(2005) 08 GUJ CK 0004

In the Gujarat High Court

Case No : Company Application No. 66 of 2005 and in O.L. Reference No. 102 of 2003

Honest Industrial Sentinels APPELLANT

Vs

Official Liquidator of Anik Ship Breaking Industries Ltd. RESPONDENT

Date of Decision : 18-08-2005

Acts Referred:
Gujarat Maritime Board Act, 1981 — Section 47

Citation : (2006) 67 SCL 293

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Harshit S. Tolia, for the Appellant; V.D. Nanavati and P.R. Nanavati, for the Respondent

Judgement

K.A. Puj, J.—The applicant, namely, Honest Industrial Sentinels, has taken out this Judges Summons seeking direction to the Official Liquidator to make the payment of an amount of Rs. 2,18,858 to the applicant being the amount of outstanding bills for the security services provided by the applicant from 4.6.2002 to 28.3.2003 for the assets of the Company-in-Liquidation, namely, Anik Ship Breaking Industries Ltd.

2. An affidavit is filed by Shri Ashoksingh Rathour - Manager of the applicant firm, in support of Judges Summons. Mr. H.S. Tolia, learned advocate appearing for the applicant has submitted that the Official Liquidator vide his letter dated 24.5.2002 appointed the applicant as security agency for the purpose of safeguarding the assets and properties of the Company and for that purpose, the applicant was directed to remain present at the registered office of the Company-in-Liquidation, situated at Bhavnagar on 4.6.2002 for the purpose of taking over the charge of assets and properties of the Company. He has further submitted that the applicant has provided security services to the respondent with respect to the assets of the Company-in-liquidation. Such services were provided for the period between 4.6.2002 to 28.3.2003. Mr. Tolia, further submitted that as per

the terms and condition agreed upon by the applicant and the Official Liquidator, the applicant has raised the bills for total amount of Rs. 2,18,858 for the entire period between 4.6.2002 to 28.3.2003. He has further submitted that no amount has been paid by the Official Liquidator to the applicant, despite several letters and reminders were sent by the applicant. He has further submitted that the applicant has made regular payment of the salary to the security personnel and applicant has also made all kinds of statutory payments like P.F etc. He has, therefore, submitted that the applicant was constrained to file this application before this Court seeking appropriate directions to the Official Liquidator for the purpose of making payment to the applicant.

3. The Official Liquidator has not filed any report so far as the present application is concerned. Earlier he has filed his report being OLR No. 102/2003 on 29.11.2003, praying for certain directions in the said report. It is pertinent to note here that though the possession of the property of the Company-in-liquidation was taken over by him on 4.6.2002 the said report which is in the nature of compliance report was filed on 29.11.2003 i.e., after more than one year and five months. One of the prayer made in the said report is for issuance of direction to Gujarat Maritime Board, the applicant in Company Application No. 409/2002 to deposit a sum of Rs. 2,23,250 towards security charges which have been paid by the Official Liquidator for safeguarding assets of the Company from 4.6.2002 to 28.3.2003. It is rather surprising that the present applicant has prayed for the direction to the Official Liquidator to make the payment of security expenses whereas the Official Liquidator has made the prayer in OLR No. 102/2003 that Gujarat Maritime Board should be directed to deposit sum of Rs. 2,23,250 towards the security charges which have been paid by the Official Liquidator. Since one of the issues involved in the said OLR was in respect of payment of security charges, the said OLR was also tagged alongwith the present application.

4. An affidavit in reply was filed on behalf of Gujarat Maritime Board. Mr. P.R. Nanavati, learned advocate appearing on behalf of Gujarat Maritime Board, has submitted that the prayer made in the Judges Summons is not maintainable against the Gujarat Maritime Board, since there is no lease between the applicant and the Board and there is no privity of contract by and between the applicant and respondent. He has further submitted that the security services provided by the applicant has been deployed by the Official Liquidator for which the Board is not liable to pay any amount towards the security charges. He has further submitted that the property in question is not forming part of the assets of the Company and under regulation 5 of Gujarat Maritime Board (Conditions & Procedure For Granting Permission for Utilising Ship Breaking Plots) Regulations, 1994, it is only a permission to carry on ship breaking activities at the plot allotted. However, the possession of the plot remains with Gujarat Maritime Board and therefore, the plot in question was purely granted for a limited purpose of carrying on ship breaking activity and therefore, even the earlier action taken by the Official Liquidator appears to have been under a presumption

that the ship breaking plot No. V-3 allotted to the Company under liquidation was forming part of the assets of the Company was on a mistaken belief and therefore, this Court modified the order passed by it vide order dated 21.2.2003 by allowing Official Liquidator to take possession of the plot in question by affixing seal and the plot in question was handed over back to Gujarat Maritime Board.

5. Mr. Nanavati has further submitted that u/s 47 of the Gujarat Maritime Board Act, Gujarat Maritime Board had a lien over all movable and immovable properties belonging to the Company if any amount is due and payable by the Company to the Board. He has further submitted that even otherwise from the sale proceeds of the movable property of the Company, Gujarat Maritime Board has a better claim over the Official Liquidator Mr. Nanavati has further submitted that the plot in question is Plot No. V-3 at Alang Ship Breaking Yard is of the dimension of 120 ? 50 sq. mtrs., which is an open space of the sea shore of Alang, and therefore providing security over said plot to take care of the safety of the said plot one security guard is enough. He has further submitted that on the plot in question on one corner of the plot there is some scrap and other materials of the Company has been kept and no valuables are kept on the plot. There is one Kachha construction constructed by the Company as an office building having hardly any material available in the said premises and therefore, the claim made by the applicant by providing various security guards over the plot is absolutely and prima facie an exaggerated claim. He has further submitted that if one has to provide security to said open plot of the dimension of 120 ? 50 sq. mtrs., one security guard would be sufficient to safeguard the plot from the security point of view. He has, therefore, submitted that the prayer made in the Judges Summons against the Gujarat Maritime Board should be rejected.

6. An affidavit is filed on behalf of State Bank of India. Mrs. V.D. Nanavati, learned advocate appearing for State Bank of India has submitted that the Bank had sanctioned Demand Cash Credit facility of Rs. 4.50 crores to the Company-in-liquidation, vide its sanction letter dated 6.11.1995. For securing the said amount, the Bank had entered into an agreement of Hypothecation of goods and assets in Form C-2 for Rs. 4.50 crores. The agreement of the pledge of the goods and assets in Form No. C-3 was also executed. The Bank''s charge on the assets of the Company has been registered with the Registrar of Companies on 30.11.1995. She has further submitted that on default of payment the Bank instituted O.A. No. 78/1997 before the Debt Recovery Tribunal at Ahmedabad, and the recovery certificate dated 22.7.2002 was issued by the Tribunal by its order dated 22.7.2002. She has further submitted that pursuant to the order passed by this Court on 19.3.2002, the Official Liquidator has taken over the possession of the assets of the Company. Subsequently the premises in question was handed over to Gujarat Maritime Board pursuant to the order of this Court. She has further submitted that since the properties were in custody of the Official Liquidator and ultimately the Gujarat Maritime Board has taken over the possession, it would be in the interest of justice that the Gujarat Maritime Board

were to make payment of the bill of security personnel.

7. After having heard Mr. Tolia learned advocate appearing for the applicant, Official Liquidator, Mr. Premal R. Nanavati, the learned advocate appearing for the Gujarat Maritime Board and Mrs. V.D. Nanavati, learned advocate appearing for State Bank of India and after having gone through the respective pleadings contained in the application as well as in the affidavits, the Court is of the view that the claim made by the applicant in the present application does not seem to be real and genuine. The Official Liquidator has not taken any sanction or approval of this Court before deployment of the security. Even after deployment of the security on 4.6.2002 the Official Liquidator has not thought it fit to file the compliance report till 29.11.2003. On the date when the report was filed by the Official Liquidator, the security was already removed as the possession was handed over back to the Gujarat Maritime Board on 28.3.2003 pursuant to the order passed by this Court. The Official Liquidator has not tendered any explanation for late filing of the report. He has not given any description of the property nor any measurement of the area in respect of which the security was deployed. The Official Liquidator was aware about the valuer''s report which was obtained on 10.6.2002. The report says that Office building is consisted of ground floor area admeasuring 258 sq. mtrs., first floor area admeasuring 112 sq. mtrs., and miscellaneous room admeasuring 160 sq. mtrs. The report further states that no value was assigned to land because it was on lease from Gujarat Maritime Board for 10 years. Six years have passed and four years were remaining. The liability towards them is approximately Rs. 3 crores as per information given by valuer. Despite this observation made by the valuer in his report dated 10.6.2002 the Official Liquidator in his report filed on 6.11.2003 has observed that after taking possession of the plot in question, the representative of Official Liquidator had asked the security agency to deploy 15 security guards (5 in each shift), 3 Security Supervisors (1 in each shift) and 1 Security Officer. Monthly security bills for the aforesaid deployment of the security has come to Rs. 22,325 and from 4.6.2002 to 28.3.2003, the security bill comes to Rs. 2,23,250.

8. Looking to the area of the plot there is no justification of deployment of 15 Security Guards, 3 Security Supervisors and 1 Security Officer. The Official Liquidator has not placed any details at any point of time of these Security Guards before the Court. On the contrary, when the details were called for by the Court, the security agency has placed the said details before the Official Liquidator on 25.7.2005 and the same were also placed on the record of this Court. While looking at the details, it immediately appears to the Court that the said details are not regularly maintained and are prepared overnight only with a view to produce before the Court. An affidavit of Gujarat Maritime Board is very clear. The claim is, therefore, absolutely unjust, excessive and totally exaggerated. The Official Liquidator has failed in his duty to take any follow up action, as to whether the security guards have in fact, been deployed and when the issue arose before the Court, no proper justification has been given either by

the security agency or by the Official Liquidator. The Court has found this practice in respect of most of the companies-in-liquidation. At the time of obtaining the order from the Court for deployment of security guards, it was never pointed out as to how much is the area of the property which is sought to be protected. No justification is ever shown as to why a particular number of security guard is required. The details are also not produced before the Court. In the present case even the sanction is also not obtained till the property is handed over back to the Gujarat Maritime Board. No report to this effect was filed before the Court. But for some tacit understanding between the security agency and the Official Liquidator office to share security charges or some consideration flowing from security agency to the Official Liquidator Office, the alleged deployment of security in this manner could not have been taken place.

9. Considering all the aforesaid facts and circumstances, the Court is not inclined to grant the prayer made in the present application in its entirety and the claim is restricted to only one-fifth. For protection of the property in question one security guard was considered to be enough in each shift. The claim of deployment of Security Supervisor as well as Security Officer is totally rejected. The Official Liquidator is, therefore, directed to make payment of one-fifth of amount which is claimed for Security Guards for alleged protection of the property in question.

10. Subject to the aforesaid directions and observations, this application is accordingly, disposed of.

11. A copy of this order should be placed in OLR No. 102/2003, as one of the prayer made in the said OLR is also pertaining to payment of security charges to security agency.

