

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

**INTERIM APPLICATION NO. 513 OF 2022  
IN  
COMPANY PETITION NO. 657 OF 2016**

**MOHINDER SINGH DUA AND ANOTHER )...APPLICANTS**

**IN THE MATTER BETWEEN**

**KISHINCHAND R. LUDHANI )...PETITIONER**

**V/s.**

**KAMLA LANDMARC CONSTRUCTION PVT. LTD. )...RESPONDENT**

**AND**

**INTERIM APPLICATION NO. 287 OF 2024  
IN  
COMPANY PETITION NO. 657 OF 2016**

**MOHINDER SINGH DUA AND ANOTHER )...APPLICANTS**

**IN THE MATTER BETWEEN**

**KISHINCHAND R. LUDHANI )...PETITIONER**

**V/s.**

**KAMLA LANDMARC CONSTRUCTION PVT. LTD. )...RESPONDENT**

Ms.Heena i/by Vimadalal & Co., Advocate for the Original Petitioner in CP/657/2016.

Mr.Mutahhar Khan, Advocate for the Official Liquidator in IA/287/2024.

Mr.S.C.Naidu and Mr.Pradeep Kumar i/by C.R.Naidu & Co., Advocate for the Applicants.

Mr.Ankit Lohia a/w. Mr.Anosh Sequeira, Mr.Mubeen S. i/by Ms.Neha M. Shah, Advocate for the Ex-Directors.

Mr.Chandan Kumar, Official Liquidator, present in Court.

**ARTI VILAS  
KHATATE**

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KHATATE  
Date: 2024.10.18  
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Mr.Jitendra Jain and Mr.Jinendra Jain – Ex-Directors – present in person in Court.

**CORAM** : **ABHAY AHUJA, J.**

**DATE** : **18<sup>th</sup> OCTOBER 2024**

**PC.** :

1. At the outset, it is pointed out that in the title of the order dated 8<sup>th</sup> October 2024, the name of the Respondent has been incorrectly mentioned as “Kamla Kabdnarc Construction Pvt. Ltd.” instead of “Kamla Landmarc Construction Pvt. Ltd.”. Let the error be corrected. Rest of the order remains as it is. Let the corrected order be uploaded as soon as possible.

2. Pursuant to order of this Court dated 8<sup>th</sup> October 2024, today when the matter is called out, Mr.Lohia, learned Counsel, appears for the ex-directors and submits that as per directions of this Court, both the ex-directors are present in Court. Mr.Lohia, however, submits that the sum of Rs.1,11,35,486/- as directed by this Court by order dated 2<sup>nd</sup> February 2024 cannot be deposited. Mr.Lohia as unsuccessfully tried to canvass before this Court that an amount of Rs.13,95,95,058/- which has been claimed on behalf of one of the ex-directors and the

claims are lodged with the Official Liquidator can be set off against the deposit of Rs.1,11,35,486/- and that therefore nothing is payable.

3. Mr.Naidu, learned Counsel for the Applicants, has drawn the attention of this Court to page 524 of the affidavit of one of the Applicants where in paragraph 12 in reference to the priority, it has been submitted that there are seven classes of creditors that would have to be paid and the unsecured creditors are ranked higher than the connected unsecured creditors. For the sake of convenience, the classes of creditors ranked as per Rules 147 to 171 of the Companies (Court) Rules, 1959, which provide a mechanism for proving of debts is quoted as under :

- “(i) Liquidator fees and expenses*
- (ii) Secured creditors with a fixed charge*
- (iii) Preferential creditors*
- (iv) Secured creditors with a floating charge*
- (v) Unsecured creditors*
- (vi) Connected unsecured creditors*
- (vii) Shareholders”*

*(emphasis supplied)*

4. It is not in dispute that the ex-directors would be connected unsecured creditors and would rank below the unsecured creditors such as the Applicants.

5. Mr.Lohia has relied upon a decision of the Hon'ble Supreme Court in the case of *Bharti Airtel Limited and Another vs. Vijaykumar V. Iyer and Others*<sup>1</sup> to submit that the ex-director ought to be permitted a set off in view of his claims being more than the amount directed to be deposited in this Court. I am afraid, I am unable to accept Mr.Lohia's submission, in as much as, in the very same decision in paragraph 40, it is clearly observed that the same classes of creditors should be given equal treatment. The connected unsecured creditors rank below the unsecured creditors and therefore do not belong to the same class and cannot be given equal treatment. Therefore, in my view, submission of Mr.Lohia that no amount is to be deposited in view of the claim for set off on behalf of his client is untenable in law and is rejected.

6. Having observed and recorded in orders of this Court that Rs.1,11,35,486/- as directed by this Court's order dated 2<sup>nd</sup> February 2024 to be deposited in this Court, has not been deposited and as has

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1 (2024) 4 Supreme Court Cases 668

been stated by Mr.Lohia today that the same cannot be complied with, this Court, left with no option, is constrained to issue notice in Form I under the Contempt of Courts Act, 1971, against the ex-directors for failing to comply with the orders of this Court.

7. Let the Registry issue a show cause notice under the Contempt of Courts Act, 1971 in Form I as provided in the High Court Rules, returnable on 5<sup>th</sup> December 2024 for the two ex-directors to show cause as to why action should not be taken under the Contempt of Courts Act, 1971 for breach and disobedience of the orders of this Court.

8. List the contempt matter as a *suo moto* contempt along with the Interim Applications listed today on board at serial nos.10 and 20 being Interim Application No.513 of 2022 and Interim Application No.287 of 2024 in Company Petition No.657 of 2016 on **5<sup>th</sup> December 2024**.

**(ABHAY AHUJA, J.)**