Companies Act, 1956 ("the Act"). The application and the memo of appeal described that the challenge is to the order dated 09 October 2023 read with the order dated 21 December 2022.

3. Learned counsel for the respondents submits that even if it is assumed that the delay of 56 days in instituting the appeal against the order dated 09 October 2023 is explained by showing sufficient cause, there is no sufficient cause shown regarding the order dated 21 December 2022 which is also sought to be questioned in the Company Appeal.

4. Mr Mohit Khanna, learned counsel for the applicants/ appellants submits that the order dated 21 December 2022 had imposed several conditions upon the respondents and had granted them time for compliance. He submits that in that sense the order dated 21 December 2022 was not final. He submits that only after conditions were allegedly complied with that respondents' application under Section 466 of the Act was allowed by the impugned order dated 09 October 2023. He, therefore, submits that this is the case of a merger and that the delay from 09 October 2023 was relevant and has been explained. In the alternate, Mr Khanna states that the applicants/ appellants have been pursuing the matter with diligence and the question of delay has been considered holistically.

5. We have perused the order dated 21 December 2022 and 09 October 2023 only in the context of submissions now made. By the order dated 21 December 2022, it is not as if Interim Application No. 3663 of 2022 was finally disposed of. Learned Company Judge in paragraph No.17 of the order dated 21 December 2022 issued the following directions:-

"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."*

6. The above order clearly states that based on 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. At that stage, there was no certainty of the applicants' complying with conditions including the condition about the deposit of Rs. 240 Crores and settlement of workers' dues. Had there been no compliances, possibly the impugned order dated 09 October 2023 would not have been made. Any challenge to the order dated 21 December 2021 could also have been resisted as premature because the said order did not dispose of the interim application.

7. Therefore, in the above circumstance if the present applicants did not immediately challenge the order dated 21 December 2022 or if the present applicants waited for Company Court to make its order dated 09 October 2023 we cannot say that the applicants were any less diligent in pursuing the matter or that there was no sufficient cause shown to condone the delay.

8. The delay is not inordinate and is sufficiently explained. The applicants have pleaded that they were not a party to the Interim Application and on being aware of the order dated 09 October 2023, the applicants applied for certified copies and some time was spent in obtaining the same. The conduct of the applicants is not such as would stigmatise them as some irresponsible litigants. There was no malafide involved or at least presently alleged. No undue advantage is taken by the applicants of their delay in instituting the accompanying appeal.

9. Upon a cumulative consideration of all such circumstances, this is not a matter where the applicant should be denied an opportunity to have his appeal heard on merits.

10. Accordingly, we condone the delay in instituting this appeal without any orders for costs. Interim Application No. 158 of 2024 is disposed of.

INTERIM APPLICATION (L) NO. 730 OF 2024

11. Learned counsel for the applicants, based on the instruction, does not press for interim relief but requests that Appeal (L) No. 421 of 2024 be taken up for final disposal at the admission stage at an early date.

12. Learned counsel for the respondents have no objection to this appeal being taken up for final disposal at the admission stage. Accordingly, list Appeal (L) No. 421 of 2024 on 02 September 2024 at 2.30 p.m. for final disposal at the admission stage subject to any overnight part-heard matter.

13. Interim Application (L) No. 730 of 2024 is disposed of.

14. Though this Interim Application is disposed of, at the request of learned counsel for the respondents, case papers be retained along with the appeal because the respondents have filed their replies opposing interim relief, and they now intend to rely on such replies while opposing the appeal.

APPEAL (L) NO. 421 OF 2024

15. Stand over to 02 September 2024 at 2.30 p.m. for final disposal at the admission stage subject to any overnight part-heard matter.

16. The Liquidator is permitted to file and serve affidavit within 2 weeks from today i.e. on or before 18 August 2024.

(Kamal Khata, J) **(M.S. Sonak, J)**