

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL (L) NO.854 OF 2014
IN
COMPANY PETITION NO.492 OF 2011
ALONG WITH
APPEAL (L) NO.61 OF 2016
IN
COMPANY PETITION NO.527 OF 2013

APPEAL (L) NO.854 OF 2014

M/s. Asian Electronics Ltd. .. Appellant
Vs
SBI Global Factors Ltd. .. Respondent

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Shri Anurag Dighe i/b India Law Alliance for the Appellant.
Ms. Sushmita Gandhi along with Gaurangi Patil i/b PKA Advocates for
the Respondent.
Shri Laxmikant Satelkar for the Official Liquidator.
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APPEAL (L) NO.61 OF 2016

Asian Electronics Ltd. .. Appellant
Vs
HDFC Bank Limited. .. Respondent

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Shri Anurag Dighe i/b India Law Alliance for the Appellant.
Dr. Birendra Saraf along with Shri Sahil Saiyed along with Shri Nikhil
Apte i/b Wadia Ghandy & Co for the Respondent (HDFC Bank Limited).
Shri Laxmikant Satelkar for the Official Liquidator.
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CORAM : A.S. OKA & G.S.KULKARNI, JJ
DATED : 8TH MARCH 2016

PC.

1. Heard the learned counsel appearing for the Appellant. The Appellant, by these Appeals has challenged the two different orders passed by the learned Company Judge in winding up Petitions. In Appeal (L) No.854 of 2014, the order under challenge is dated 13th November 2014 and in Appeal (L) No.61 of 2016, the challenge is to the order dated 13th January 2016. The Appellant Company has been ordered to be wound up.

2. Learned counsel appearing for the Appellant states that the Secured Creditors of the Appellant Company are interested in reviving the Appellant Company. He pointed out that earlier, the orders in that behalf were passed in these Appeals. He submitted that as the Secured Creditors are making an effort for reviving the Appellant Company, the said Company be protected. The learned counsel appearing for the Petitioner before the Company Court has tendered on record the orders dated 6th February 2015 and 21st November 2015. By an order dated 6th February 2015, the Appellant withdrew the Company Summons for Direction (L) No.555 of 2014 with liberty to file a fresh Company Summons for Directions. Accordingly, the Company Summons (L) No.376 of 2015 for Directions was taken out by the Appellant. By an order dated 21st November 2015, the Company Summons for Directions

was dismissed. The order dated 23rd February 2016 passed in the Company Appeal (L) No.854 of 2014 refers to the said Company Summons for direction. At this stage, it may be necessary to make a reference to the impugned orders. In the Company Petition No.527 of 2013 which is the subject matter of Appeal (L) No.61 of 2016, the learned Company Judge has recorded that the Appellant did not dispute the claim of the Petitioner HDFC Bank Limited in the sum of Rs.33,39,68,077.17 under the various Credit Facilities. The Paragraph 2 of the said order dated 13th January 2016 reads thus:

“2. The counsel only submitted that certain other creditors had filed a winding up petition which came to be allowed on 13.11.2014. The company filed an Appeal assailing the order of 13.11.2014 that was passed in Company Petition No.492 of 2011. The Division Bench of this Court by an order dated 11.02.2015, initially granted ad-interim stay on the operation of order dated 13.11.2014. On 31.03.2015, the Division Bench granted an interim stay on the operation of order dated 13.11.2014 as the counsel for the appellant informed the Court that 70% of the secured creditors who are supporting the claim to move the Company Court for restructuring of the debts under the Companies Act, 1956. Thereafter, the Division Bench, by an order dated 31.03.2015, granted interim protection in view of the statement made by the Company that the claim for revival of the company will be moved before the learned Company Judge within one month.”

3. Thereafter, in Paragraph 3 of the said order, it is recorded that the scheme for revival/restructuring was filed viz. Company Summons for Direction (Lodg.) No.376 of 2015. The objections were not removed and therefore, the same was dismissed under Rule 986 of

the Bombay High Court (Original Side) Rules, 1981. It is the same Company Summons for Direction which was dismissed under the order dated 21st November 2015. It is in this context in Paragraph 4 of the said order, the learned Judge has observed that there is no claim for restructuring pending before the Company Court and that the Company has admitted its liabilities. It was observed that the Company was, therefore, unable to pay its debts and is commercially insolvent. Hence, the Company was ordered to be wound up.

4. Even in the impugned order dated 13th November 2014 subject matter of Appeal (L) No.854 of 2014, the claim of the Petitioner was admitted by the Appellant which was in the sum of Rs.2,12,62,280/-. After paying the sum of Rs.20 lacs, the Appellant had agreed to pay the balance amount as per the installments recorded in Paragraph 1 of the impugned order dated 13th November 2014. The entire balance amount was to be paid on or before 1st August 2012. Admittedly, the Appellant defaulted and accordingly the Company Petition stood admitted and was advertised. The Paragraph 3 of the said order records the admitted position that the Appellant failed to pay the amount as agreed.

5. Both the impugned orders proceed on the admitted position that the Appellant admitted the claim of the respective

Petitioners in the Company Petition. The orders passed in the Appeal (L) No.854 of 2014 shows that opportunities have been granted by this Court from time to time from 11th February 2015.

6. Hence, we find that there is absolutely no merit in both these Appeals and the same are accordingly dismissed. The Notices of Motion (L) No.184 of 2015, 1966 of 2015 and Notice of Motion No.1679 of 2015 in Appeal (L) No.854 of 2014 stand disposed of in view of the disposal of both the Appeals.

7. On the prayer made by the learned counsel appearing for the Appellant, we direct that the Official Liquidator shall not act upon the impugned orders for a period of ten weeks from today.

(G.S. KULKARNI, J)

(A.S. OKA, J)