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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO. 177 OF 2016

IN

COMPANY PETITION NO. 256 OF 2013

Mr. Pravin S. Lunkad ...Applicant
In the matter between
M/s. Shakti International Pvt. Ltd. ...Petitioner
Versus
M/s. Pranav Agro Industries Limited ...Respondent

WITH

COMPANY APPLICATION (L) NO. 178 OF 2016

IN

COMPANY PETITION NO. 377 OF 2013

Mr. Pravin S. Lunkad ...Applicant
In the matter between
M/s. Macworld Industries Pvt. Ltd. ...Petitioner
Versus
M/s. Pranav Agro Industries Limited ...Respondent

Mr. Sitesh Sharma, *for the Applicant.*
Mr. Benny Joseph, *i/b BJ Law Associates, for the Respondent/ Original Petitioner.*
Ms. Yogini Chauhan, Dy. Official Liquidator, *present.*

CORAM: G.S. PATEL, J

DATED: 11th March 2016

PC:-

1. Having now seen the previous orders in both the Petitions and also the proposed Consent Terms, I do not believe that an order can be passed in terms of the present Company Applications.

2. Before I turn to the reasons for this, I must note that there are typographical errors in the order dated 7th March 2016. In paragraph 1 instead of "Company Application (L) No. 177 of 2016", the correct reference should be "Company Petition No. 256 of 2013". Similarly, instead of "Company Application (L) No. 178 of 2016", the reference should be "Company Petition No. 377 of 2013". Further in paragraph 2, the reference to "Rs. 25,00,000/-" shall be corrected to read as "Rs. 20,00,000/-".

3. The order dated 7th March 2016 to be read accordingly.

4. I find that as a result of the default mentioned in paragraph 1 of the order dated 7th March 2016, in relation to the orders in terms of consent terms and passed on 11th/16th March 2015 and 17th February 2015, the Provisional Liquidator has already been appointed on the Respondent-Company. It is true that the Petitions have not been advertised. However, the appointment of the Provisional Liquidator and admission of the Company Petitions means that the entire property and assets of the Company are now *custodia legis* and the order of appointment relates back to the date of presentation of these Company Petitions.

5. The consent terms that are now proposed seem to me to be some sort of private arrangement between a Group Head of the Company and one of its ex-directors, both said to be shareholders or acting on behalf of some shareholders, and the Petitioner Creditors. The consent terms themselves do not make any provision for re-advertising/advertising the Petition for withdrawal. This would be necessary before any order is made discharging the Provisional Liquidator and dismissing the Company Petition. Just because the Petitioning Creditors and some shareholders have arrived at some private arrangement, that does not mean that the order of admission and of appointment of a Provisional Liquidator can straightaway be set aside for the asking. Indeed, as Mr. Joseph for the Petitioners points out, there is no submission or prayer in these Company Applications for a rollback of the order of admission and the appointment of a Provisional Liquidator. The purpose of these applications is unclear. To be plain: if the applicants want to pay off the Petitioning-Creditors, they are always at liberty to do so, and no order of the Court is necessary for this. The Petitioners may then even give a full discharge to the Company itself. But that does not mean that the Company Petition can now be dismissed and the order of appointment of the Provisional Liquidator set aside for the mere asking. That order of admission and the appointment of the Provisional Liquidator now endures till properly recalled for the benefit of all creditors of the Company and its workmen who enjoy a statutory priority. To achieve any such objective necessarily requires that the Petition be advertised for withdrawal so that any other creditor with a valid claim may step forward. I have no such application before me.

6. Hence, on these two Company Applications, no order is possible.

7. A most peculiar application is made asking me to stay the order dated 24th February 2016 (K R Shriram J) appointing the Provisional Liquidator. The application is a gross over-simplification. A consent order was passed on 11th March 2015 (S. J. Kathawalla J). It set out a schedule of payments. It provided for an event of default: that the Petitions would revive, stand admitted, would be advertised and the Provisional Liquidator would stand appointed. As Mr Justice Shriram notes in his elaborate order of 24th February 2016, the initial order was subsequently slightly modified and thereafter repeated extensions were sought and granted for payment. At the end of all this, since the Company seemed only to be dragging out the matter, Shriram J said:

> 8. On 18th December, 2015, the time was further extended because the counsel for the respondent stated that the Managing Director and CEO of Vijaya Bank, which was the fourth bank in the consortium was not available and the meeting with him was scheduled on 19th December, 2015. On 14th January, 2016, the status of meeting remain unchanged but the company handed over a cheque for Rs.10 lacs to the petitioner. On 21st January, 2016 the company made an offer to pay a sum of Rs.12,04,002/to the petitioner on 25th January, 2016, which the petitioner states he has received. The company has not even paid the fourth installment in its entirety and the fifth to ninth

installments are still due and payable. Today the company is again seeking leave to restructure the payment installments. The counsel for the petitioner strongly opposes the extension request.

9. As could be seen from the above, time and again the company's director was giving undertaking to the court to only breach the same. Time and again, undertaking was given that no further extension will be sought. The court relying on such an undertaking was granting extension. Time and again, order has been passed that incase any default is made, the petition will be admitted and advertised. The advertisement of the admission of the petition was only deferred due to undertakings being given to the court. On those dates of hearing one Yogesh Sheth, director of the company was present. The counsel for the company states that he is not aware whether Mr. Yogesh Sheth continues to be a director or not. Once the Liquidator is appointed how the company could change the constitution of the board of director, is a subject matter to consider later. The company has had enough opportunities to honor these undertakings to the court. From the order sheets it appears that the installments that were being granted have only been abused by the company. It is strange that the company has given undertakings to pay the installments including personal undertakings but committed default and

> kept on dragging the matter. As regards the CDR Scheme and Joint Lender's Forum, counsel for the respondent states Vijaya Bank has not yet approved and the meetings/scheme have not come through as on date.
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> 10. **In my view, it is a fit case where no further time should be granted to the company. Therefore, the petitioner may go ahead and advertise the admission of the petition as mentioned in the order dated 11th March, 2015 returnable on 4th April, 2016**.
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> 11. The Official Liquidator also to take possession of the books of accounts as well as movable and immovable assets of the company forthwith.

(*Emphasis added*)

8. Also, the initial order of Mr. Justice Kathawalla passed on 11th March 2015 was a consent order. It specifically made provision for the appointment of the Provisional Liquidator in the event of default. The Company agreed to this. Given Mr. Justice Shriram's findings, and against which there is no appeal, I do not see how I can accept the request made to me today. Mr. Justice Shriram's order is a fully reasoned order. It binds me. To stay it would require either the presentation of fresh circumstances that were not before him or, in effect, for me to sit in appeal over that order. The latter I cannot and will not do (leaving aside the fact that I agree with every single word of Mr Justice Shriram's order) and as to the former there are no fresh circumstances at all on behalf of the Company. The arrangement proposed is too little too late.

9. I may also note that on 24th February 2016, as also on 3rd March 2016 when the matter was once again listed, no application for stay of 24th February 2016 order was ever made to Mr. Justice Shriram. On the contrary, on 3rd March 2016 an application was made that the Group Head Mr. Pravin Lunkad and one Mr. Yogesh Seth, ex-director will make certain payments to the Petitioner.

10. Further, it is in admitted position that the Provisional Liquidator has already taken charge of the assets of the Company. There is nothing, therefore, to now 'stay'. When this is pointed out, Mr. Sharma for the Applicants suggests that though the appointment of the Provisional Liquidator can continue, an order should be made restraining him from acting further, and that, in the meantime, the directors of the Company should be allowed to resume charge of its affairs and business. That is a truly adventurous application, given the circumstances. It needs only to be stated to be rejected.

11. The application for 'stay' is refused.

12. The Company Applications are dismissed with no order as to costs.

(G. S. PATEL, J.)