



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

INTERIM APPLICATION NO. 6953 OF 2025

IN

COMPANY PETITION NO. 385 OF 2002

Grand View Estates Private Limited

...Applicant

In the matter of :

Board for Industrial and Financial Reconstruction...Petitioner

Versus

The Official Liquidator of the Swadeshi Mills Company Limited

(in liqn.) and Others

...Respondents

Mr. Janak Dwarkadas, Senior Advocate a/w Mr. Shansh Sengupta, Mr. Siddharth Ranade, Ms. Nishi Bhankharia, Mr. Vedant Kumar, Mr. Gaurav Jain, Ms. Neeraja Barve i/b M/s. Trilegal for Applicant.

Dr. Virag Tulzapurkar, Senior Advocate a/w Ms. Vaishnavai Dhure i/b mr. Amir Arsiwala for Respondent No. 2.

Mr. Cyrus Ardeshir, Senior Advocate i/b Mr. Yash Jariwala for Respondent No. 3.

Mr. Mohit Khanna, Mr. Pranav Varsaria and Mr. Tejas Popat i/b Mr. Pravin Patil for Respondent Nos. 4 and 5.

Mr. Ranjeev Carvalho, Ms. Apurva Thipsay for Official Liquidator.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 12th December, 2025.

Pronounced on : 23rd February, 2026.

Judgment :

1. A Company ordered to be wound up by order dated 5th September, 2005, is sought to be revived by the Applicant after earlier

two failed attempts. The Applicant and the Respondent No. 2, are part of Shapoorji Pallonji Group and together own about 52% share holding of Swadeshi Mills Company Ltd-the Company (in liquidation), and has filed the present Application invoking powers under Section 466 of the Companies Act, 1956 [for short, "**Companies Act**"] seeking stay of the winding-up order dated 5th September, 2005 passed by this Court and for other consequential reliefs.

2. The Company in liquidation prior to its winding up was operating as a composite textile mill engaged in textile business. In the year 1997, Petition came to be filed in this Court by Ralli Brothers and Coney under Section 433 of the Companies Act seeking winding up. As the net worth of the Company became negative in February, 1998, a statutory reference was made to the Board for Industrial and Financial Reconstruction which declared the Company a sick company and by order dated 5th February, 2001 recommended that the Company be wound up.

3. Pursuant to the recommendations, this Court admitted various winding-up petitions and on 13th February, 2002, appointed a provisional liquidator. Court Receiver came to be appointed and finished goods of the Company came to be sold. Vide resolution dated 28th September, 2001 issued by Government of Maharashtra, a High Power Committee (HPC) was appointed to look into the matters

related to the payment of dues of workers, bankers and financial institutions of the Company. This HPC was permitted by order of 21st June, 2002 of this Court to dispose of the assets of the Company. Accordingly, HPC disposed of the entire plant and machinery. The sale proceeds were utilised for part payment of dues of workers, secured creditors etc. The winding up was ordered on 5th September, 2005.

4. The Industrial Development Bank of India [for short, "**IDBI**"] and Bank of Baroda [for short, "**BOB**"], who were the secured creditors obtained recovery certificates from Debt Recovery Tribunal on 26th February, 2003. IDBI transferred its loan to Stress Assets Stabilisation Fund [for short, "**SASF**"], which debts were acquired by the present Applicant by way of assignment from SASF and BOB on 1st December, 2006 and 31st August, 2007 respectively. The Applicant preferred an application before DRT for being substituted in place of SASF and BOB on the Recovery Certificate, which was allowed. It is claimed that the resultant position is that the Applicant is the secured creditor of the Company in liquidation. It is claimed that the Applicant's security interest includes mortgage by deposit of title deed over the properties of Swadeshi Mills situated at Chunnabhatti, Mumbai including the mill premises and the approximate debt is of Rs. 985 crores.

5. The broad contours of the revival scheme proposed in the

present Application is as under:

AS REGARDS PAYMENT OF DEBTS AND LIABILITIES:

(a) Safeguarding the interest of all erstwhile workers including 469 badli workers and families of deceased worker by paying 100% of worker's dues and additional compensation as per the Agreement for settlement amounting to approximately INR 237.08 crores and providing low cost housing.

(b) The deferment of dues of Applicant and Respondent No 2, who are secured creditors of INR 1,100.81 crores as on 22nd January, 2025 as per mutually acceptable payment schedule with Company in liquidation to facilitate business operations .

(c) Dues of 70 unsecured creditors out of 146 unsecured creditors have been assigned to the group companies of Shapoorji Pallonji group which includes the Applicant and Respondent No 2. The deferment of dues of INR 124.49 crores as per mutually agreed terms with the Company. The outstanding dues of the remaining unsecured creditors of INR 5.45 crores to be settled by the Applicant.

(d) Dues towards claims of eight co-operative societies of Rs 3.29 crores to be paid out of amount of INR 240 crores deposited by the Applicant with Official Liquidator.

(e) Statutory Dues of Rs 4.51 crores to be settled from the amount of Rs 240 crores deposited by the Applicant with Official Liquidator and any additional amount being adjudicated shall be paid by the Applicant.

(f) Recovery of dues of Employees State Insurance Corporation and Profession Tax Department of Rs 1.99 Crores and Rs 0.70 Crores paid by the Applicant to be deferred as per mutually agreed terms between the Applicant and the Company.

(h) The liquidation costs to be borne by the Applicant.

(i) Dues payable to the Applicant of INR 1.09 Crores on account of the security charges undertaken by the

Applicant to be deferred.

AS REGARDS REVIVAL OF BUSINESS:

Diversifying the business activities into other fields including real estate development involving the immoveable properties owned by the Company in liquidation.

6. The change of circumstances since the prior failed attempts are (a) revival plan is supported by the Company's stakeholders, (b) revival plan serves larger public and economic objectives, (c) commissioning of technical feasibility report confirming that revival of textile business is not viable, (d) unconditional support of workers who had earlier opposed the stay of winding-up. The dues of the Applicant is about Rs. 985 crores and what can be sold in winding up proceedings is only equity of redemption.

7. The Applicant has filed an Additional Affidavit on 27th May, 2025 stating that in furtherance of the resolution passed in extraordinary general meeting held on 14th May, 2024, the company was authorized to create mortgage/charges/hypothecation/pledge and or other encumbrance on the assets of the properties of the company and that the company has created a charge by way of first-ranking mortgage in favor of IDBI Trusteeship Services Ltd. to secure the borrowing of Rs. 380 crores advanced to the Applicant by Asia Pragati Investment Fund

for purpose of revival of the Company which includes the amount of Rs. 240 crores raised for the purpose of complying with the order dated 21st December, 2022.

8. The application for stay of winding up is opposed by two shareholders of the Company (in liquidation) who have 0.07% and 0.0032% shareholding in Swadeshi Mills. The reply affidavit of Respondent No 4 dated 28th May, 2025 contends that the proposed revival scheme is the same scheme presented in an identical Interim Application No. 3663 of 2022, which came to be set aside by Hon'ble Division Bench categorically holding that the revival scheme was only a means to acquire the prime asset of the company (in liquidation) at throw away price. It is stated that the deposit of Rs. 240 crores with the Official Liquidator or the EOGM of the company do not qualify for change of circumstances. It is contended that the EOGM only approves diversification of business and not the revival scheme. It is stated that out of approximately 54% shareholders, who have purportedly voted in favor of change in the object of the company, 53.25% shareholders are the Applicant and Respondent No. 2 themselves and even this shareholding has been acquired after winding-up order. It is stated that the Hon'ble Division bench has held that the deposit of Rs. 240 crores cannot result in any equities being claimed and that the sum of Rs. 240 crores were raised by the Applicant by mortgaging the assets and

further receivables of the company itself and not out of its own funds.

9. It is stated that as per 116th Annual General Report of the Swadeshi Mills Company, the liability of the company was approximately Rs. 1569 crores and when compared with the liabilities of the company in the year 2011, the same was Rs. 375.33 crores which makes it evident that the Applicant has been attempting to saddle the company with additional liabilities. It is stated that if the public auction is conducted, the company will be able to realize the maximum value of the land which can ensure that even after all liabilities are paid off, a substantial amount will remain for distribution to the members of the company and that the proposal of the Applicant does not reflect the provision made for balance of 46.75% shareholders which includes the opposing Respondents. It is stated that the feasibility report submitted by the Applicant is self-serving report.

10. In rejoinder Affidavit, the earlier stand is re-iterated and it is further contended that the creation of the mortgage was during the period the Company was out of liquidation. Given the encumbered nature of the assets, the winding up will result in distress fire sale prejudicing all stakeholders. The revival plan includes public interest as it provides for low cost housing for workers, redevelopment of long dormant land and establishment of textile training institutions in line with the State textile policy.

11. The Respondent No. 1-Official Liquidator by its reply stated that it has taken possession of the factory premises of Swadeshi Mills in July, 2002. The movable properties were sold by the High Power Committee for Rs 15,26,62,222/- and thereafter, High Power Committee was discharged by order dated 25th August, 2006 and Official Liquidator was appointed. The Official Liquidator is in possession of : (a) factory premises of Swadeshi Mills situated at Chunabatti, Sion, Mumbai, and (b) Tata Textiles Holiday Home, Panchgani (1/3rd share in Plot No. 536, 536A and 540). There are various other assets available as listed in Official Liquidator's Reports submitted from time to time. The Official Liquidator has addressed correspondence to the concerned authority for removal of encroachment on property of the Company. The Official Liquidator is unable to take any concrete steps for auctioning of the immovable properties of the Company due to several difficulties including carrying out survey. The workers and unsecured creditors have been paid Rs. 169,00,87,538/-.

12. The Respondent No. 3-recognized union of ex-workers of Swadeshi Mills supports the Applicant. The reply Affidavit set out the details of MOU executed in the year 2010 with the Applicant agreeing to make payments to the ex-workers of Swadeshi Mills upon being brought out of liquidation. It is pleaded that the settlement has been

reduced in writing in form of Agreement for settlement dated 28th February, 2020 and the Supplementary Agreement dated 29th June, 2021. Out of 2834 ex-workers of Swadeshi Mills at the time of its winding-up, 2625 have given their express consent and the remaining ex-workers are either untraceable or have expired without leaving behind any legal heirs. It is stated that after 23 years of appointment of provisional liquidator, it is unjust for ex-workers to avoid the outcome of winding-up which would now effectively restart if the application is dismissed and if the winding-up is stayed, the ex-workers will receive their payment and it is in the interest of the ex-workers that the proposal of the Applicant be accepted.

SUBMISSIONS:

13. Mr. Dwarkadas, learned Senior Advocate appearing for Applicant has taken this Court painstakingly through the orders passed in the earlier round of litigation. He submits that the present application is filed pursuant to the liberty granted by the Hon'ble Court. He submits that the first application came to be dismissed on 14th October, 2011 on the finding that the application was not *bona fide* and in public interest and lacked commercial morality for the reason that the Applicants are seeking to acquire the land at throw away price, the workers' interest has not been taken care and the scheme was not for revival of the textile business and hence, not in

public interest. He submits that this view was reaffirmed by the Hon'ble Division Bench, however, what is of significance is that at the time of the first application, the object clause of the Memorandum of Association of the Company did not include real estate activities and there was opposition by some of the workers.

14. He would further submit that by the time the second application was filed, all the claims of the workmen were successfully resolved and they supported the stay of winding up order. He submits that the order of learned Single Judge dated 21st December, 2022 took note of previous orders passed in the earlier application and noted that the second application provided for development of the company's property and it is only after noting the satisfaction of the order dated 21st December, 2022 that the stay was granted by order of 9th October, 2023. He submits that during the subsistence of the stay of the winding-up proceedings on 14th May, 2024, an extraordinary general meeting of the company was held for alteration of the memorandum of understanding to expand the object of the company to undertake the new business activities relating to real estate undertaking which was approved by 99.85% shareholders voting in favor of alteration of object of the company. He submits that by voting in favour of amendment of MoA with 99.85% votes, the shareholders have expressly indicated their clear approval of revival efforts of the

Applicant and to engage in real estate business. He submits that in the Appeal filed by Respondent Nos. 4 and 5, the Division Bench noted that the earlier orders were not shown to the learned Single Judge and granted liberty to file a fresh application after making complete disclosure. He submits that the Special Leave Petition came to be dismissed in view of the liberty granted by the Hon'ble Division Bench and hence, the present application has been filed.

15. He submits the present Application has been filed in completely changed circumstances as there is settlement of workers dues and grant of additional benefits, full settlement of all creditors and liabilities, approval of shareholder and the viability constraints on the revival of the textile business. He submits that though the resolution was opposed by one of the contesting shareholders, the same was approved by majority.

16. Distinguishing the issues flagged in the earlier round of litigation, he submits that the present plan serves larger public and economic object including rehabilitation, welfare of the erstwhile workers and sustainable redevelopment. He submits that the proposed plan envisages settlement of all outstanding dues of the creditors including unsecured and statutory creditors. He submits that there is no sale of assets/reorganisation or transfer of share holding and the company is merely brought out of winding up and made financially

viable. He submits that there is no question of taking the assets of the Company out of the Company as the Applicant is shareholder of the Company. He submits that as opposed to public auction which would result in sale of assets of the Company, the assets of the Company would remain with the Company in present plan .

17. He would submit that one of the grounds for dismissal earlier was non consideration of share holder's interest which has been taken care in the present application as the shareholders have approved the resolution to amend the object clause of the company implying that the shareholders are bound to not object to stay of winding up. He submits that the Applicant owns 52% of the total equity shares and is part of Shapporji Pallanji group, which is in the business of construction and not textile which was one of the grounds for rejection by holding that it is not shown that the textile manufacturing business is prohibited or not permitted in Mumbai and that mere revival of corporate existence of erstwhile company is not sufficient for intervention of the Court. He submits that now the Applicant is in possession of the technical feasibility report which confirms that revival of textile business is not viable.

18. He would further submit that the decision of ***Meghal Homes (P) Ltd. vs. Shree Niwas Girni K. K. Samiti'*** relied upon in the earlier round

1 (2007) 7 SCC 753.

of litigation is distinguishable on facts as in that case while the revival application was pending, a MOU was executed between the majority shareholders of the company therein and Developer under which the Developer agreed to acquire the right of development of properties of the company. It was pursuant to the MOU that the application was filed in the Company Court to convene a meeting which was seen by the Company Court as a pre-arrangement for sale of the company's lands and assets. He submits that in such factual scenario, the Hon'ble Apex Court rejected the scheme by holding that shareholders were seeking to bring the company outside winding-up to sell the land of the company to the third-party. He submits that with the present revival scheme, the land will continue to vest with the company and it is proposed to be developed which will ultimately inure to the benefit of current shareholders. He would further submit that for period of almost 20 years, the liquidation process has been stalled yielding no results for any stakeholders including the workmen.

19. He submits that even accepting applicability of ***Meghal Homes (P) Ltd. vs. Shree Niwas Girni K.K. Samiti*** (supra) , the three-fold tests laid down i.e. commercial morality, *bona fide* intent and public interest has been satisfied in present case. He would submit that it has been consistently held that whenever an option is available between revival of the company and winding-up, the Courts must lean towards revival

of the Company. He submits that revival of the Company does not mean restoring the usual manufacturing of the business activities and means best utilization of the assets including the vacant land. He would further submit that the mortgage and the related funding structure is fully disclosed in the Affidavit dated 27th May, 2025 and the mortgage was created subsequent to EOGM with 99.85% voting in favor of the same. He submits that sum of Rs. 240 crores was paid for revival of the company and to ensure that the company is not being saddled with any additional or fresh liability.

20. He would submit that there were two valuations conducted in 2019, both of which were contested and the Official Liquidator's Report No. 56 of 2022 reiterates that the valuation could not be conducted in view of various impediments and encroachments on the property. He submits that the present application provides for full settlement of the Company's total liabilities of approximately Rs. 1,572.07 crores as on 22nd January, 2025 covering all classes of creditors including secured, unsecured, statutory dues and co-operative societies.

21. He submits that there is practical difficulty in public auction as all attempts made to sell the asset have been unsuccessful by reason of widespread encroachments and occupation by erstwhile workers. He would submit that the land is encumbered and only equity of

redemption can be sold which drastically reduces the potential of commanding an attractive price in the public auction. He would further submit that the Respondent Nos. 4 and 5's motive is obstruction and not value maximization and the objection is purely for personal gain. He submits that the valuation of Rs. 3,000 crores placed by Respondent No 4 and 5 is misleading as the value of the land as per ready reckoner rate is about Rs. 996 crores. In support, he relies upon the following decisions:

***Forbes and Co. Ltd. vs. Bipin Bagadia*²**

Meghal Homes (P) Ltd. vs. Shree Niwas Girni K. K. Samiti (supra)

***Nutan Mills Employee Co-Op. vs. Official Liquidator of Nutan Mills*³**

***Narayan Deorao Javle (Deceased) vs. Krishna and Others*⁴**

***Gujrat Bottling Co. Ltd. vs. Coca Cola Company*⁵**

22. Mr. Khanna, Learned counsel for Respondent Nos. 4 and 5 submits that the land of the Company is extremely valuable which admeasures about 48 acres and the OLR makes it clear that only 5 to 10 acres of the land is encroached. He submits that the OLR seeks various reliefs for removal of encroachment and for valuation which is

² 2009(2) Mh. L.K. 897

³ Order dated 18.03.2026 passed in OLR No. 517 of 2015.

⁴ (2003) 9 SCC 401.

⁵ (2019) 212 Comp Cas 480.

required to be allowed in the interest of all the stakeholders of the Company. He submits that the land is valued upwards Rs. 3,000 crores and public auction ought to be conducted for value maximisation.

23. He would further submit that the Applicant is trying to justify the proposal on the basis of inflated and illegal claims. He submits that as per the Applicant, the total liability of the company in 2025 is Rs. 1477.01 crores which differs from the figures presented by the Applicant in Interim Application No. 3663 of 2022, which at that point of time was Rs. 1103.09 crores and in 2011, was Rs. 366.89 crores. He submits that the debt figure in 2025 is by reason of the inflated claim of the Applicant and Respondent No. 2 from Rs. 280.44 crores as on 31st March, 2011 to Rs. 1225.3 crores in 2025. He would further submit that as per the Official Liquidator's Report in Company Application No. 243 of 2011, the admitted claim of Respondent No. 2 was adjudicated at around Rs. 58 crores as per the admission of proof dated 27th February, 2006 and the IDBI had been paid a sum of about three and half crore rupees as stated in the Official Liquidator's Report. He submits that the inflated claim of Applicant and Respondent No. 2 is by addition of interest component at 16%, whereas the creditors are not entitled to continue claiming interest after the date of winding-up till the date of realization of payment as per Rule 179 of the Company

Court Rules. He would further submit that there is no confirmation by the Official Liquidator whether the Applicant and Respondent No 2's claim is correct despite the direction of the Hon'ble Apex Court.

24. He submits that the Applicant is not standing outside winding-up since the debts of IDBI Bank and Bank of Baroda have been adjudicated by the Official Liquidator at the relevant time. By reason of illegal assignment post the winding up order, the Applicant cannot claim to stand outside winding-up. He would submit that the order of Debt Recovery Tribunal permitting the Applicant to be substituted in Recovery Certificate does not create any equity in favor of Applicant and the Applicant cannot claim to be a secured creditor for any purpose. He would further submit that the Assignment Deeds relied upon by the Applicant are against the guidelines dated 13th July, 2005 issued by the Reserve Bank of India under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and as no charge has ever been registered *qua* the security with the Registrar of the Companies and hence, the charge is void under Section 125 of the Companies Act, 1956. He submits that all these factors are required to be adjudicated as directed by the Hon'ble Apex Court in its order dated 22nd January, 2025.

25. He would further submit that even without the Official Liquidator making an attempt to clear encroachment and without

facing a public auction, the Applicant along with Respondent No. 2 wants to take the benefit of land and its immense potential to carry out real estate business. He submits that the proposal put forth by the Applicant is only to obliquely take the valuable assets of the company without participating in public auction which would ensure maximum value for the land which is more than 6 million sq. feet worth of development potential.

26. He would further submit that the argument that only the right of redemption can be sold in public auction and not the land cannot be accepted as when the land is sold, it will be sold on as is where is basis. He would further submit that once the land is sold, the waterfall mechanism under Section 529A of the Companies Act would apply and considering that the claim of the Applicant and the Respondent No. 2 are inflated and contrary to law, there is no question of nothing been left for other creditors and contributories of the company. He submits that the said position nullifies the argument of the Applicant of fire sale taking place. He submits that the public auction would ensure fair play and transparency and is a preferred route to ensure value maximization of the assets particularly, when the assets are *custodia legis*. He would further point out the orders dated 17th September, 2003 passed by this Court to demonstrate that the benefits were received upon public auction being conducted.

27. He has taken this Court in detail through the earlier orders and would contend that identical scheme of revival was found to be illegal. He submits that the findings of the Hon'ble Division Bench in the order dated 22nd January, 2025 are binding on this Court and in any event, there is no case made out for dispelling those findings. He submits that under Section 466 of the Companies Act, it is the resumption of the business which is contemplated which is reaffirmed in the judgment of ***Meghal Homes (P) Ltd.*** (supra) and followed by this Court in the earlier round of litigation. He submits that nothing prevents the Applicant from starting the business of textile manufacturing outside Mumbai, which would ensure revival of business in consonance with the principles of Section 466.

28. He would submit that there is no change of circumstances between 2011 and 2025 for considering the present scheme. He would submit that only purported change of circumstances is the EOGM, the feasibility report of independent agency, the settlement of workmen dues and creditor's liabilities. He submits that EOGM was held after the learned Single Judge's order dated 9th October, 2023 and before the same was set aside by the Hon'ble Division Bench which found the order of winding-up was obtained by suppressing the order of this Court. He submits that as the learned Single Judge's order has been set aside, the doctrine of restitution or principles analogous thereto would

apply and therefore, the Applicants cannot rely upon the EOGM held in the interregnum. He would submit that in any event, the EOGM does not constitute change in circumstances as out of 54% shareholders who voted in favor of change in object clause, 52.25% were of the Applicant and the Respondent No. 2 themselves. He would submit that the shareholders have not approved the Applicant's revival scheme in the EOGM. He points out to the order of the Hon'ble Division Bench dated 23rd August, 2013 holding that the correct approach for the Applicant is an application under Section 391 of the Companies Act to enable the members of the company to consider and vote on the revival scheme. He submits that the Hon'ble Division Bench has further held that in event after the scheme is approved by shareholders in the meeting held under Section 391 of the Companies Act, the Company Court would still have to consider the aspect of morality and public interest in order to bind the dissenting minority while sanctioning the scheme. He submits that the technical feasibility report does not constitute change in circumstances as in the first round of litigation in 2011, the claim of the Applicant was identical that it is not practicable and feasible to carry on such business. He submits that there is difference between the revival not being economically feasible and complete prohibition on revival.

29. He would further submit that no equities can be claimed on the

ground that the Applicant has paid Rs. 240 crores which was also raised by mortgaging the land of the company. He would further submit that the consequences of the stay of winding-up is required to be considered as the Applicant and Respondent No. 2 have only deferred the recovery of the dues of the secured creditors and that the inflated and purported liability will then be recovered from the company once it is out of liquidation. He would further submit that the Hon'ble Division Bench in its judgment dated 22nd January, 2025 has held that the motive of the Applicant was to avoid participating in the public auction and the mere fact of pumping money could not persuade the Company Court to grant any discretionary relief. He would further submit that purported scheme under Section 466 of the Companies Act is only an attempt to take over the land of the company and to enter into the real estate development business, a business which is never carried by the company (in liquidation).

30. He would further submit that in the case of ***Meghal Homes (P) Ltd.*** (supra) decision, the Hon'ble Apex Court negated the argument that Section 391 is a standalone provision and held that Section 391 to Section 394A and Section 466 of the Act are required to be reconciled and test of Section 466 of the Act was made applicable to Section 391 of the Act in that case. He submits that the test of commercial morality, public interest and the intention to revive are the applicable

tests which have not been satisfied in the present case. In support, he relies upon the following decisions :

Pravin S. Shah vs. Rashtriya Mill Mazdoor Sangh⁶

Indian Link Chain Mfrs Ltd.⁷

Vinay Syay vs. State of Punjab⁸

Suzuki Parasampuri Suitings Pvt. Ltd. vs. Official Liquidator Mahendra Petrochemicals Ltd. (in liquidation)⁹

Gorakhpur Steels and Metals vs. Presiding Officer, DRT¹⁰

Pravin S. Shah vs. Rashtriya Mill Mazdoor Sangh¹¹

ARC Holding Ltd vs. Rishra Steel Ltd.¹²

Shyam Rastogi vs. Nona Sona Exports¹³

Sonajuli Tea and Industries vs. Ashkaran Chattarsingh¹⁴

Meghal Homes (P) Ltd. vs. Shree Niwas Girni K. K. Samiti (supra)

Indore Development Authority vs. Manoharlal¹⁵

31. In rejoinder, Mr. Dwarkadas would submit that the revival of textile business is not feasible and the object clause is amended to

6 2017 SCC OnLine All 3009.

7 2009 (2) Mh. L. J. 897.

8 2010 SCC OnLine Cal 1677.

9 1984 SCC OnLine Del 66.

10 85CWN557.

11 (2020) 8 SCC 129.

12 Company Application No. 1202 of 2008, decided on 07th August, 2008.

13 SLP No. 760 of 2014, decided on 27th January, 2014.

14 CA No. 342 of 2013, decided on 11th April, 2014.

15 SLP No. 1387 of 2014, decided on 29th August, 2014.

include real estate development. He submits that the explanatory statement to the EoGM mentions about the intention to undertake new business activity relating to real estate development which constitutes approval to the revival scheme by the share holders. He submits that as the proposal is not for sale of assets of the Company for which scheme would have to be propounded, Section 391 -392 of Companies Act has no application. He submits that the argument of Respondent Nos. 4 and 5 about the sale by public auction is fundamentally flawed as the option of public auction cannot be treated as an alternative to the Applicant's proposal which seeks to satisfy the dues of all the stakeholders including the creditors, workers and statutory authorities. He submits that by allowing the company to develop the land itself, the development profits will accrue to company and consequently to all the shareholders which is far more superior method of maximization as compared to that of uncertain public auction. He would further submit that all efforts by the Official Liquidator and High Powered Committee have been unsuccessful and there is no auction which has been conducted by Official Liquidator for over 20 years.

32. He would further submit that the question of interest applied by the Applicant as secured security is extraneous to the adjudication of the present application and that determination is within the remit of

Official Liquidator at the appropriate stage. He would submit that the Applicant's claim is based on the recovery certificate of DRT where the interest is awarded at 16% p.a. and irrespective of whether the claim is pursued by the Applicant or the assignors, the underlying debts subsists and remains recoverable. He submits that the Applicant is a secured creditor who stands outside winding up and it is well-settled that in such circumstances, the ceiling on payment of interest under Rule 179 has no application. He would further submit that DRT vide order dated 19th May, 2014 has recognized the assignment of debt of the Recovery Certificate and replaced the applicant as creditor in the DRT proceedings which assignment has attained finality. He submits that the present application is filed in dual capacity as a secured creditor as well as the shareholder of the company.

33. He would further submit that the reliance on the earlier orders is misplaced as there is material change in circumstances. He would further submit that the resolution passed in EOGM is not invalid because there was no stay on the order dated 9th October, 2023. He submits that the Hon'ble Division Bench had only noticed the EOGM as held and did not give any finding on whether it was a relevant subsequent event or not. He submits that the application being a fresh application under Section 466 is expressly permitted by the earlier orders. He submits that the principle of restitution applies where any

benefits have been derived by doing any wrong to another or any loss has been caused to the person and the resolution is validly passed by the shareholders cannot constitute a benefit. He would further submit that the Respondent Nos. 4 and 5 have failed to raise any substantial grounds on merits of the Applicant's revival plan.

34. Mr. Carvalho, learned counsel appearing for the Official Liquidator would submit that the Official Liquidator has taken out the Official Liquidator's Report No. 39 of 2025 *inter alia* seeking ratification of the security agency for valuation of the properties of the companies, making payments and further directions. He has taken this Court through the OLR to demonstrate the steps taken by the Official Liquidator in winding up process. He submits that the amount which has been deposited by the Applicant was Rs. 240 crores out of which the creditors/workers were paid Rs.16,900,87,548/-. He submits that out of 2910 creditors, 2071 creditors have been paid. He submits that the balance amount lying with the Official Liquidator is Rs. 80,35,43,179/- and apart from the Applicant's deposit, there is an additional amount of Rs. 20,30,242/-. He would submit that by order of 1st July, 2016, this Court has directed the land of mill premises to be surveyed and valued and Corporation was permitted to take appropriate steps in respect of dilapidated structures standing on the main land. He would further submit that the mill land is occupied by

buildings/structures and it is not clear as to how these entities have acquired title therein. He would further submit that by order of 13th November, 2017, this Court noted that the surveyor and valuer have not been able to proceed further due to impediment at the site and the Court permitted the valuation of the rest of the mill land except the two survey numbers for which clarification was sought. He submits that in the meantime, the movable properties of the company was sold and on 21st November, 2018, the order was passed by this Court directing the valuer to submit fresh valuation report after considering the DCPR, 2034 which report was submitted on 6th February, 2019. By order of 10th April, 2019, this Court appointed the Architect to inspect the condition of the structure standing on the mill premises and to submit a necessary report which was submitted on 24th April, 2019. He submits that on 2nd January, 2020, the order was passed by this Court regarding the completion of survey and valuation, however, as the implication of the DCPR, 2034 was to be considered, the Interim Application came to be disposed of with the directions to the Official Liquidator to submit a fresh report after considering DCPR, 2034 and to seek further directions with respect to disposal of the mill land. He submits that 49 erstwhile workers have objected to the payment of settlement amount and the meeting was convened by the Official Liquidator who had filed a separate Interim Application out of which 45

applications are dismissed as withdrawn and four applications are pending. He submits that in 2024, the company created a charge in respect of mill premises in favor of IDBI Trusteeship Services Ltd. for the sum of Rs. 380 crores.

35. He submits that the Official Liquidator has taken various steps towards taking charge and liquidating the assets of the parties since the passing of winding-up order. He submits that out of four immovable properties, one property i.e. Andheri flat was sold with the permission of the Court and one tenanted property was handed back to the owner pursuant to the order of this Court. He would submit that insofar as the remaining two properties are concerned, the Official Liquidator has sought to take several steps towards the preservation and sale of the property. In respect of the mill lands, Mr. Carvalho would contend that the Official Liquidator upon taking charge of the mill premises discovered that the land was encroached upon and occupied by several structures, however, the encroachment could not be fully removed. He submits that some of the structures standing on the mill lands are in dangerous dilapidated condition and this Court had directed the Corporation to take necessary steps in accordance with law.

36. He submits that in the meanwhile, there was an application moved seeking stay of winding-up which traveled right up to the Apex

Court and after rejection by the Hon'ble Apex Court, by present OLR No. 39 of 2025, the Official Liquidator has sought directions to carry out the valuation of the property with a view to proceed with the same. He would further submit that the Applicant is a secured creditor standing outside winding up as assignee under Recovery Certificate dated 26th February, 2025 issued by DRT and as on 27th January, 2025, the Applicant claims to be entitled to outstanding dues of Rs. 985,05,82,364/-. He submits that under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 where a recovery certificate is issued in respect of company (in liquidation), the secured assets are to be distributed by DRT and not by the Company Court in a manner under Section 529A of the Companies Act, 1956 in favor of secured creditor subject to payment of workmen's portion in such secured assets. He submits that Respondent No. 2 is a secured creditor who has participated in the winding-up process and has obtained adjudication of its claim from the Official Liquidator for a total sum of Rs. 57,39,17,238/-. He submits that as on 27th January, 2025, the Respondent No. 2 claims to be entitled to outstanding claim of Rs. 115,75,77,048/- including simple interest at the rate of 4% p.a. in terms of Rule 179 of Company Court Rules. He submits that the claim to interest would be subject to availability of surplus remaining and capped at the rate of 4% on the admitted amount from the date of

winding up order to declaration of final dividend. He submits that in view of DCPR, 2034, the Company has become entitled to valuable right in the form of increased floor space index of the mill land which is possible for the company to utilize, if revived. He submits that the Official Liquidator would adhere to the orders of this Court and in event, the application is refused, the Official Liquidator is ready and willing to proceed with taking further steps for valuation and sale of the properties of the company. In support, he relies upon the following decisions :

***Associate Engineers vs. Swadeshi Mills Company*¹⁶**

***Rashtriya Mill Mazdoor Sangh vs. The Official Liquidator*¹⁷**

***Kaushike Dave and Others vs. B.I.F.R.*¹⁸**

***Forbes and Co. Ltd. vs. Official Liquidator of Swadeshi Mills*¹⁹**

***Kaushik Dave vs. Official Liquidator*²⁰**

37. Mr. Tulzapurkar, learned Senior Advocate appearing for Respondent No. 2 questions the locus of Respondent Nos. 4 and 5 to object to the relief sought in the present Application. He submits that Respondent Nos. 4 and 5 are not creditors of the company having a

16 CA No. 342 of 2013, order dated 7th July, 2016.

17 2005 SCC OnLine Bom 338.

18 (1985) 57 Comp Cas 85.

19 (1998) 94 Comp Cas 723.

20 2017 SCC OnLine Kar 4817.

right to participate in the proceeds of winding up. He submits that the Applicant and Respondent No. 2 together hold approximately 52% of the Company's total shares and are its only secured creditors. He submits that the purpose of winding up proceedings is to ensure equitable distribution of the proceeds from the sale of the assets of the company (in liquidation) to its creditors and it is the interest of the creditors, which is required to be protected. He submits that the shareholder is not to be equated with the creditor when it comes to winding-up and the distribution of surplus to shareholders is not in discharge of any debt and a shareholder cannot dictate the course of winding-up at the expenses of interest of creditors. He would further submit that in the EOGM, the majority shareholders have approved the amendment to the Memorandum of Association, which supports the application for revival and cannot be disturbed by persons holding minuscule shareholding. He would further submit that Respondent Nos. 4 and 5 have vested interest in ensuring that the company remains in winding up and is not revived. He submits that an application was filed being Interim Application No. 1110 of 2020 seeking permission of Company Court under Section 536(2) of the Companies Act, 1956 for recording transfer of 2,800 more equity shares to Respondent No. 4 which the Company Court held did not appear to be *bona fide* in nature. He would further submit that no

stakeholder has objected except the Respondent Nos. 4 and 5. He submits that the Applicant has disclosed the changed circumstances for filing present Application. He submits that the revival of the company is the only legally tenable outcome whereas continuation of winding-up would amount to exercising futility and institutionalized value destruction. He submits that for over two decades, the winding-up has remained inconclusive and the Official Liquidator has itself acknowledged the practical impossibility of effecting meaningful sale. He submits that the present revival plan results in complete discharge of all liabilities, settlement of worker's claim and lawful redevelopment in accordance with DCPR, 2034. He would further submit that the statutory scheme does not favor auction of these assets and dissolution. He would further submit that the shareholders of the company have approved its revival which is a decision taken in commercial wisdom and is required to be taken into consideration for deciding the present Application. In support, he relies upon the following decisions :

Shree Niwas Girni Kamgar Kruti Samiti vs. Rangnath Basudev Soman²¹

Sudarshan Chits (India) Ltd. vs. Sukumaran Pillai and Others²²

²¹ (1981) 51 Com Cas 20.

²² SLP No. 2705 of 2025 decided on 31.01.2025 decided by Hon'ble Supreme Court.

Wearwell Cycle Co. (I) Ltd. (in liquidation)²³

Government of Karnataka vs. NGEF Limited²⁴

Vasant Investment Corp. Ltd. vs. Official Liquidator, Colaba Land and Mill Co. Ltd.²⁵

38. Mr. Ardeshir, learned Senior Advocate appearing for Respondent No. 3-recognized union of workers submits that the Agreement of settlement entered into with the Applicant is far superior than what can be expected to be received through continuation of winding-up proceedings. He submits that under the settlement agreement, the badli workers are treated at par with permanent workers. He would further submit that depending upon outcome of this application, the ex-worker would be entitled to more through the agreement for settlement rather than through liquidation. He would further submit that the legal heirs of the workers would be entitled to the benefits like retrenchment under the agreement of settlement which is not available under the liquidation process. He submits that the settlement agreement sets out the timelines for making the payment whereas there is no certainty as to receiving the payment considering the Official Liquidator has not been able to adjudicate all the claims yet. He submits that upon the Company being brought out of liquidation, approximately 800 ex-workers residing in chawl would get housing and

²³ (2001) 104 Comp Cas 439.

²⁴ (2021) 17 SCC 626.

²⁵ Appeal No. 183 of 1995, decided by Gujarat High Court on 3rd March, 1995.

remaining workers would be entitled to subsidized housing. He submits that based on the representation by the union and by government resolution of 28th September, 2001, the Government of Maharashtra constituted a high-powered committee to initiate action for payment of workers and dues in Banks/financial institutions which were empowered by this Court to sell the assets of the company pursuant to which the entire plant and machinery was auctioned however, the committee was unable to sell the lands of the company. He submits that no objections has been raised by any other shareholders, creditors, workmen and stakeholders except the minuscule faction of shareholders who hold insignificant stake in the company which is the luxury dispute by Respondent Nos. 4 and 5.

REASONS AND ANALYSIS:

39. The present application invokes the power of this Court under Section 466 of Companies Act, 1956 [for short "***Companies Act***"] seeking stay on the winding up order dated 5th September, 2005 passed by this Court. Section 466 of Companies Act reads as under:

"466. POWER OF TRIBUNAL TO STAY WINDING UP :

(1) The Tribunal may at any time after making a winding up order, on the application either of the Official Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Tribunal that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms

and conditions as the Tribunal thinks fit.

(2) On any application under this section, the Tribunal may, before making an order, require the Official Liquidator to furnish to the Tribunal a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.”

40. Section 466 of the Companies Act permits the filing of application by the Official Liquidator, creditor or contributory for seeking stay of winding up. The statute thus permits a contributory to seek stay of winding up order and in absence of any prohibition, there is no reason as to why the contributory cannot be permitted to contest the application seeking stay of winding up order. It is well settled that upon winding up of company, the members are entitled to a share in the distribution of the assets after the liabilities have been discharged, which gives right to the contributory to oppose the application for stay of winding up, if the application prejudices his rights in the distribution of assets. This is precisely the grievance of the Respondent Nos. 4 and 5 that value maximisation can be achieved through public auction. The minuscule share-holding of the Respondent Nos. 4 and 5 will not affect the rights of Respondent Nos.

4 and 5 to contest the proceedings.

41. Before advertent to the facts, it would be apposite to have brief overlook at the statutory scheme of winding up. The statutory provisions governing winding up by Court is set out in Chapter II of the Companies Act. Upon passing of an order for winding up and appointment of official liquidator, the custody and control of all the property, effects and actionable claims to which the company is entitled is taken over by the Official Liquidator (OL), who then has the powers set out in Section 457 of Companies Act to do all acts necessary for winding up the affairs of the company and distributing its assets including the power to sell the assets of the company by public auction or private contract. The general powers of the Court includes power to direct the contributories to pay any money due from him and adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.

42. The waterfall mechanism provided by the enactment governs the order of distribution of sale proceeds. Section 520 provides for payment of liquidation costs subject to the rights of the secured creditors, if any. Section 529 provides for security of secured creditor to be subject to *pari passu* charge in favour of workmen to the extent of workmen's portion therein. Where a secured creditor stands outside winding up and opts to realise his security, the liquidator shall be

entitled to enforce the workmen's charge. Section 529A provides for overriding preferential payment to the workmen's dues and debts due to secured creditors to the extent such debts rank under Section 529(1)(c) *pari passu* with such dues. Section 530 provides for the order of preferential payments subject to Section 529A. The debts shall be paid in full, unless the assets are insufficient to meet them in which case they shall abate in equal proportion.

43. Section 466 of Companies Act enables the Tribunal to stay the winding up of company upon arriving at a satisfaction that all proceedings relating to winding up ought to be stayed. The parameters for exercising power under Section 466 of Companies Act was laid down by the Hon'ble Apex Court in the case of ***Meghal Homes*** (supra) though in the context of Section 391 to 394 of Companies Act. It would be relevant to consider the decision in some detail.

Meghal Homes (P) Ltd. (supra) judgment -

44. In respect of the Respondent-textile mill therein, the winding-up order was passed in 1984 and charge was taken by the Official Liquidator. In 1994 Court order was passed directing the Official Liquidator to issue public notice inviting offers for revival of the textile mills and absorption of the workmen and to purchase the assets of the company. At that stage, a contributory filed company application seeking direction of the Company Court for holding a meeting of

contributories and other interested persons to consider a scheme proposed for revival of the company which was permitted to be convened by the Company Court. The order was challenged by the worker's union and the parties who had submitted their offers in response to the public notice. The meeting was held as directed by the Company Court and the scheme was approved by the workers, creditors, contributories and an application for sanctioning the scheme was also filed. In the meantime, in 1995, the Division Bench allowed the Appeal and set aside the direction for convening a meeting to consider the scheme proposed. The Special Leave Petition filed against the order was dismissed. In that case, the State Bank of India Capital Markets limited was assigned the task of preparing the viability report which reported the unviability of revival of weaving and processing section of the mill and opined that it is not possible to restart the entire mill. In 1998, the new industrial location policy of the Government of Maharashtra became operative and applied to all industries in Mumbai Metropolitan region excluding the cotton textile industries which did not restrict the restarting of the manufacturing activities of the Mill in question.

45. In the year 2003, Memorandum of Understanding was executed between the shareholders, one Somani Group who had acquired the shares of other majority shareholders and Lodha Builders Private

Limited-developer. Under that Agreement, the developer, in consideration of acquiring the development rights of the landed properties of the Mill, agreed to pay certain consideration and hand over certain constructed area. Based on the Agreement, the majority shareholder filed Company Application propounding a scheme and seeking direction from the Company Court for convening the meeting to consider the amended scheme. The amendment to the earlier scheme envisaged the development and transfer of the Mill's properties to the developer for revival of the Mill. The scheme also provided that after discharging the liabilities of the creditors, if extra funds are available with the textile mill, then the textile mill will start a viable industry in any part of Maharashtra and employment will be generated.

46. The amended scheme was approved by the stake holders. The sanction to the scheme was declined by the Company Court holding that the scheme was in substance, a disposal of the company's assets which then vested in the Official Liquidator. As against the order of Company Court, the Division Bench allowed the Appeal, which was carried upto the Hon'ble Apex Court by the party who had submitted offers pursuant to the public notice.

47. The Hon'ble Apex Court noted that the issue for consideration is whether the compromise which would fall under Section 391 of the

Companies Act could be accepted by the Court without reference to the fact that it is the Company (in liquidation) and without considering that whether the compromise proposed as intended to take the company out of liquidation contemplates the revival of the company and whether it puts forward a proposal for revival and whether such a proposal satisfies the element of public interest and commercial morality, the elements required to be satisfied for the Court to stop the winding-up proceedings under Section 466 of the Act.

48. The Hon'ble Apex Court considered the viability report of the State Bank of India (Capital Markets), the modified proposal of settlement of liabilities of the creditors and others, development agreement between the builder and textile mill, payment of dues of workers and creditors, the setting up of school/industrial unit for benefit of workers, setting up of spinning/garment unit in mill premises and unit in rural Maharashtra. The Hon'ble Apex Court in the context of Section 391 held that it is not a scheme for revival of the company as it is more in realm of disposal of assets of Company (in liquidation) no doubt with a view to pay of all the creditors, debenture holders and workers from the funds generated from the sale of lands.

49. The Hon'ble Court held in paragraph 47 and 51 as under:

"47. When a company is ordered to be wound up, the assets of it are put in possession of Official Liquidator. The assets becomes *custodia legis*. The follow-up, in the

absence of revival of the company, is the realization of the assets of the company by the Official Liquidator and distribution of the proceeds to creditors, workers and contributories of the company ultimately resulting in death of the company and order under Section 481 of the Act being passed. The Apex Court held that nothing stands in the way of Company Court before the ultimate step is taken or before the assets are disposed of to accept the scheme or proposal for revival of the company. In that context, the Court has necessarily to see whether the scheme contemplates revival of business of the company, makes provision for paying of creditors or for satisfying their claims as agreed of by them and for meeting the liability of the workers in terms of Section 529 and Section 529A of the Act. Of course, the court has to see to the *bona fide* of the scheme and to ensure that what is put forward is not the ruse to dispose of the assets of the company (in liquidation)."

"51. We see no difficulty in reconciling the need to satisfy the requirement of both Sections 391 to 394A and 466 of the Companies Act while dealing with a company, which has been ordered to be wound up. In other words, we find no incongruity in looking into aspects of public interest, commercial morality and *bona fide* intention to revive a company while considering whether a compromise or arrangement put forward in terms of Section 391 of the Companies Act should be accepted or not. We see no conflict in applying both the provisions and in harmoniously constructing them and in finding that while the court will not sit in appeal over the commercial wisdom of the shareholders of a company, it will certainly consider whether there is genuine attempt to revive the company that has gone into liquidation and whether revival is in public interest and and confirms to commercial morality".

50. The Hon'ble Apex Court reconciled the provisions of Section 391 to 394 of Companies Act and Section 466 while dealing with the scheme of revival of company ordered to be wound up and applied the triple tests of bonafides, commercial morality and public interest.

51. Though it is sought to be contended by Mr. Dwarkadas that the decision of ***Meghal Homes (P) Ltd.*** (supra) is rendered in different factual scenario, what applies and is binding upon this Court is the tests to be applied while adjudicating an application under Section 466.

52. The previous applications were dismissed by the Courts by applying the principles laid down in of ***Meghal Homes (P) Ltd.*** (supra). Rival contentions are advanced as regards the applicability of the said decision. It will be necessary to advert to the earlier orders of this Court which had applied the tests of ***Meghal Homes (P) Ltd.*** (supra) while rejecting the prior applications.

FIRST APPLICATION UNDER SECTION 466:

53. The Applicant jointly with Respondent No. 2 filed Company Application No. 243 of 2011 seeking identical relief of permanent stay of winding up. The liabilities of the company as on 31st March, 2011 was stated to be approximately Rs. 375.33 crores out of which Rs. 280.90 crores was towards the dues of Applicant and Respondent No 2, which they agreed to defer. As regards other claims, it was stated as under:

(a) Claims of workers affiliated to Rashtryia Mill Mazdoor Sangh - R-3 herein and Mumbai Mazdoor Sabha:

- 75% of the claim of around 2800 workers has been paid of by the OL out of sale proceeds of machinery of the company.
- MOU of 2010 has been entered into by which Rs 30,000/- will be paid to each worker aggregating to Rs 74,42,97,519/-.

- 37 workers who had opted for VRS would be paid Rs 20,98,611/-.
- 18 workers who had retired would be paid Rs 3,10,238/-.
- 28 works of Mumbai Mazdoor Sabha would be paid Rs 65,73,086/- as per MOU dated 24th January, 2011.

(b) Claims towards co-operative societies :

- 10 co-operative societies/bodies of workers/employees would be paid Rs 2,57,98,113/-.

(c) Claims towards statutory bodies:

- Rs 3,76,04,014/- would be paid and ESI and Profession Tax Department has already been paid Rs 1,99,83,919/- and Rs 70,07,427/-.

(d) Claims of secured creditors i.e. the Applicant and Respondent No 2 of Rs 193,85,74,592/- are agreed to be deferred and would be received after stay of winding up as agreed mutually between the Applicant and the Company.

(e) Claims of 146 unsecured creditors Rs 4,12,18,801/- out of which 70 unsecured creditors have assigned their claims to Applicant No 2. The Applicant and two other companies being part of Shapoorji Pallonji group have agreed to defer amount of Rs. 86,59,94,497/-.

54. The Applicant undertook to deposit Rs. 86 cores with OL and additional amount, if directed, for payment to workers, statutory creditors and unsecured creditors and further amount of Rs. 40 crores for carrying on business by the Company upon stay of winding up, to be treated as loan by the Applicant to the Company and will have to be repaid by the Company with interest and on mutually agreed terms. As regards revival of the Company, it was proposed that the Applicants will diversify the business of Company in real estate business.

ORDER DATED 14th OCTOBER, 2011 PASSED ON THE FIRST

APPLICATION:

55. One of the submissions canvassed on behalf of Applicants on the objection raised in that case that the Applicants want to take over the company and start some other business was that if the object clause in the memorandum does not include proposed business, subject to modification or amendment, the object clause would be amended. The application was opposed by 748 workers. Pertinently, the submission canvassed by the Applicants therein i.e. the Applicant and Respondent No 2 are entitled to interest in terms of Rule 179 of Companies Court Rules, 1959, which is at variance with the Applicant's stand in the present application.

56. The Learned Single Judge applied the settled principles that the application should be *bona fide*, mere consent of creditors is not enough, commercial morality and that jurisdiction of stay can be used only to allow resumption of business of company in public interest. It held that the Court will refuse an order if there is evidence of misfeasance or irregularity applying the decision of **Meghal Homes** (supra).

57. The Learned Single Judge upon perusal of paragraph 7 of the Affidavit in that case observed that the intent was that the applicants do not desire to revive the business of the company (in liquidation) by developing part of its properties or portions of the land, but desire to

take over the said lands for exploitation in the real estate market. Paragraph 7 of the Affidavit which led to the finding and is reproduced in the order of Learned Single Judge reads as under:

"7. In recent years, the Government of Maharashtra has initiated various activities for the promotion and facilitation of development of mill lands in Mumbai. Increasing the availability of housing has also been a thrust area. The said initiatives, alongwith the available immovable properties of the Company together, offer a favourable platform for the company to undertake real estate development operation. Though the company was in textile business prior to winding up, due to disposal of all the stock in trade and entire plant and machines, it is no longer viable to run the business as manufacturer of textiles. In the present circumstances, in Mumbai even otherwise a textile mill is not viable. The applicants are part of Shapoorji Pallonji Group, Shapoorji Pallonji Group has expertise in the real estate business and therefore, intends to enable the company to undertake real estate development applicant No 2 has shown its willingness to bring in funds to meet all the legitimate liabilities of the company subject to the order of winding up being permanently stayed by this Court as sought by the applicants herein."

(Emphasis supplied)

58. The proposal therein also intended to enable the company to undertake real estate development by infusing funds, which is identical proposal propounded herein. The Learned Single Judge considered this proposal in paragraph 41 and 42 as under:

"41. The applicants have stated in the affidavit in support that the company in liquidation is a Public Limited Company incorporated and registered under the Companies Act VI of 1882 of the Legislative Council of India. Its shareholding and activities are set out and admittedly the company was operating composite textile mills having spinning, weaving and processing sections for the manufacture of cotton, synthetics and non-woven fabrics. Although the company ran into rough weather, what has been placed for this Court's consideration and

seeking reliefs in its equitable and discretionary jurisdiction is, that Government of Maharashtra has initiated various measures for promotion and facilitation of development of mill lands in Mumbai. It is projected that in accordance therewith, the availability of houses has also been a thrust area. The initiative alongwith available immovable properties of the company together, offer a favourable platform for the company to undertake real estate development operation. Now, if para 7 of the affidavit in support, which is reproduced herein above is carefully perused, it is apparent that the applicants do not desire to revive the business of the company in liquidation by developing part of its properties or portions of its lands, but desire to take over the said lands for exploitation in the real estate market. It is clearly their motive that these lands should be taken over without offering the market price, but via this application so that once the permanent stay of winding up is obtained or granted, that would mean that the company's prime assets and properties can no longer be controlled by the Court. They would develop these lands by constructing buildings and sell off the units therein and earn profits.

42. However, the desire to cash on the lands with a view to fully exploit their potential is not matched with the same approach as far as the creditors of the company. By not reviving the company after taking it out of winding up shows that the applicants are primarily concerned with the benefits attached to these lands. By exploiting and utilising them to their advantage, the applicants are not agreeable to the Liquidator and the Court controlling their actions in interest of all creditors and general public. The business opportunities on account of spiraling prices in the Real Estate Market is the only attraction for the applicants. The proceeds and gains from such opportunities ought to have been shared by them with all. However, that is not their intent, is clear from their stand. If these lands are sold by the Official Liquidator under the supervision of this Court and at open, fair and transparent public auction the applicants may not stand any chance and hence they desire to obtain the lands at a throwaway price by a back-door method. That is the sole intent in making this application. By invoking sympathy of some creditors and stating that the monies to meet the claims of the workers would be brought in immediately,

what the applicants are seeking to do is to take away entire proceedings in winding up from the supervision and control of this Court. They may make give or seek some concessions here and there. However, their object is not to run the business of the company in liquidation. They have not brought anything on record by which it could be conclusively held that textile manufacturing business is altogether prohibited or not permitted in the Island city. In fact, if the affidavit in support is perused carefully, it is evident that the Shapoorji Pallonji Group is interested in the lands of this textile company and if they have to obtain the same at public auction or by bidding at a sale of this land and assets of the company in liquidation under the aegis of the Liquidator and pursuant to the sanction of this Court, they may not be able to acquire these lands. Thus, to avoid participation at a public auction and at a sale which will be conducted in a transparent and fair manner, that the application has been filed. The applicants have not come out with a positive case that business of the company in liquidation cannot be revived at all. They do not say that the textile business cannot be carried on or is totally prohibited. They claim that it is not practicable and feasible to carry on such business. However, it is their perception. The Liquidator has not come forward with any conclusive or decisive report on this aspect. In such circumstances, if all the above tests and principles are applied, it is evident that this company application is filed for seeking a stay of the winding up not for revival of the company's business or to smoothen the process of liquidation and winding up, but to take over the company itself in an indirect and oblique manner. There is substance in the objection of Ms.Cox that this is a take over of the company without recourse to the provisions in law enabling such take over and particularly sections 391, 392 to 394 of the Act. To by pass and avoid compliance with such provisions, that this application is filed. Once such is the motive, then, the enormity of the funds, the applicants are willing to pump in, the schemes or arrangements of settlement of the dues of creditors, cannot persuade this Court to grant any discretionary relief to them and prevent the Liquidator from proceeding to wind up the company in accordance with law. If ultimately it is impossible to revive the company, then, it is better that the Liquidator carries on its affairs till the dissolution of the company. It is only through the mechanism and participation of the

Liquidator, that the Court can ensure settlement of claims of the secured and unsecured creditors in accordance with law.”

59. It was not the absence of the object clause in the Memorandum of the company in carrying on real estate development which weighed with the Learned Single Judge to hold that the proposal was with the intent to take over the lands for exploitation but it was the consideration of the proposal put forth by the Applicant.

ORDER OF DIVISION BENCH DATED 23RD AUGUST, 2013 :

60. The order of 14th October, 2011 was carried in an Appeal being Appeal No. 34 of 2012 and by order dated 23rd August, 2013, the Appeal came to be dismissed. The Hon’ble Appellate Court noted the decision of Hon’ble Apex Court in ***M/s Meghal Homes Pvt Ltd vs Shree Niwas Girni K.K. Samiti & Ors*** (supra). Before the Appellate Court, an attempt was made to distinguish the judgment of ***Meghal Homes*** (supra) raising the same contention as sought to be raised in present application that in ***Meghal Homes*** (supra), that the assets of the company therein were sought to be sold to developer whereas in present case there is not transfer of assets of the company and the assets would be used to carry on real estate business. The Appellate Court declined to accept the submission and applied the tests enunciated in ***Meghal Homes*** (supra). The Appellate Court held that it would be appropriate if the company court were to be moved by way

of application for reconstruction under Section 391 to take the company out of winding up. The findings of the Hon'ble Division Bench can be broadly summarised as under:

- (a) An amendment of the objects would be required to enable the company to enter upon real estate construction.*
- (b) Upon winding up order being passed, each member is entitled to the distribution of the company's assets in accordance with his right and interest in the company after the liabilities have been discharged.*
- (c) All shareholders of the company have not joined in the application for stay of winding up nor have they consented to it.*
- (d) The company court to be moved by way of application for reconstruction under Section 391, which would give the members an opportunity to vote on the proposal and the company court would still consider the aspects of commercial morality and public interest to bind the dissenting minority while sanctioning the scheme.*
- (e) The preference by the substantial body of shareholders is not before the Court.*

61. The Applicant and the Respondent No. 2 preferred Special Leave Petition No. 1387 of 2014 before the Hon'ble Apex Court, which came to be dismissed on 23rd February, 2016. The Review Petition was dismissed by order dated 3rd August, 2016.

SECOND APPLICATION NO. 3663 OF 2022:

62. The second attempt to seek stay of winding up was only by the present Applicant stating broadly the same revival proposal. By the time, the second application was filed, the Applicant had entered into an Agreement for Settlement dated 28th February, 2020 with the Respondent No 3 Union and about 90% workers have signed individual

consent letters accepting terms of the agreement and the workers who had earlier opposed the application supported the Applicant. The textile policy was introduced by the State Government in consonance with which the Applicant undertook to establish educational institution for imparting training and course in relation to textile industry.

63. The liability of the secured creditors i.e. the Applicant and the Respondent No 2 was shown as Rs 737.44 crores. The settlement of the claims was proposed as under:

(a) As per the agreement for settlement, the workers shall be paid cumulative amount of Rs 237.22 crores and each workers would get Rs 5,25,000/- more from the agreement than from liquidation. About 469 badli workers and kin of deceased workers would get payment under the agreement for settlement.

(b) Claims of co-operative societies:

- The claim of 10 co-operative societies/bodies of Rs 3.29 crores to be paid out of amount being deposited with OL.*

(c) Claims of statutory creditors:

- The dues amounting to Rs 4.51 crores can be paid out of amount being deposited with OL and any shortfall would be met by the Applicant.*

(d) Claims of secured creditors i.e. the Applicant and Respondent No 2 of Rs 737.44 crores is agreed to be deferred and would be received after stay of winding up as agreed mutually between the Applicant and the Company.

(e) Claims of 146 unsecured creditors Rs 4,12,18,801/- out of which 70 unsecured creditors have assigned their claims to Applicant No. 2. The Applicant and two other companies being part of Shapoorji Pallonji group have agreed to defer the recovery of their dues. The rest of

the unsecured creditors of Rs 5.45 crores would be paid by the Applicant.

64. The Applicant placed on record copy of the pre-feasability report dated 8th April, 2022. The Applicant stated that it was willing to deposit Rs 239.13 crores to show its *bona fides* and is willing to advance Rs 40 crores to the company to commence its business. All amounts to be treated as loan by Applicant to the Company to be repaid along with interest. The Applicant also conveyed its willingness to modify its object clause to start the business of real estate.

65. The learned Single Judge by order dated 21st December, 2022 noted the history of the litigation, the applications of workers seeking enforcement of obligations under the agreement for settlement, the Official Liquidator's Report No. 56 of 2022 setting out the impediment in sale due to occupation by ex-workers and encroachments. In light of consensus between parties as regards revival and after considering the revival proposal in order to test the *bona fides* directed deposit of Rs. 240 crores and filing of undertaking. Pursuant to the compliance of the order dated 21st December, 2022, by order of 9th October, 2023, the Interim Application came to be allowed staying winding-up.

66. The order of learned Single Judge came to be challenged by present Respondent Nos. 4 and 5 by Appeal (L) No. 421 of 2024, which was allowed vide order dated 22nd January, 2025. In the Appeal

proceedings, one of the submissions on behalf of the present Applicant was that the order of 14th October, 2011 cannot be looked into which was rejected by the Hon'ble Division Bench which noted that in earlier round of litigation the order of 14th October, 2011 was held to be only correct view. The Hon'ble Division Bench observed that the earlier orders had specially noted that the Shapoor Pallonji groups of which the Applicant and Respondent No 2 are group companies were interested in acquiring the properties of the company at throw away price and that the interim application therein contains no pleadings to dispel or vary these findings. The Hon'ble Division Bench noted that despite the order of 23rd August, 2013 in first round of litigation all share holders have not been joined in the second application.

67. At the stage of Appeal in second round of litigation, the object clause of Memorandum of Association of company (in liquidation) had already undergone the change.

68. The Hon'ble Division Bench permitted filing of fresh application after complete disclosure and after annexing all relevant documents, judgments and orders which, if made, to be considered in accordance with law and principles that govern the discretion to grant stay under Section 466 of the Companies Act vide order dated 31st January, 2025 the Hon'ble Apex Court declined to interfere with the order of Hon'ble Division Bench and reserved the liberty to file fresh application and

directed expeditious hearing of the Application, if filed. The Hon'ble Apex Court further directed that the question as to whether the creditor's dues, etc., the dues payable to the workers and their eligibility also be examined but no further payment be made out of the amount deposited by the Applicant. The Hon'ble Apex Court granted liberty to raise all pleas and contentions including the prayer of winding up ought to be raised before the Company Judge and dismissed the Special Leave Petition. A similar order was passed on 3rd February, 2025 by the Hon'ble Apex Court in Special Leave Petition filed by the Respondent No. 3 challenging the same order of the Hon'ble Division Bench dated 22nd January, 2025.

FINDINGS BINDING ON THIS COURT:

69. The finding of the learned Single Judge as to the real intent of an identical proposal would continue to bind this Court in the present application and the subsequent amendment of object clause will not wipe out the said finding. Upon dismissal of SLP, the finding has attained finality. The revival proposal in present proposal is identical proposal of enabling the company to carry out real estate development by infusion of funds by the Applicant cannot be viewed differently by this Court. The changed circumstances, if any, would not result in diluting the findings rendered in order of 14th October, 2011, on the revival proposal and would continue to bind this Court. Even in

first round of litigation, the position was similar as existing today as to Applicant and Respondent No. 2 being majority shareholders, revival proposal of carrying out real estate business by Company (in liquidation) and infusion of funds by Applicant and the unviability of the textile business. The identical proposal of use of assets of the Company for real estate business was held to be an attempt to take over the said lands for exploitation in the real estate market, which continues to bind this Court.

TESTS FOR PERMANENT STAY OF WINDING UP:

70. Despite the above, this Court has considered the revival proposal by applying the triple tests formulated by the Hon'ble Apex Court in ***Meghal Homes*** (supra) of *bona fides*, commercial morality and public interest.

BONA FIDES:

STATUS OF APPLICANT AND RESPONDENT NO. 2:

71. The Applicant and the Respondent No 2 claim to be majority shareholder and only secured creditors of the Company in liquidation. It is claimed in the application that by virtue of two deeds of assignment dated 1st December, 2006 and 31st August, 2007, the Applicant has obtained assignment of debts owed by the Company to financial institutions, which debt is secured by creation of mortgage over the company's land at Chunnabatti, Sion. In the present

application, the debt claimed is Rs. 985 crores and it is pleaded that the recovery certificate of DRT dated 26th February, 2003 awards interest @ 16% p.a. The DRT vide order dated 19th May, 2014 has recognised the assignment of debt in recovery certificate and replaced the Applicant as creditor in DRT proceedings.

72. The deeds of assignment and the DRT orders are not placed on record, however, there is no denial as to existence of debt whether assigned to the Applicant or still standing in name of IDBI and BOB. The objection by the Respondent Nos 4 and 5 is as regards the quantum of debt which swelled from first round of litigation till present application. In so far as the Respondent No 2 is concerned, the Official Liquidator states that the Respondent No 2's claim has been adjudicated for an amount of Rs 57,39,17,238 as per notice of admission of proof dated 27th February, 2006. The Respondent No 2 has therefore relinquished its security in favour of the general body of creditors and is standing inside winding up.

73. In so far as the Applicant is concerned, the Official Liquidator and the Applicant claims that the Applicant is a secured creditor standing outside winding up and is entitled to enforce its decree against the assets of the Company. Till date, the security interest has not been realised by the Applicant, though, it claims to have secured assignments in the year 2005-2007 and substitution in the recovery

certificate in the year 2014. The Tribunal under The Recovery of Debts and Bankruptcy Act, 1993 by itself or through its recovery officer is empowered to sell the assets of the debtor Company in liquidation by associating the Official Liquidator since there is *pari passu* charge on assets under Section 529A of Companies Act, which remedy has not been exhausted by the Applicant till date even after lapse of considerable period.

74. In the written submissions of the Official Liquidator, the status of Respondent No. 2 is stated to be secured creditor standing within winding up and its interest claim is capped @4% p.a as per Rule 179 of Companies Act. The status of Applicant is claimed by the Official Liquidator as that of secured a secured creditor standing outside winding up as holder of Recovery Certificate endorsing the entitlement of Applicant to dues of approximately Rs. 985 crores comprising of principal plus interest in terms of recovery certificate and not capped @ 4% p.a. In effect the OL justified the claim of the Applicant which swelled considerably over the years by putting forth the non applicability of Rule 179 of Company Court Rules which caps the interest @ 4% p.a. in case of creditors standing within winding up.

75. In light of directions issued by Hon'ble Apex Court in its order dated 31st January, 2025, this Court, during the hearing called upon the OL to submit the statement of creditors, which submitted as per the

record of claims lodged with OL. The statement states that the Respondent No. 3 Union herein filed claim for an aggregate amount of Rs 15,05,87,247/-. Referring to OLR No 56 of 2022, the statement states that the secured creditors of the company are the Applicant and Respondent No 2. On 13th January, 2003, DRT directed the OL to pay certain amount to IDBI and BOB and OL has paid Rs 3,59,07,810/- to IDBI. The claim of Respondent No 2 has been adjudicated for Rs 57,39,17,238/- as per notice of admission of proof. OL has received a preferential claim of Rs 49,30,14,469.76/- out of which Rs. 5,25,50,157/- has been adjudicated/admitted. There are total of 146 unsecured/ordinary claims received by OL which are adjudicated for Rs 66,44,45,086/-. The tabular statement of the creditors submitted are as under:

Sr. N o.	List of claimants	Final Dividend (Less First Dividend of Rs. 50,000/- out of Sale Proceed of Andheri Flats) <i>Except Sr. 3 to 7.</i>	Paid	Balance
1	List of workers(Final Dividend,Paid and Balance)	2,23,18,85,705	1,61,33,78,303	61,85,07,402

2	List of Head Office Employees (Final Dividend, Paid and Balance)	3,01,00,000	2,84,50,000	16,50,000
3	List of Government dues (Final dividend, paid and balance)	4,51,85,327	-	4,51,85,327
4	List of Societies (Final Dividend, paid and Balance)	Dividend 3,30,00,415	2,17,64,239	1,12,36,176
5	List of Unsecured Creditors (Final Dividend, Paid and Balance)	Dividend 3,53,55,892	1,35,52,517	2,18,03,375
6	List of Unsecured Assignees (Final Dividend, Paid and Balance)	1,83,63,741	1,17,12,480	66,51,261
7	List of Additional Worker (Final Dividend, Paid and Balance)	12,29,999	12,29,999	-

76. The statement makes reference to OLR No. 12 of 2021 which was filed by the OL seeking certain directions from the Company Court,

which was allowed by order of 23rd February, 2021. In so far as direction (b) of the OLR is concerned, permission was sought to declare dividend of Rs 16,00,14,476/- to the Applicant herein subject to an undertaking that it will bring back the amount if and when called by OL.

77. OLR No. 56 of 2022, which is annexed at Annexure "B" of the statement states that the OL has paid to the Applicant Rs. 16,00,14,476/-. The position in law that exists is that the Debt Recovery Tribunal is entitled to order the sale of the properties of the debtor, even of a company-in-liquidation, through its Recovery Officer but only after notice to the Official Liquidator or the Liquidator appointed by the Company Court and after hearing him. In the Company Court, any secured creditor who has not stood outside winding up but wants to come before the Company Court has to relinquish his security and prove his debt before the liquidator to seek dividend. The assignors of the debt-IDBI has been paid by the OL, dividend of about Rs. 16 crores was declared to the Applicant and payment was made to the Applicant. Despite the declaration of dividend in the year 2021, the OL and Applicant claims that the Applicant is standing outside winding up and entitled to its inflated claim by mounting interest @ 16% p.a..

78. In view of the payment of dividend to the Applicant as reflected

from the material on record in contradistinction to the claim of the OL and Applicant that the Applicant's standing outside winding up, the application was listed for direction for clarification as regards the status of the Applicant. There is no whisper in the written submissions of OL about the direction of declaration of dividend sought and allowed, by Company Court and consequent payment of Rs. 16 crores to the Applicant. It is not as if the written submissions made no reference to the OLR No. 21 of 2021 but restricted the submission only in respect of part payment made of the workmen's dues from the sale proceeds of Andheri flat. The OL was therefore conscious of the directions sought in the OLR No 21 of 2021 and non mentioning of the declaration of dividend is not an unintentional inadvertent omission.

79. It was sought to be contended by Mr. Carvalho, that the amount was paid to the Applicant pursuant to an agreement for settlement entered into between the workers of the company and the Applicant. There is no explanation as to why the OL would seek to enforce a private settlement between the Applicant and the workers of the company in liquidation. There is no basis for such payout to the Applicant, who all along claimed to be a secured creditor standing outside winding up and no explanation has been tendered for convenient omission of the payout of Rs 16 crores to the Applicant in the 2021. The Applicant has also chosen to conveniently omit the

dividend declared and payment received and stressed upon its security interest justifying its entitlement to the inflated debt by claiming interest @16% p.a. on the assigned debt. The proceeds in the hands of the official liquidator are not available for distribution at the whims of the official liquidator and is required to be distributed in accordance with the order of priority as per the Companies Act. The payment of dividend, while maintaining that the Applicant is a secured creditor standing outside winding up, makes the Official Liquidator vulnerable to the charge of fraudulent preference. It was necessary to invite all claims and thereafter adjudicate the claims and declare dividend accordingly. In event, the Applicant was secured creditor, it had the right to seek enforcement of its security through the aegis of the Debt Recovery Tribunal.

80. The entitlement of the Applicant to the proceeds available with the OL arises only after the realisation of its security and payment of workmen's portion, for settlement of so much of its debt which was not realised from the security. The written submissions filed by the Applicant and the OL are conveniently silent about the said payment to the Applicant. Although the order dated 23rd February, 2021 was passed by this Court in OLR No. 12 of 2021 permitting declaration of dividend, perusal of the order does not indicate that the Court was apprised of the fact that the Applicant is a secured creditor standing

outside winding up as in that event no such order of declaration of dividend would have been passed.

81. Though the application was thereafter mentioned on behalf of Applicant with an offer to return the sum of Rs 16 crores, it is too late in the day to consider the said offer. The application seeking stay of winding up should be *bona fide* application disclosing all facts relevant to adjudicate the application. The claim of the creditors is an important facet to be considered while adjudicating the application and in light of suppression of this material fact, the Application ought to have been dismissed on this count alone. The cascading effect of the declaration of dividend would be upon the quantum of debt claimed by the Applicant as it seeks to enforce the payment of interest as per the recovery certificate and not as per Rule 179 of the Company Court Rules.

82. Proceeding further, the facts would reveal that the present application is nothing but a ruse to obtain the valuable land for exploitation in real estate market. At the core of the dispute lies 45 acres of land in the heart of city of Mumbai located in prime residential and commercial area which would command astronomical price given the potential of the property for development. The manner in which the Applicant has attempted to lay its hands on this valuable property of the company in liquidation leaves much to be desired. On 13th

February, 2002, the OL was appointed as provisional liquidator. On 1st December, 2006, the Applicant acquired the secured debt against the Company from SASF vide deed of assignment. On 31st August, 2007, the applicant acquired the secured debt from Bank of Baroda. The Applicant acquired 29.29% shareholding in Swadeshi Mills vide order dated 4th March, 2010, 21st June, 2010 and 14th October, 2010. The Applicant has obtained the assignment of 70 unsecured debts. In the year 2014, the Applicant came on record as holder of recovery certificate issued by DRT in place of IDBI and BOB, the secured creditors of the recovery certificate. The Applicant thereafter acquired 1.26% of the share holding on 30th October, 2023. The acquisitions of the debt and share holding of the Applicant is no doubt in accordance with law, however, the same shows a systematic pattern of arrangement or compromise which otherwise would have required compliance of the procedure mandated under Section 391 to 394 of the Companies Act.

COMMERCIAL MORALITY:

83. The Hon'ble Division Bench in its order of 23rd August, 2013 opined about the desirability of moving an application under Section 391 of Companies Act as the scheme of reconstruction would be laid threadbare before the share holders who would take an informed decision thereon. The added benefit was that upon the company court

applying all required tests, the sanction would bind the dissenting minority.

84. Instead of adopting the course suggested, the Applicants have amended the object clause of the Company (in liquidation) to diversify the business interest into real estate development, which has been approved by 54% share holders out of which 53.25% were the Applicant and the Respondent No 2 themselves. The explanatory statement in respect of Item 6 dealing with the alteration of memorandum of association of the company appended to the notice calling the extraordinary general meeting of the share holders reads as under:

“ Item No 6:

TO APPROVE THE ALTERATION OF MEMORANDUM OF ASSOCIATION OF THE COMPANY IN ACCORDANCE WITH THE COMPANIES ACT 2013:

The Svadeshi Mills Company Limited was incorporated on September 13, 1886 under the provision of Act no VI of 1882 of Legislative Council of India.

The existing Memorandum of Association (“MOA”) were based on the earlier prevailing laws and several clauses/resolutions in the existing MOA contain reference to specific sections of the Companies Act, 1956 which are no longer in force. Also, the Company now desires to enter into new business activities relating to real estate development.

In order to align the existing MOA in lines with the provisions of the Companies Act, 2013 and to reflect the proposed changes in business activities, it is hereby proposed to alter the MOA accordingly.....”

85. The Applicant, by adopting the course of amendment of object

clause and the explanatory statement which conveys an impression of the memorandum being altered to align the Memorandum in lines with the provisions of Companies Act, 2013 and incidentally to enter into new business, instead of taking recourse to Section 391, ensured that the shareholders were kept unaware of the proposal of seeking stay of winding up. The Hon'ble Division Bench by order of 23rd August, 2013 had sought to protect the proprietary interest of balance 48% share holders by impressing the need of consent of substantial body of share holders to support the stay of winding up. The share holders upon the order of winding up being passed is entitled to a share in the distribution of the company's assets after liabilities have been discharged and it is this right which is competing with the stay of winding up which was required to be put for consideration before the share holders. Having failed to place the revival proposal before the shareholders, there can be no implied consent of shareholders to the revival proposal. Consequently, the shareholders were required to be impleaded in present application as opined in the orders passed in previous round of litigation.

86. The contention of Applicants is that it has met the highest standard of morality by ensuring 100% payment of dues of all creditors, especially the workers. Let us test this contention by considering the revival proposal as regards the payment of liabilities.

The Applicant proposes:

- (a) deferment of dues of Applicant and Respondent No 2 of about INR 1100.81 crores.*
- (b) deferment of dues of INR 124.49 of 70 unsecured creditors assigned to the Shapoorji Pallonji Group.*
- (c) deferment of dues of INR 1.09 crores paid by Applicant towards security charges.*

The Applicant proposes to pay the following dues:

- (a) INR 237.08 crores to the workers and INR 240 crores has been deposited with OL in 2nd round of litigation.*
- (b) INR 5.45 crores to the remaining unsecured creditors*
- (c) INR 3.29 crores to the eight co-operative societies*
- (d) INR 4.51 crores of statutory dues*
- (e) INR 70 lakhs to ESI and Profession Tax department*
- (f) Payment of liquidation costs.*

87. The Applicant claims that the Applicant and Respondent No 2 are the secured creditors as on 22nd January, 2025 with dues amounting to about Rs. 1,100.81 Crores. In the year 2011 at the time of filing the first application seeking stay of winding up, the total liabilities of the Company was Rs. 366.89 crores which included the dues of Applicant and Respondent No 2 being Rs. 193.85 crores. The dues of the Company in the second round of litigation in the year 2022 was stated to be Rs. 1103.09 including dues of the Applicant and Respondent No 2 being Rs. 737.44 crores. In the present application the dues of the Company in liquidation have swelled to Rs. 1477.01

which included the dues of the Applicant and Respondent No 2 of Rs. 1100.81 crores.

88. The enhanced liability is substantially by reason of the inflated claim of the Applicant which as discussed above, upon declaration and payment of dividend applied ought to have the interest @ 4% p.a. cap. The debt stand frozen as on the date of winding up. For purpose of receiving dividend out of the sale proceeds of the company's assets, the Applicant claims to stand inside winding up and receive dividend whereas for the purpose of avoiding the restrictive rate of interest, the Applicant claims to be standing outside winding up.

89. The claims of the secured creditors is thus an inflated claim and cannot be accepted. The Hon'ble Apex Court while granting liberty to the Applicant to file application afresh had directed this Court to consider whether the creditors etc have been paid. This examination requires an honest disclosure of the creditors dues and in the absence of such disclosure, there can be no examination of settlement of liabilities. This also takes away the argument of the Applicant that what can be sold is only an equity of redemption as the Applicant by its act of accepting dividend has relinquished its security in favour of the general body of creditors.

90. Even otherwise, the revival proposal defers the payment of all amounts due to the Applicant and Respondent No 2 as per mutually

agreed terms with the Company in liquidation after stay of winding up. The proposal conveniently keeps the repayment open ended and there is no concrete proposal as to how the purported claims of the Applicant and Respondent No 2 will be met. There are no details about the rate of interest, the manner in which the liability will be met and the repayment proposed on mutually agreed terms with Company in liquidation is naturally going to be influenced by the Applicant and Respondent No 2 themselves who are the majority share holders.

91. The *eo instanti* repayment is proposed of about Rs. 252 crores including the workers dues of Rs. 237.08 crores out of the funds deposited by the Applicant with the OL of Rs. 240 crores and some additional insignificant payment. The sum of Rs. 240 crores is also raised by encumbering the properties of the company in liquidation. In return, without expending any of its funds, by way of back door method, the Applicant and Respondent No 2 seeks to utilise the valuable asset of the company in liquidation without having to face public auction. Even accepting that the asset will remain with the Company, the profits out of re-development will obviously first be utilised for repayment of the Applicant and Respondent No 2's dues which would be considerable with the mounting interest.

92. It is for the above reason that the entire revival proposal was required to be presented to the share holders so that an informed

decision could have been taken by the share holders on the various facets of the revival proposal. The Applicant by choosing the method of amending the object clause ensured that the proposal was out of reach of the share holders and there is no informed decision of the share holders. In the first as well as second round of litigation, the Courts have emphasised on the presence of share holders to the application for stay of winding up to protect their interests. Despite the specific observations, the Applicant has neither presented the proposal to the share holders nor joined them in the present application.

93. In any event, it is well settled that the repayment of creditors cannot be the sole criteria for exercising the jurisdiction of stay. The workers are even otherwise entitled to priority of debts. There are only two secured creditors i.e the Applicant and Respondent No 2 and in light of the material on record, apparently they have relinquished their security interest and are standing inside winding up and would take haircut as per the waterfall mechanism.

94. In these circumstances, I am unable to subscribe to the contention that the highest standard of commercial morality is met. The conduct of the Applicant and Respondent No 2 is far from ethical business standard and is actuated by *mala fides*.

PUBLIC INTEREST:

95. The public interest is sought to be demonstrated from the provision for redevelopment of dilapidated workers chawls and facilitating low cost housing through MHADA, establishing textile educational institutions, opening up public space as per DCRP 2034 and increased revenue for government authorities and public infrastructures. The aforesaid public interest is the natural concomitant of the grant of stay of winding up. The provisions of DCPR 2034 mandate equitable distribution of mill land when put for redevelopment. 1/3rd of land must be allocated for public spaces, 1/3rd of land must be handed over to MHADA for developing affordable housing for displaced mill workers and 1/3rd of land is available for redevelopment. The Applicant has not proposed any voluntary handing over of land for public purpose apart from what is mandated by statutory provisions. In exchange the Applicant gains additional FSI which is personal benefit to the Applicant and Respondent No. 2.

CHANGED CIRCUMSTANCES:

96. Dealing with the production of feasibility report, which according to the Applicant constitutes change in circumstances, the learned Single Judge while rejecting the first Application in 2011 considered the submissions as regards the unviability of revival of textile mills to hold that there is nothing on record from which it can be conclusively held that the textile business is altogether prohibited

or not permitted in Island city. It held that it is the perception of the Applicants that it is not practicable and feasible to carry on such business and that the liquidator has not come forward with exclusive or decisive report on this aspect.

97. In this application, the Applicant has placed on record the technical feasibility report dated 8th April, 2022 of one MITCOM. The report sets out the background of the litigation as well as the liabilities then goes into the overview of the textile industry and its value chain. The report further sets out the different types and amounts of utilities required in the textiles and labour force, the type of pollution and waste generated in the textile industry. Chapter VI of the Report, sets out major reasons influencing the location of industry in Mumbai region as regards the availability of raw material, labour, proximity to market, fire safety, etc. The report concludes that looking at the pollution generated, the required change in labour compared to textile industry norms, difficulty in logistic requirement by various textile segments, fire safety and close vicinity of highly eco sensitive area and after considering the major reasons it can be concluded that setting up of textile industries would not be viable in terms of pollution, logistics, and not viable in terms of economics at the existing site in the Mumbai. The second feasibility report dated 22nd May, 2025 reiterates the conclusion of the earlier feasibility report. It states that

no new textile units have been established in the region and existing plants have shut down due to their unsustainable financial situation. Importantly, the report states that due to logistical constraints and cost implications many textile industries originally based in Mumbai have relocated closer to cotton growing regions. The report also mentions about the integrated and sustainable textile policy of Government of Maharashtra 2023-2028. The report, when read, signifies that there is possibility of relocation of the textile business from Mumbai to other areas within Maharashtra.

98. The Applicant does not propose relocation of the business of textile mills or using portions of its land for purpose of revival but proposes exploitation of the land by reviving the corporate existence of the company in liquidation. The Hon'ble Division Bench in the order dated 23rd August, 2013 in the first round of litigation did not subscribe to the submission that mere revival of the corporate existence of the erstwhile company in liquidation would be sufficient for intervention of court to grant stay of winding up. The feasibility report does not take the case of the Applicant any further from the position that it was at the time when the first application was filed in the year 2011. The findings of the learned Single Judge which was confirmed by the Division Bench would continue to bind this Court.

99. The holding of the EOGM is presented as changed circumstance

enough to warrant consideration of the revival proposal. This Court in the preceding paragraphs has already discussed about the absence of an informed decision of the share holders on the revival proposal and the change in the object clause of the memorandum does not constitute change of circumstances to support the stay of winding up. There is therefore no substance in the contention of the Applicant that there is overwhelming share holders approval to the revival proposal.

100. There is no full settlement of the creditors dues as contended and substantial dues of the Applicant and the Respondent No 2 have been left unresolved. It is clear that the Applicant and Respondent No 2 subsequent to the redevelopment of the property intends to take a lion's share out of the profits of redevelopment, leaving the stake holders high and dry. The workers consent cannot form the singular driving force to accept the proposed scheme of revival.

FAILURE OF LIQUIDATION PROCESS FOR OVER 20 YEARS:

101. The provisional liquidator was appointed on 13/2/2002 and the order of winding up was passed on 5th September, 2005. The OL has disposed of the entire plant and machinery and certain immovable property of the company in liquidation, invited claims, taken action against encroachments, appointed valuers for valuation of property. The Applicant cannot take advantage of slow pace at which the liquidation process has been moved particularly considering that the

process has been interdicted with repeated attempts for stay of winding up, passing of *status quo* orders, which litigation has reached upto the Hon'ble Apex Court.

102. Though it is contended that the subject land has been heavily encroached making it difficult for the OL to sell the land, the OL has placed on record the attempts made to remove the encroachments. It is contended by Respondent Nos 4 and 5 that the out of larger land of about 48 acres, 5 to 10 acres is encroached, which contention has not been shown to be incorrect. Considering the proportion of encroached land to the larger land, this Court is unable to accept that the land cannot be sold by public auction. The stalling of liquidation process constitutes failure of the OL which is tasked with the duty of proceeding expeditiously with the winding up proceedings. The property is *custodia legis* since the year 2002 and it is their duty to ensure that the assets of the company in liquidation are properly secured. The OL has sought directions for payment of security charges and it is evident that the property is being guarded and it is surprising that despite so, it is claimed that the property is encroached.

103. There is no credible and comprehensive revival plan presented for this Court to be satisfied that the winding up ought to be stayed. The OL is still at the stage of valuing the property and there is not a singular attempt of public auction for this Court to come to a

conclusion that there cannot be value maximisation through public auction. This Court is required to be satisfied that the proposal for revival is not a ruse to dispose of the assets of the company. Even if the development of the land would take place as an asset of the Company, in the facts and circumstances of the present case, the revival proposal is with the intent to enable the Applicant and Respondent No 2 to reap the benefits of the redevelopment of the valuable asset and not for the benefit of the substantial body of stakeholders.

104. Dealing with the decisions relied upon in support of the stay of winding up. In the case of ***Nutan Mills Employees Co-operative Credit Society Limited*** (supra) and ***Narayan Deorao Javle (Deceased) vs. Krishna*** (supra), the issue as regards the equity of redemption has been discussed. There is no quarrel with the said proposition of law. In the present case, as already discussed above, the Applicant has accepted dividend from the Liquidator and has therefore, relinquished its security in favour of the general body of creditors. In ***Narayan Deorao Javle*** (supra), the Hon'ble Apex Court has held that the right of redemption is a statutory and legal right. In the case of ***Gujarat Bottling Company Limited*** (supra), the Court has held that in the context of suppression of facts that it is not possible to deny relief to a party when the facts have come to the knowledge of the Court before consideration for grant of relief. The relevance of the said judgment

has not been shown.

105. Insofar as the decisions relied upon on behalf of Respondent No. 2, in ***Sudarshan Chits (India) Limited*** (supra), the Kerala High Court has held that it should be the policy of the Court to promote revival of a company if it is shown that there is reasonable prospect of resurrection and survival. This was not the case where after winding up order has been passed, stay is sought to the order of winding-up in which case, the test formulated in ***Meghal Homes*** (supra) is required to be satisfied.

106. In the case of ***Wearwell Cycle Co. (I) Ltd.*** (supra), the Delhi High Court leaned in favor of revival of the company as against auction of assets and distribution of proceedings by the Official Liquidator to various parties. Even accepting the view of Delhi High Court, the revival proposal is required to meet the test of *bona fides*, commercial morality and public interest which is not met in the present case and the scheme in the present case is a ruse to reap the benefits of the development without sharing the same with the other stakeholders.

107. In the case of ***Government of Karnataka represented by KSIIDC*** (supra), the Karnataka High Court had held that revival of the company does not necessarily mean the revival and restoration of the usual manufacturing or business activity and includes the best utilization of its assets including the vacant land. The observation of the Karnataka

High Court is subject to the qualification that the adequate arrangements are made to free the assets from the charge of creditors and worker's liabilities which in turn requires the revival proposal to be *bona fide* which is not so as held in the present case. The decision of ***Shriniwas Girni Kamgar Kruti Samiti*** (supra) appears to be one of off-shoot litigation of ***Meghal Homes*** (supra).

108. In light of the above discussion, I am not inclined to allow the Interim Application. The Application stands dismissed.

[Sharmila U. Deshmukh]