

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****COMPANY PETITION NO. 122 OF 2011**

M/s. Satyaman Impex Private Limited ... Petitioner

Versus

M/s. Trinity Auto Components Limited ... Respondent

Mr.Bharat Vaishnawa for the Petitioner.

Mr.Girish Kedia for the Respondent.

CORAM : S.J. KATHAWALLA, J.

DATE : 16TH APRIL, 2015

PC.:

1. By the above Company Petition, the Petitioner seeks winding up of M/s. Trinity Auto Components Limited (the Company) on the ground that the Company is unable to pay its debt to the Petitioner. The Company Petition is taken up for hearing and final disposal.

2. In the said Company Petition, the AAIFR, New Delhi has passed the following order dated 14th January, 2015, which is reproduced hereunder :

“ We have heard Mr.C.S.Gupta learned Counsel appearing for the Appellant and Ms.Purti Marwaha Gupta learned Counsel appearing for the Respondent sick Company. The only grievance of the Appellant in this Appeal is that its dues

relating to the interest has not been reflected in the DRS. The DRS simply mentions payment of 15% of the principal amount to the Appellant being in the category of unsecured creditors.

Since para 2.3 of the impugned order clearly provides for an option to the unsecured creditors not to accept any sacrifice if they so choose and in that eventuality they have to wait till the revival of the sick Company to get their dues recovered in accordance with law. In view of this clear provision, we do not find any reason as to why the DRS or for that matter the sanctioned scheme should mention as to what is the outstanding dues between the parties and more, so if the same is disputed. The Appellant's prayer is that it does not want to avail benefit provided under the DRS and would like to wait till the revival of the sick Company for recovery of its dues in full in accordance with law. In such an eventuality, since certain part of the dues between the parties are disputed, the Appellant wants permission under section 22(1) of SICA to get its crystallized by approaching an appropriate forum. We feel that the acceptance of this prayer would not cause any prejudice to the Respondent sick

Company. Accordingly, we permit the Appellant to approach appropriate forum to get its dues against the sick Company crystallized. However, the Appellant Company will not recover these dues even after it get an appropriate decree in its favour till the sick Company is revived.

The Appeal is disposed of in terms of above order.

There will be no order as to costs”.

2. From the aforestated order, it is clear that the Petitioner has informed the AAIFR that the Petitioner will wait till the revival of the sick Company for recovery of its dues in full in accordance with law. It is also recorded that since the part of the claim of the Petitioner is disputed, the Petitioner sought permission from AAIFR to approach the appropriate forum to get its dues against the Company crystallized, which leave is granted with a clarification that the Appellant Company will not recover its dues even after obtaining a decree in its favour till the Company is revived.

3. It is also clear from the aforestated order passed by the AAIFR that the Petitioner has sought leave to file a Suit so that the disputed claim of the Petitioner can be adjudicated / crystallized. It is for this reason that the AAIFR has clarified that the Petitioner will not recover dues even after obtaining a decree in its favour till the Company is revived. The claim of

the Petitioner which is admittedly disputed cannot be adjudicated and crystallized in a Petition seeking winding up of the Company. The Company Petition is therefore dismissed.

(S.J.KATHAWALLA, J.)