

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION
COMPANY APPLICATION LOD.NO.742 OF 2015
N
COMPANY PETITION NO.175 OF 2015

Topworth Pipes and Tubes Pvt. Ltd. .. Applicants
Versus
MSTC Limited .. Respondents

Ms. Alpana Ghone i/b. S. Vishwakarma for applicants
Dr. Birendra Saraf i/b. Mr.Rohit Gupta with Ms.Sushmita Gandhi and
Anaisha Zachariah i/b. PKA Advocates for respondents/ original
petitioners.

CORAM : S.C.GUPTE, J.

DATE : 27th October 2015

P.C.

1] This application seeks re-schedulement of instalments which have been recorded in the order passed by this Court on 16th April 2015. By this order, the respondent company's admission to pay a total sum of Rs.13,77,21,297/- as principal amount plus Rs.2,90,86,079/- as interest was recorded. The order further recorded an agreement and undertaking on the part of the respondents to pay this amount in ten instalments as mentioned therein. The respondent has paid first five instalments, aggregating to a sum of Rs.5 Crores. The sixth instalment, which was in a sum

of Rs.8,77,21,297 which was due and payable on or before 30th September 2015, has not been paid by the respondents. The respondents have now applied for re-schedulement of the last five instalments, citing financial difficulties as a result of circumstances beyond its control. The particular circumstances have been inter alia set out in para 2.25 of the affidavit in support of the application. The applicants (original respondents) also offer to pay interest on the principal amount from the respective original dates of payment.

2] Learned Counsel for the petitioner opposes the application. He submits that the schedule provided for in the order of 16th April 2015 was on the basis of consent of parties and the schedule cannot be altered except by consent of the parties. The court exercises its jurisdiction to wind up a company on the ground of company's inability to pay. A temporary financial crunch faced by the company cannot always be termed as its inability to pay. Considering the fact that a substantial payment from out of the petitioners' dues has already been made by the respondents/ applicants and also considering the fact that the re-schedulement asked for by the respondents/ applicants merely extends the period

of total discharge of the petitioner's liability by six months, for which the applicants are ready and willing to pay interest, I am of the view that the request of the applicants for reschedulement of the instalments should be accepted.

3] Accordingly, the applicants are permitted to pay the balance instalments as follows:-

(i) Rs.2 Crores on or before 15th November 2015;

(ii) Rs. 1 Crore each on or before 15th of each following month till 15th July 2016 and the balance amount on or before 15th August 2016.

4] Along with each of the instalments referred to above, the respondent/ applicants shall pay interest calculated at the rate of 12% p.a. on the sum of Rs.8,77,21,297/- on reducing balance basis for a period between 1st October 2015 till the respective dates of actual payments.

5] It is clarified that this reschedulement is a one time measure

and ordered in the peculiar facts and circumstances of the case and the respondents/ applicants shall not be entitled to any extension of time for payment in future. Rest of the clauses of the order dated 16th April 215 shall remain in full force and effect. Application is disposed of accordingly.

(S.C.GUPTE, J.)