IN THE HIGH COURT AT CALCUTTA

Original Jurisdiction

ORIGINAL SIDE

IA NO. CA/6/2023

In CP/22/1989

IN THE MATTER OF KHEMKA PLASTIC UDYOG LTD. (IN LIQN.)

Vs

ASHOK KHEMKA ..APPLICANT -VS- THE O/L, HIGH COURT, CALCUTTA... RESPONDENT

And

IA NO. CA/7/2024

In CP/22/1989

IN THE MATTER OF KHEMKA PLASTIC UDYOG LTD. (IN LIQN.)

Vs

ASHOK KHEMKA -VS- OFFICIAL LIQUIDATOR

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date :28thFebruary, 2025.

APPEARANCE:
Mr. SoumabhoGhose, Adv.
Ms. Tiana Bhattacharyya, Adv.
Mr. Dilip Kumar Ghosh, Adv.
...for the petitioner
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Ms. Smita Das De, Adv.
Ms. TanushreeDasgupta, Adv.
...for the O/L.

Mr. D. Bhattacharjee, Adv.
Mr. Steven S. Biswas, Adv.
...for active securities.

The Court:-Learned Counsel appearing for the Official Liquidator contends that the establishment charges, legal expenses and other ancillary expenses to the tune of Rs. 1,28,263.49p. as well as the expenses to be paid to the security agency which was appointed by the Official Liquidator under the aegis of the Company Court are required to be paid off before the property is handed over to the contributory/applicant, if so decided by the Court.

Learned Counsel appearing for thecontributory/applicant in CA/6/2023 and CA/7/2024 submits that the charges of the security agency are contested and debatable,since the property, as per last inspection,was surrounded by shrubs and jungleand as such could not have been secured by any security agency. That apart, learned counsel relies on the affidavit in opposition used by the security agency to CA/7/2024 where it has been admitted that the guards appointed by the security agency did not have any access to the assets of the company due to the surrounding areas being shrouded by dense vegetation and portions being dug up.

It is, thus, contended that the projected security expenses are inflated and the applicant ought not to be directed to pay the same.

However, upon perusal of the affidavit-in-opposition of the security agency, I find that the security agency has given a plausible reason for the security guards not having direct access to the immediateprecincts of the company's assets. It transpires from the said affidavit that the assets were being kept a vigil on by the security agency from the opposite side of the road, since the security personnel could not directly access the premises. In fact, the proof of the security agents' vigilis also borne out by the fact that the assets of

the company are still apparently intact and have not been intruded upon by third parties.

Moreover, the Company Court cannot shirk its responsibility since the security agency was appointed under its aegis and direction by the Official Liquidator and as such the court cannot now wash off its hands insofar as their payments are concerned. Moreover, from the bills and chart handed over in Court today, it transpires that a transparent basis of such charges has been disclosed before the Court. Learned Counsel for the security agency submits that the chart indicates the security charges only upto the month of January this year, which comes to about Rs.11,98,187/-, to which the charges for the month of February, including GST,to the tune ofRs. 49,427/-, is required to be added, bringing the total dues of the security agency till the end of February, 2025 to Rs. 12,47,614/-.

Although a dispute has been raised by the applicant in respect of the said charges, in view of the reasons given above, I am of the opinion that the said security charges are actually due and ought to be met by the applicant before the assets of the company are handed over to the applicant in a bid to revive the company in terms of the scheme as disclosed in the applications.

Regarding the allegation that the bills were raised by the security agency at one go, sufficient explanation in that regard has also been given in the affidavit of the security agency inasmuch as if such bills were raised earlier before any payment being made, there would beincidence of liability to make recurring GST payments on the security agency without the agencyhaving received any amount in reality. Thus, being satisfied of the veracity of the claim

of the security agency, I am of the opinion that the asset may be handed over to the applicant in CA/7/2024 as well as CA/6/2023 subject to the applicant payingthe amount of Rs. 12, 47,614/-, along with the further expenses which will accrue in lieu of the security charges for the coming fortnight, to the security agency directly within a fortnight from date.

That apart, the applicant shall also pay an amount of Rs. 1,28,263.59 p. to the Official Liquidator in order to meet the establishment charges and legal expenses as indicated inthe report of the Official Liquidator which is before this Courtas well as Rs. 80,000/- payable to the valuer appointed by the Official Liquidator. Such payments shall be made accordingly to the Official Liquidator within a fortnight from the date by the applicant, upon which the Official Liquidator shall pay its appointed valuer the remuneration due to such valuer. Subject to such payment being made by the applicant within a fortnight, the Official Liquidatorshall formally hand over possession of the assets of the company as disclosed in the applications to the applicant, within forty-eight hours of such payment being made.

It is made clear that after a fortnight and simultaneously with the handing over of the possession to the applicant, the services of the security agency appointed by the Official Liquidator shall immediately stand discharged. Thereafter, it will be the liability of the applicant to look after the safety and security of the said asset.

The applicant is hereby restrained by an order of injunction from transferring, alienating, handing over the possession, encumberingand/or creating any interest in favour of any third party in respect of the assets of the

company-in-liquidation for a period of one year from date or until further order, whichever is earlier.

The payments made by the applicant in terms of the aforementioned directions shall be treated to be the security paid by the applicant for getting possession of the asset of the company.

Liberty is given to the Official Liquidator as well as the applicant to approach this Court in the event the applicant fails to give effect to the scheme and/or in the event of any further development, which may be germane in the matter. TheCompanyPetition shall remain stayed *sine die*.

In the event there is any hindrance in the smooth handing over of possession of the asset of the company by the Official Liquidatorto the applicant's duly authorized agent, it will be open to the Official Liquidatoras well asthe applicantto approach the Superintendent of Police, Hooghly as well as the concerned District Magistrate having territorial jurisdiction over the locality of the asset for granting adequate police assistance in that regard at the cost of the applicant.

The parties and all concerned shall act on a server copy of this order, without insisting uponprior production of a certified copy, for the purpose of compliance of the same.

Nothing in the above order of injunction shall prevent the applicant frommortgaging the assets of the company to any bank or financial institution for the sole purpose of raising capital to revive the company. However, the above rider is subject to the condition that in the event the applicant fails to repay the debts to the banks or financial institutions, such debt shall be

treated to be the personal liability of the applicant and shall be recoverable from the applicant.

CA/6/ 2023 and CA/7/2024 are disposed of accordingly.

(SABYASACHI BHATTACHARYYA, J.)

Arsad, AR(CR)