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

APPEAL (L) NO.119 OF 2015
IN
COMPANY PETITION NO.432 OF 2014
WITH
NOTICE OF MOTION (L) NO.293 OF 2015
IN
APPEAL (L) NO.119 OF 2015

Sea Link Marine Equipments Pvt.Ltd. Appellant
versus
Kotak Mahindra Bank Limited Respondent

Ms.Shilpa Kapil for Appellant.
Mr.S.N.Fadia for Respondent bank.
Mr.L.T.Satelkar for Official Liquidator.

CORAM : MOHIT S. SHAH, C.J. AND
B.P.COLABAWALLA, J.

DATE : 17 February 2015

PC :

This appeal is directed against the order dated 8 January 2015 of the learned Company Judge ordering winding-up of the Appellant Sea Link Marine Equipments Private Limited on the ground that the Appellant is unable to pay the debt to the respondent bank (Petitioning Creditor).

2. The learned Company Judge initially passed an order on 4 December 2014 admitting the company petition with

a direction to the respondent herein to advertise the petition and consequential directions. By the impugned order dated 8 January 2015, the learned Company Judge passed a final order of winding-up and allowed the company petition in terms of prayer clauses (a) and (b) of the company petition.

3. The learned Company Judge has rendered the impugned order dated 8 January 2015 on the ground that the respondent bank herein had issued statutory notice dated 29 October 2013 to the Appellant calling upon the Appellant to pay a sum of Rs.2.38 crores as on 28 October 2013 together with interest and other charges at the contractual rates within a period of three weeks. In the impugned order, the learned Company Judge has recorded that in spite of service of the statutory notice, the Appellant failed to respond to the said notice and failed to make any payment as called upon, and therefore, the respondent bank filed the company petition for winding-up the Appellant. Upon publication of the admission of the petition in newspapers and upon issuance of notice under Rule 28 of Companies (Court) Rules, 1959 also, the Appellant neither filed his affidavit nor has paid the debts.

4. The advocate for the Appellant has submitted that the respondent bank has suppressed several material facts about payments made by the Appellant to the respondent bank after receipt of statutory notice. It is stated that the Appellant paid

amounts to the tune of Rs.96,26,502/- (Rs.71,27,593/- towards principal and Rs.25,00,909/- towards interest) after issuance of statutory notice. It is stated that since the last two payments of Rs.70.00 lakh and Rs.10.00 lakh were made on 25 August 2014 and 29 September 2014 respectively and since the respondent bank has accepted the said amounts, the respondent bank should not have filed the company petition for winding-up. It is further submitted that the Appellant was assured by the officers of the respondent bank that in view of the said payments, the bank will not pursue the winding-up petition before the Company Court and, therefore, the Appellant in good faith relied on the said assurances and did not engage an Advocate for filing any reply to the company petition.

5. It is submitted that an amount of Rs.88.00 lakhs is due and payable as of today but the learned Company Judge proceeded on the basis that the Appellant still owes the bank Rs.2.38 crores. It is, therefore, submitted that on this ground alone, the impugned order is required to be set aside.

6. On the other hand, the learned counsel for the respondent bank does not dispute the fact that the Appellant did pay Rs.70.00 lakh on 25 August 2014 and Rs.10.00 lakh on 29 September 2014 and even according to the respondent bank, the amount payable as on 15 February 2015 is Rs.96,41,331/- and not Rs.2.38 crores. The learned counsel for the respondent

bank, however, disputes the statement made on behalf of the Appellant that any assurance was given by the officers of the respondent bank not to pursue the company petition.

7. It, therefore, appears to us that the difference between the parties about amount due and payable by the Appellant to the respondent bank is only Rs.8 lakhs (difference between Rs.96.41 lakh and odd as per bank's claim and Rs.88.00 lakh and odd amount as per Appellant's contention). Be that as it may, the learned counsel for the Appellant states that the Appellant is ready and willing to pay the said amount of Rs.96,41,331/- in twelve equal monthly installments of Rs.8.53 lakhs together with interest @ 12% per annum on the reducing balance. Learned counsel states that the Appellant will begin to make the payment from 15 April 2015.

8. Learned counsel for the respondent bank submits that the amount should be paid at the earliest.

9. Having heard the learned counsel for the parties, we are of the view that since the impugned order was passed on the basis that the Appellant did not make any payments after the date of receipt of statutory notice by the Appellant and that the amount payable was Rs.2.38 crores, which is factually incorrect, the interests of justice would be served if this appeal is disposed of in terms of the following directions :

(i) The Appellant shall pay the respondent bank a sum of Rs.96,41,331/- (Rs. Ninety six lakh forty one thousand three hundred and thirty one only) together with interest @ 12% p.a. on the reducing balance in twelve monthly installments of Rs.8.53 lakh. The first installment shall be paid on 15 April 2015 and the subsequent installments should be paid on 15th day of each succeeding month. The Appellant shall work out a detailed schedule indicating the amounts which will be paid on 15th day of each month commencing from 15 April 2015. Such schedule shall be placed on record of these proceedings by 23 February 2015;

(ii) Upon the Appellant paying the aforesaid amounts to the respondent bank within the above time limit, this appeal shall stand allowed and the impugned order dated 8 January 2015 as well as order dated 4 December 2014 of learned Company Judge admitting winding-up petition, shall stand set aside and Company Petition No.432 of 2014 shall stand dismissed and the Official Liquidator shall stand discharged;

(iii) In case of default in payment of any two installments or the last installment, the impugned orders dated 8 January 2015 and 4 December 2014 shall stand revived without any further reference to this Court and the appeal shall stand dismissed;

(iv) Till the last installment is paid as above, the operation, implementation and execution of the impugned orders dated 4 December 2014 and 8 January 2015 shall stand stayed.

10. The appeal accordingly stands disposed of. No order as to costs.

(CHIEF JUSTICE)

(B.P.COLABAWALLA, J.)

MST