IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 110 OF 2015
IN
COMPANY PETITION NO. 431 OF 2014

Sea Eagle Dredging Marine Infrastructure Pvt. Ltd. .. Appellant
Vs.
Kotak Mahindra Bank Limited .. Respondent

Ms. Shilpa Kapil for the appellant.
Mr. S.N. Fadia for respondent no.1.
Mr. L.T. Satelkar for the Official Liquidator.

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

DATE : 6 FEBRUARY 2015

P.C.:

This appeal is directed against the order dated 8 January 2015 of the learned Company Judge winding up the appellant – Sea Eagle Dredging Marine Infrastructure Pvt. Ltd. on the ground of inability of the appellant company to pay an amount of Rs.41,69,122.75, which was the amount mentioned due and payable by the appellant company to the petitioning creditor bank in the order dated 28 November 2014 while admitting the winding up petition.

2. Learned counsel for the appellant states that the respondent bank did not bring it to the notice of the Company Judge that during the period between the date of statutory notice i.e. 29 October 2013 and the date of the impugned order i.e. 8 January 2015, the appellant had paid the sum of Rs.25,20,050/-. It is submitted that this was relevant and material fact which was required to be brought to the notice of the Company Judge.

Without prejudice to the above submission, it is also submitted that in any view of the matter, the balance amount now due and payable by the appellant to the respondent bank is only Rs.12,65,422/- rounded off to Rs.12,66,000/-.

Learned counsel for the respondent bank is not in a position to dispute the above factual aspect about the balance amount which is due and payable by the appellant company to the respondent bank.

3. Learned counsel for the appellant on instructions of Mr. Balraj Singh Bajwa, Managing Director of the appellant company, who is present in the Court, states and undertakes that the appellant shall pay the aforesaid amount of Rs.12,66,000/- in six equal monthly instalments of Rs.2,11,000/- each. The first instalment shall be paid on or before 25 March 2015 and the subsequent

instalment will be paid on the 25th day of each succeeding month. The undertaking is accepted.

4. Learned counsel for the respondent bank (petitioning creditor) states that the respondent bank is agreeable to accept the above arrangement in full and final settlement of the dues of the appellant company to the respondent bank, but default clause may be provided.

5. Having heard the learned counsel for the parties, we are of the view that looking to the payments made by the appellant company to the respondent bank after service of statutory notice and during the pendency of the winding up petition and in view of the aforesaid undertaking to pay the balance amount of Rs.12,66,000/- in six equal monthly instalments, the impugned order dated 8 January 2015 is required to be set aside and is accordingly set aside with a rider that in case of default on the part of the appellant company in paying any two instalments or the last instalment, this appeal shall stand dismissed and the order of the learned Single Judge shall stand revived. Upon payment of the full amount of Rs.12,66,000/- in accordance with the above order, the impugned order shall stand set aside and the Official Liquidator shall stand discharged. Till payment of the last instalment, the Official Liquidator shall continue to hold symbolic possession of the properties of the appellant company, but the appellant company shall

continue to retain the physical possession of the properties and to run its business in the normal course.

6. The appeal is disposed of in the aforesaid terms.

CHIEF JUSTICE

(B.P. COLABAWALLA, J.)