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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 11.11.2024

+ **CO.APP. 30/2024**

MRS. USHA JAIN & ANR.

.....Appellants

Through: Mr. Piyush Sanghi, Ms. Khushbu Sahu, Mr. Nikhil Singh, Ms. Priyadarshi Gopal, Ms. Anushka Ojha, Ms. Raahithya Raj Mishra, Advocates.

versus

M/S VIGNESHWARA DEVELOPWELL PVT LTDRespondent

Through: Ms. Ruchi Sindhwani, Senior Standing Counsel with Ms. Megha Bharara, Advocate for official liquidator.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

CM APPL. 65644/2024 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM APPL. 65645/2024 (delay of 52 days in filing)

3. For the reasons stated in the application, the same is allowed and the delay of 52 days in filing the captioned appeal is condoned.
4. The application is disposed of.

CO.APP. 30/2024

5. The appellants have filed the present appeal impugning an order dated



24.07.2024, passed by the learned Company Court, rejecting the appellants' application for release of the amounts deposited by the respondent (M/s Vigneshwara Developers Pvt. Ltd.), which is a company-in-liquidation (hereafter **the Company**).

6. The appellants had jointly applied for allotment of a commercial unit admeasuring 500 square feet in a technology park project at Gurgaon, which was being developed by the Company at the material time. The appellants deposited an amount of ₹27,50,000/- as consideration, for the purchase of the said property. The agreement between the appellants and the Company included a buy-back clause, whereby the appellants were entitled to insist that their investment be returned at an enhanced pre-determined rate (₹8882.5/- per square feet against initial consideration of ₹5500/- per square feet).

7. The appellants exercised the said option on 20.08.2012, and there appears to be no dispute that the appellants are entitled to an amount of ₹44,41,250/- from the Company in terms of Clause 2.4 of their *inter-se* agreement (buy-back clause). The Company failed and neglected to pay the said amount despite a notice issued under Section 434(1)(a) of the Companies Act, 1956 (hereafter **the Act**). In the aforesaid circumstances, the appellants preferred a petition (Company Petition No. 145/2014) under Section 433(1)(e) of the Act, for winding up the Company on the ground that it was unable to pay its debts.

8. During the course of the said proceedings (Company Petition No. 145/2014), the Company deposited the said amount payable to the appellants



in Court, essentially to contest the appellants' claim, that the Company was liable to be wound up. This Court also noted that the appellants were entitled to the said amount. However, at that stage, the Company raised certain objections with regard to compliance with the provisions of Foreign Exchange Management Act, 1999 (FEMA) and a possible liability to pay service tax on the said amount. Pending resolution of the objections, the amount remained deposited in a fixed deposit, with the Registry of this Court. The appellants also sought time to file a rejoinder to the counter affidavit and to complete the pleadings in Company Petition 145/2014.

9. While the said proceedings (Company Petition 145/2014) were, thus pending, other creditors also filed petitions for winding up the Company. The same included Company Petition No. 885/2015 captioned "*Col. P.K. Uberoi (Retd.) & Anr. v. Vigneshwara Developwell Pvt. Ltd. & Ors*". It became apparent that the Company had not paid the admitted debts and was, therefore, liable to be wound up on the ground of its inability to pay debts to creditors. Accordingly, on 22.07.2016, the learned Company Court admitted the said petition for winding up and appointed an Official Liquidator as the Provisional Liquidator, under Section 450 of the Act. On the date of the said order, a large number of petitions (forty two in number) seeking winding up the Company were pending.

10. Plainly, it was not necessary to keep all such petitions pending, since the proceedings for winding up the Company had commenced under an order passed in Company Petition No. 885/2015. Accordingly, all other petitioners, including the appellants, withdrew their petitions with liberty to approach the Official Liquidator with their claims.



11. The appellants herein did not take any steps, at that stage, for seeking release of the amount deposited by the Company with the Registry of this Court and in our view, rightly so, the appellants were not entitled to any preferential payment, once the learned Company Court had decided to proceed with the winding up of the company.

12. The contention advanced by the appellants that since their petition was prior in point of time and an amount was deposited during the course of the said petition, they would have a right to recover the amount deposited in precedence to other creditors, is unmerited. It is necessary to bear in mind that the petition filed by the appellants was for winding up of the Company. In a sense their stand was vindicated, and they had effectively succeeded in their petition as the learned Company Court had proceeded to initiate steps for winding up of the Company. Accordingly, the appellants would now have to stand with other similarly placed creditors for recovering their dividends in accordance with Section 529 of the Act.

13. It is the appellants' case that they were ill-advised and their counsel did not inform them of withdrawing their company petition. However, in our view, that would make a little difference because, if the company petition has not been withdrawn, at best it could have remained pending once the learned Commercial Court appointed the Official Liquidator as the Provisional Liquidator. It would serve little purpose, as no orders could have been passed for disbursal of funds to the appellants in that petition.

14. The winding up petition that was admitted, Company Petition No. 885/2015, ultimately culminated in the order for winding up the Company.



Clearly at that stage, the petition filed by the appellants would have been rendered infructuous. This is for obvious reason that a company can be wound up only once. In terms of Rule 101 of the Company Court Rules 1959, the appellants also have a right to pursue the Company Petition No. 885/2015 if for any reason the petitioner in that case sought to withdraw from the same.

15. In our view, the application filed by the appellants now seeking withdrawal of the amount deposited in this Court (Company Application No. 784/2023 filed on 16.09.2023) in a disposed of company petition, is clearly not maintainable. Although, the appellants have faulted their counsel for not pursuing their interest with due diligence, however, we are unable to accept that the appellants could have any better right with respect to the properties of the Company, than other similarly placed creditors of the Company.

16. In view of the above, we are unable to accept that the appellants are entitled to any other relief.

17. Needless to state, the appellants have the right to file their claim with the Official Liquidator, for the amounts which are admittedly due to them.

18. Ms. Sindhvani, the learned counsel for the Official Liquidator submits that more than 1200 (twelve hundred) claims have been received and the Official Liquidator is in the process of examining the same. In the circumstances we direct that since the claims of the appellants are admitted by the Company and there is no dispute that the said amount was owed to the appellants, the Official Liquidator shall proceed by admitting the said claim. The disbursement, if any, in regard to the said claim shall be made in



accordance with Sections 529,529A & 530 of the Act.

19. The appeal is disposed of in the aforesaid directions.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 11, 2024/at

Click here to check corrigendum, if any