The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Company Application Nos.110, 111, 112 and 364 of 2015
in/& Company Petition No.52 of 2013

Dated 25.03.2015

Comp.A.Nos.110, 111 & 112 of 2015

Between:

M/s.Multiwal Pulp & Board Mills Pvt. Ltd.,
rep. by its authorized signatory Sri M.Monsheen
...Applicant
and

1.Coastal Energy Pvt. Ltd.,
rep. by its Manager Credit & Risks
and Authorised Signatory
Sri H.Natarajan and 2 others
...Respondents
Counsel for the Applicant: Mr.V.Hariharan
Counsel for respondent No.1: J.Sivanesan
Counsel for respondent Nos.2 & 3: ---

Comp.A.No.364 of 2015

Between:

Multiwal Pulp and Board Mills Private Limited
rep. by its Authorised signatory
...Applicant
and

1.BVR.Paper Industries (India) Pvt. Ltd.,
rep. by its official liquidator and 2 others
...Respondents
Counsel for the Applicant: Mr.V.Hariharan
Counsel for the respondents: ---

Company Petition No.52 of 2013

Between:

Coastal Energy Private Limited
rep. by its Manager- Credit and Risk
& authorised signatory H.Natarajan
...Petitioner
and

BVR Paper Industries (India) Private Limited
Hyderabad.

...Respondent

Counsel for the petitioner: Mr.J.Sivanesan
Counsel for the respondent:---

The Court made the following:

<u>Common Order:</u>

Company Application No.111 of 2015 is filed for recalling winding up order, dated 02-07-2014, in Company Petition No.52 of 2013, passed by this Court in respect of non-applicant No.2- M/s.BVR Paper Industries (India) Private Limited.

Company Application No.110 of 2015 is filed for keeping in abeyance the aforesaid winding up order.

Company Application No.112 of 2015 is filed for stay of all further proceedings in pursuance of the aforesaid winding up order.

Company Application No.364 of 2015 is filed to recall and modify order, dated 20-01-2015, in Company Application (Sr) No.8625 of 2014 in Company Petition No.52 of 2013, permitting the applicant to give third party security for the claim in Company Petition No.22 of 2014.

The brief facts leading to the filing of these applications are that M/s.Coastal Energy Private

Limited (hereinafter referred to as ‘the petitioner’) has filed Company Petition No.52 of 2013 against M/s.BVR Paper Industries (India) Private Limited (hereinafter referred to as ‘the principal debtor’) for winding up of the latter for non-payment of the debt due to it. Despite service of notice, the principal debtor has not entered appearance. The Company Petition was admitted on 23-09-2013. However, the publication of advertisement was directed to be kept in abeyance for a period of four weeks, while directing service of notice on the principal debtor. As the principal debtor failed to enter appearance, this Court directed publication of notice of admission of the Company Petition, by order, dated 04-12-2013. Despite publication of advertisement, the principal debtor has not participated in the proceedings. This Court has, therefore, set the principal debtor *ex parte* and forfeited its right to cross-examine PW.1 *vide* order, dated 07-04-2014. Thereafter, by Order, dated 02-07-2014, this Court has directed winding up of the principal debtor and appointed the Official Liquidator of this Court as the liquidator of the said Company. The petitioner has carried out publication of the winding up order.

At this stage, the applicant *viz.*, M/s.Multiwal Pulp & Board Mills Private Limited has filed the above applications.

It is *inter alia* stated in the affidavits, filed in support of these applications, that it has entered into a Memorandum of Understanding, dated 04-04-2011, with the principal debtor whereunder it has agreed to meet the financial commitments of the principal debtor; that the management of the principal debtor was transferred to itself in due course of time; that during the period from 31-01-2012 to 08-05-2012, the applicant had paid in all a sum of Rs.36,22,17,591/- to the Punjab National Bank and the Union Bank of India and obtained No Due Certificates; that the Bankers released the documents to the applicant with the consent of the Principal debtor; that in pursuance of the Memorandum of Understanding, dated 04-04-2011, with a view to revive and rehabilitate the principal debtor- Company, the applicant took over the factory and brought it to functional stage; and that over a period of time, the applicant has discharged further liabilities of the principal debtor and ensured that the principal debtor will remain liability free. The applicant has, however, stated that the management of the principal debtor has backed out from its commitment towards the applicant; that a separate legal proceeding is pending in this regard; that on coming to know that the petitioner has filed the present Company Petition and that this Court has ordered winding up of the principal debtor, the applicant has filed these applications.

In paragraph 14 of the affidavit, filed in support of Company Application No.111 of 2015, it is stated that the applicant is willing to deposit the principal amount claimed by the petitioner.

At the hearing, Mr.V.Hari Haran, learned Counsel for the applicant, and Mr.J.Sivanesan, learned Counsel for the petitioner, submitted that after these applications were filed, an understanding has been reached between the applicant and the petitioner as per which the applicant has agreed to pay a sum of Rs.15,82,350/- and that the applicant has, accordingly, deposited the said amount with the Registrar (Judicial) of this Court.

Learned Counsel for the petitioner submitted that his client has no objection for setting aside the winding up order as the claim of his client is fully satisfied by the applicant.

During the pendency of these applications, this Court, *vide* Order, dated 31-12-2014, in Comp.A.(Sr) No.8625 of 2014 has granted stay of all further proceedings in pursuance of the winding up order.

In the above facts and circumstances of the case, the aforesaid interim stay is vacated and order, dated 02-07-2014, in Company Petition No.52 of 2013, is recalled. Consequently, the Official Liquidator appointed in the said order is discharged. The Official Liquidator is permitted to remove the lock, stated to have been put to the factory of the principal debtor, immediately to enable the applicant to run the factory.

Company Application No.111 of 2015 is, accordingly, allowed.

As a sequel to allowing of the above-mentioned Company Application, Company Application Nos.110, 112 and 364 of 2015 are disposed of as infructuous.

The Registrar (Judicial) is directed to pay the money deposited by the applicant *vide* Demand Draft No.201392, dated 03-01-2015, for Rs.15,82,350/- to the petitioner in Company Petition No.52 of 2013.

Company Petition No.52 of 2013 is, accordingly, dismissed as settled out of the Court.

(C.V.Nagarjuna Reddy, J)

Dt: 25th March, 2015
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