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

COMPANY APPLICATION NO.857 OF 2015
IN
COMPANY PETITION NO. 196 OF 2014
WITH
COMPANY PETITION NO.188 OF 2015
WITH
OLR NO. 207 OF 2015

M/s Maharashtra Power Transmission Structures Pvt. Ltd. ...Applicant

In the matter between

M/s Shree Sai Industries Pvt. Ltd. ...Petitioner

vs

M/s Maharashtra Power Transmission Structures Pvt. Ltd. ...Respondent.

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Ms Shalaka Mali i/b Ashok Purohit & Co. for the Applicant in CA No.857 of 2015 & the Respondent in CP No.188 of 2015
Mr Girish Kedia for the Petitioner in CP No.196 of 2014
Ms Pooja Joshi i/b Siddharth Murarka for the Petitioner in CP No.188 of 2015.

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CORAM : S.C. GUPTE, J.

AUGUST 20, 2015

P.C. :

The Company Application seeks stay of a winding up order. By an order dated 13 December 2014, the consent terms executed between the original Petitioner and the Respondent company (the Applicant herein) were taken on record. The consent terms provided for payment of a sum of about Rs.2.88 crores by the Respondent company to the Petitioner in installments provided for therein. There were defaults in payment of the installments. On the application of the Respondent company, by an order dated 29 June 2015, the payment schedule provided for in the consent terms of 13 December 2014 was altered. Insofar as the installments payable on or before 7 May 2015 and 7 June 2015 are concerned, this Court, by its order dated 29 June 2015, directed the Respondent company to pay a sum of Rs.10 lacs on or before 3 July 2015 and a sum of Rs.30 lacs on or before 10 July 2015 and stay the winding up order till 13 July 2015, subject to such payments. After this order, whilst the installment of Rs.10 lacs payable on or before 3 July 2015 was duly paid by the Respondent company, there was a default in payment of the installment of Rs.30 lacs on or before 10 July 2015. Out of the amount of Rs.30 lacs, a sum of Rs.10 lacs alone was paid by the Respondent company to the Petitioner. The payments made so far leave a balance of over Rs.2.10 crores, still outstanding and payable by the Respondent to the Petitioner, in terms of the original consent terms dated 13 December 2014, read with the amended schedule provided in the order dated 29 June 2015. The Petitioning Creditor refuses to accept any further reschedulment of the installments. Having regard to these two orders dated 13 December 2014 and 29 June 2015 and persistent defaults committed by the Respondent company, it is not permissible to grant any further reschedulement of the installments agreed upon between the parties. Besides from what is disclosed in an affidavit filed by the Respondent company in response to the last order passed by this Court on 29 June 2015, it transpires that there is an inadequate disclosure concerning two valuable movable assets of the Respondent company, namely, a Jaguar car and a BMW 5300 car. The Jaguar car is said to be in possession of one of the creditors of the Respondent company, who is nothing but a related party, namely, a company belonging to the brother of the Managing Director of the Respondent company. In the premises, the Company Application has no merits and the same deserves to be dismissed.

2 There is a connected Official Liquidator's report (OLR No.207 of 2015). In this OLR, the Official Liquidator has sought permission to appoint a security agency on the panel of the Official Liquidator to safeguard the assets of the company in liquidation. M/s Bank of India, who is the secured creditor of the Respondent company, has already taken symbolic possession of the factory premises of the company in enforcement of its rights under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act".) M/s Bank of India shall keep the Official Liquidator informed from time to time about various steps taken in pursuance of the

SARFAESI Act in respect of the factory premises of the company in liquidation. Bank of India offers to appoint its own security agency to safeguard the factory premises. As far as the registered office of the company in liquidation is concerned, the Official Liquidator has already taken symbolic possession of the registered office. The Official Liquidator will now have to proceed to take physical possession of the registered office. As regards the vehicles, namely, the Jaguar and BMW cars referred to above, the ex-directors of the company are directed to handover the possession of the Jaguar car to the Official Liquidator, after seeking repossession of the same from M/s Eagle Pvt. Ltd. The ex-directors are also directed to handover documents showing proof of possession of the BMW car with M/s BMW Financial Services as mentioned in an affidavit of the Respondent dated 6 July 2015. The Official Liquidator shall write to M/s BMW Financial Services and independently confirm the position.

3 Accordingly, the following order is passed:

(i) Company Application No.857 pf 2015 for stay of the winding up order is dismissed;

(ii) The Official Liquidator shall proceed to take physical possession of the registered office of the company in liquidation and make a report in that behalf to this Court;

(iii) M/s Bank of India shall appoint a security agency to safeguard the factory premises of the company in liquidation. M/s Bank of India shall provide access to the Official Liquidator from time to time to the Admin and Quality Control offices situated within the factory premises for the purpose of general administration of the assets of the company in liquidation;

(iv) Ex-directors of the company in liquidation are directed to forthwith and in any event not later than within two weeks handover possession of the Jaguar car owned by the company in liquidation after repossessing the same from M/s Eagle Sales Pvt. Ltd.;

(v) In the event, the ex-directors refuse to handover possession of the vehicle to the Official Liquidator within a period of two weeks from today, the Official Liquidator shall take over possession of the vehicle with the help of police, if necessary;

(vi) The ex-directors of the company in liquidation are also directed to submit a proof of possession of the BMW car with M/s BMW Financial Services as mentioned in the ex-directors' affidavit dated 6 July 2015, to the Official Liquidator. The Official Liquidator shall also make independent inquiries from BMW Financial Services about the status of the vehicle;

(vii) The Company Application and the Official Liquidator's report are disposed of, accordingly.

(S.C.GUPTE J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/ Order.