

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9277 OF 2015

M/s Asian Electronics Ltd.,
and another

PETITIONERS

VERSUS

Rajendraprasad Jagannath Modani

RESPONDENT

Mr.Rohit P.Kharhadkar h/f Mr.R.B.Narvade Patil, Advocate for the
petitioners.

Mr.A.P.Bhandari, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 16/09/2015

PER COURT :

1. The petitioner is aggrieved by the order dated 29/08/2015 passed by the Trial Court below Appl.Exh.13 in Spl.Civil Suit No.337/2014.

2. The petitioner submits that a Company Petition No.492/2011 has been preferred by SBI Global Factors Ltd., in which the petitioners are the respondents, praying for an order of winding up. By an order dated 13/11/2014, passed by the Company Law Bench, the Company Petition was disposed of by appointing an Official Liquidator. It is pointed out that the said order was passed when the petitioner Company herein failed to pay the amount as agreed to SBI

Global Factors and since the Court was convinced that the present petitioners are unable to pay its debts, it directed the winding up of the petitioner.

3. Learned Advocate for the petitioners submits that Appeal (L) No.854/2014 was preferred by this petitioners and a Notice of Motion (L) No.184/2015 was moved before the Appeal Bench. By order dated 31/03/2015, the order of the learned Company Judge dated 13/11/2014 directing winding up of the petitioner/Company has been stayed by way of an interim order and the said stay is directed to be continued till further orders.

4. The petitioners point out that the respondent herein has moved Spl.Civil Suit No.337/2014 for seeking recovery of money. Amount sought to be recovered is said to be about Rs.23,00,000/-.

5. The petitioners have moved application Exh.13 before the Trial Court seeking a stay to the suit in the light of Section 446 of The Companies Act, 1956. Contention is that the effect and operation of the winding up order will lead to the staying of the suits in the light of the applicability of Section 446.

6. It is further submitted that the Trial Court has lost sight of these proceedings as well as the provisions of Law and has rejected the application Exh.13.

7. The petitioners, therefore, submit that as the appeal preferred by the petitioners challenging the winding up order is pending and since the order of winding up dated 13/11/2014 has been stayed, Section 446 would still continue to have the force as in the case of a pending winding up proceeding or an order of winding up having been passed. It is, therefore, prayed that the impugned order deserves to be quashed and set aside.

8. Mr.Bhandari, learned Advocate appearing on behalf of the respondent submits that had the order of the Company Judge been in operation or had the situation as is prescribed under Section 446 had been in existence, the contention of the petitioners would have been accepted.

9. He points out that the winding up order dated 13/11/2014 has been challenged by the petitioners opposing the winding up of the Company on the hope of a financial revival of the Company. Consequent to the order dated 31/03/2015 delivered by the Appeal

Bench, the impugned order dated 13/11/2014 stands stayed and as such, even if the Liquidator may be said to have been appointed in the interregnum, he would not be able to function as the winding up of the Company has been stayed.

10. He, therefore, submits that the Trial Court has rightly concluded that the petitioner/original defendant itself is opposing winding up, has been granted interim relief by the Appeal Bench and yet desires to draw advantage of the order dated 13/11/2014, as if the said order is operating.

11. I have considered the submissions of the learned Advocates as have been recorded hereinabove.

12. It is not in dispute that the winding up order has been stayed by the Appeal Bench. The said order cannot be enforced until further orders from the Appeal Bench. The Liquidator, if already appointed, would also be precluded from discharging his functions in the light of the staying of the winding up order. I, therefore, find that the Trial Court has rightly considered that on the one hand the petitioner is in appeal before the Appeal Bench, winding up order is stayed and on the other hand desires to draw advantage on the basis of the said

winding up order u/s 446 of the Companies Act.

13. It cannot be overlooked that the Trial Court has observed that in the event the stay to the winding up order is vacated and the winding up order is effected, the petitioner/defendant can make a claim for staying or transferring the suit in the light of Section 446. I, therefore, find that the Trial Court has granted liberty to the petitioners to move the Court for staying the suit in the eventuality set out in paragraph No.16 of the impugned order.

14. As such, I do not find that the impugned order could be termed as being perverse or erroneous. Merely because a second view could be possible, would not mean that the impugned order is rendered unsustainable.

15. As such, this petition is without merit and is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)