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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.16 OF 2016 IN
COMPANY PETITION NO.518 OF 2014

M/s.Omnitech Infosolutions Ltd ...Appellant
vs.
M/s.Streamline Shipping Company
Pvt.Ltd. ...Respondent

WITH
APPEAL NO.18 OF 2016 IN
COMPANY PETITION NO.434 OF 2014 WITH
NOTICE OF MOTION (L) no.981 of 2015 WITH
APPEAL NO.19 OF 2016 IN
COMPANY PETITION NO.499 OF 2014 WITH
NOTICE OF MOTION (L) No.982 of 2015 WITH
APPEAL NO.23 OF 2016 IN
COMPANY PETITION NO.428 OF 2014 WITH
NOTICE OF MOTION (L) NO.978 OF 2015 WITH
APPEAL NO.26 OF 2016 IN
COMPANY PETITION NO.366 OF 2014 WITH
NOTICE OF MOTION (L) No.980 of 2015 WITH
NOTICE OF MOTION (L) NO.979 OF 2015 IN
APPEAL NO.16 OF 2016.

Mr.J.S.Kini a/w Mr.Suresh Dubey for the appellant in all appeals
Mr.Rakesh Pirpodia i/b RMP Legal for the respondent in all appeals
Mr.L.T.Satelkar for Official Liquidator

CORAM : A.S.OKA, &
A.A.SAYED,JJ.
DATE : JUNE 23, 2016

P.C.:

1 Heard the learned counsel appearing for the appellant-company and the learned counsel for the respondent. The appellant company in these appeals is the same. The challenge in these appeals is to the orders passed by the learned Single Judge on 18th

March 2015 on the winding up petitions filed by the respondent in these appeals against the appellant. By the impugned order, the company petitions were allowed by directing that the appellant-company be wound up under the orders of this Court. The Official Liquidator was appointed as Liquidator.

2 The learned counsel for the appellant firstly urged that the learned Single Judge has proceeded on wrong footing that the reply to the winding up petition was not filed. His second submission is that the documents placed on record will show that the financial position of the appellant-company has considerably improved during the last two years. Thirdly, he submitted that the application made by the appellant to the consortium of banks for grant of permission to pay 50% of the amount to the petitioning creditors is still pending. He invited our attention to clause (2) of the order dated 8th May 2015 passed by the Division Bench of this Court in these group of appeals. He tenders across the bar a compilation of documents which is taken on record and marked `X-1' for identification. It contains a schedule of payment to be made to the petitioners in Company Petitions. He submitted that notwithstanding the fact that permission has not been granted by the lead bank of consortium to the appellant to pay the amount to the petitioning creditors, the appellant is prepared to pay amounts in terms of the schedule incorporated in the compilation marked `X-1' for identification. He submitted that the appellant-company is getting work and its financial

condition has considerably improved. He stated that the appellant-company is doing the work relating to Aadhar Cards and therefore, no purpose will be served by winding up the said company.

3 The learned counsel for the respondents states that the schedule of the payment offered by the appellant is not acceptable to the respondents.

4 We have considered the submissions. The facts of the company petitions subject matter of these appeals are more or less same. Only the amount of debt is different in each case. Therefore, for the sake of convenience, we are referring to the order passed by the learned Single Judge in Company Petition No.518 of 2014 which is the subject matter of challenge in Appeal No.16 of 2016. The paragraph 8 of the said order reads thus :

> "8 On 3rd February 2015, this Court was informed that CDR Scheme has been approved and that M/s.Axis Bank is the monitoring agency. The petitioner in the above Petition as well as the other Petitioners appearing in Company Petition Nos.499 of 2014, 366 of 2014, 428 of 2014, 434 of 2014 and 544 of 2014 informed the Court that they are not parties to the CDR scheme and are entitled in law to seek winding up of the Company. However, this Court on 3rd February 2015 passed the following order:

> "The Company shall file its Affidavit-in-Reply on or before 9.2.2015 and shall annex thereto all the documents referred to and/or relied upon therein. The Company undertakes to forward a copy of the Affidavit to the Advocate for the Petitioners on or before 7.2.2015. M/s.Axis Bank/ Monitoring Agency shall remain present before this Court on 9.2.2015 at 11.00 a.m. Stand over to 9.2.2015."

However, till date the Company has failed and neglected to file any affidavit-in-reply to the above petition."

5 The contention of the learned counsel for the appellant is that in fact a reply in terms of the said order was filed and therefore, the learned Single Judge has proceeded on an erroneous assumption that the reply was not filed. If that was the contention, the appellant should have moved the learned Single Judge. However, that was not done. Without going into that controversy, we have perused the reply filed by the appellant of Shri Avinash Pitale S/o Mr.Chandrakant Pitale. In paragraph 20 of the reply filed in company petition No.518 of 2014, the appellant accepted that the amount stated in paragraph 20 of the reply was due and payable by the appellant to the respondent (petitioning creditor). All that the appellant has stated is that a request was made to the respondent to provide some time for

payment as the company was under severe economic crunch. There is a reference in the affidavit to the CDR documents executed by the company. Thus, the liability of the appellant-company is clearly admitted by it on oath in its reply to the Company Petition. In this context, what is material is the observations made by the learned Single Judge in paragraphs 8 and 9 of the impugned Judgment. The learned Single Judge noted that before him a statement was made that the offer made by the appellant cannot be acted upon as M/s.Axix Bank has informed the appellant that no payment can be made to the respondents or unsecured creditors. Therefore, the learned Single Judge proceeded to record a finding that he was satisfied that the appellant-company is unable to pay debts and deserves to be wound up. Thus, there is absolutely no ground to find fault with the impugned order passed by the learned Single Judge.

6 The present appeals were lodged on 4th April 2014 which were placed for admission before the Division Bench of this Court on 8th May 2015. Paragraph 2 of the said order reads thus:

> "2 In the meantime, we take on record the copy of letter dated 6th May 2015 from the Managing Director and CEO of the appellant-company to Axis Bank Limited, which is the lead bank in the consortium of the banks to which the appellant has applied to pay 50% of the amounts to the petitioning creditor

within one month from the date of sanction."

7 Even today, consortium of Banks has not permitted the appellant to make any payment to the respondents. Thus, from the date of filing of winding up petitions of the year 2014, nothing has been paid by the appellant to the petitioning creditors.

8 We have perused the payment schedule offered by the appellant which is a part of the compilation tendered and marked as `X-1'. The offer of the appellant is to pay 5% of the debt on every quarter of a calendar year to the creditors starting from October 2016. The offer provides that interest will be paid on the outstanding amount only at the rate of 4% p.a. Apart from the fact that the offer is not at all attractive, considering the past conduct of the appellant, the respondent is fully justified in not accepting the said offer. Hence, we find absolutely no merit in these appeals. Considering the conduct of the appellant, it deserves no sympathy. Accordingly, we dismiss the appeals. Pending Notices of Motion do not survive and the same are disposed of.

9 At this stage, the learned counsel for the appellant seeks continuation of ad-interim order which is operative from May 2015. The said ad-interim order will continue to operate for a period of eight weeks from today.

(A.A.SAYED,J.) (A.S.OKA,J.)