IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (LODG.) NO.833 OF 2015
WITH
COMPANY APPLICATION NO.254 OF 2015
WITH
COMPANY APPLICATION NO.622 OF 2015
IN
COMPANY PETITION NO.256 OF 2013

M/s. Pranav Agro Industries Ltd. ....Applicant

IN THE MATTER BETWEEN :

Shakti International Pvt. Ltd. ....Petitioner

V/s.

M/s. Pranav Agro Industries Ltd. ....Respondent

WITH
COMPANY APPLICATION (LODG.) NO.834 OF 2015
IN
COMPANY PETITION NO.377 OF 2013

M/s. Pranav Agro Industries Ltd. ....Applicant

IN THE MATTER BETWEEN :

Macworld Industries SDN BDH ....Petitioner

V/s.

M/s. Pranav Agro Industries Ltd. ....Respondent

Mr. Sitesh S. Sharma a/w. Mr. Vijay Upadhyay for the applicant/respondent.

Mr. Ravi Nersihan – representative of applicant present.

Mr. Beny Joseph i/b. Beny Joseph Law Offices for the original petitioner.

CORAM : K.R.SHRIRAM,J
DATE : 24th FEBRUARY, 2016

P.C.:-

1 This company application is taken out for reworking the schedule to pay the petitioner's admitted claim. According to the company out of Rs.4,50,00,000/- that they owed to the petitioner, a sum of Rs.3,27,97,891/- is still payable and the company wants to pay the amount over 15 months. The counsel for the petitioner strongly objected to the same.

2 When the petition came up for admission on 11th March, 2015, the respondent agreed to pay a sum of Rs.4,50,00,000/- to the petitioner in full and final settlement of the claim of the petitioner against the respondent. This amount was to be paid in 9 installments of Rs.50 lacs on the 7th of every month beginning 7th April, 2015 and ending on 7th December, 2015. It was also recorded in the order, which was a consent order that in the event of the respondent company committed default in payment as undertaken, the petition shall without reference to the court get revived, stand admitted and will also advertised in two newspapers. The petitioner was also directed, in such a case, to deposit an amount of Rs.10,000/- with the Prothonotary and Senior Master.

3 By an order dated 16th March, 2015, the installments mentioned in the order of 11th March, 2015 came to be modified because

in the order of 11th March, 2015 the interest component of 10% p.a. on reducing balance was not mentioned. The company defaulted even the first installment. By an order of 15th April, 2015, the time to make the full payment of the first installment was extended upto 7th May, 2015. The company paid this amount but was unable to pay the second installment that fell due on 7th May, 2015.

4 On 7th May, 2015, on an application by the director of the company – Mr. Yogesh Sheth, who was present in court and in view of the undertaking given by him, the time to pay the second installment, which fell due on 7th May, 2015, was extended upto 31st May, 2015. The undertaking of Mr. Yogesh Sheth that he shall not seek any extension of time was also accepted by the court and his statement that in the event of any default in payment, the petition shall stand admitted without reference to this court was also recorded. It was once again recorded that if the company makes any default in payment as undertaken, the petition would stand admitted without reference to this court and advertised.

5 This installment was paid. The company, however, failed and neglected to pay the third installment. It is not clear whether the company applied to the court for extension but in the order dated 30th June, 2015 it is recorded that the company be given extension to pay

the 7th June, 2015 installment with additional 1% p.m. on or before 7th August, 2015. It was further ordered that the installment that fell due on 7th July, 2015 and 7th August, 2015 shall be paid together, with additional interest at 1% p.m. thereon from their respective original due dates till payment, on or before 7th September, 2015. The installment that was due and payable on 7th September, 2015 was to be paid with this additional interest of 1% p.m. with the installment that fell due on 7th October, 2015. The last two installments payable on 7th November, 2015 and 7th December, 2015 were to be paid on their respective due dates. In the said order it was also made clear that the installments shall be paid on the respective due dates as mentioned in the order and no further extension of time will be considered under any circumstances. Since the installments payable were restructured under the said order, the advertisement of the admission order was deferred until further orders. It was also made clear that in the event of any default being committed in payment of the installments as provided in the order, the petitioner was at liberty to approach the Official Liquidator and thereupon the Official Liquidator shall proceed to take physical possession of the books of accounts as well as movable and immovable assets of the respondent company without any further reference to the court. The petition was also to be advertised without further reference to the court. The waiver of notice under rule 28 of the Companies (Court) Rules, 1959 by the respondent company is also noted.

6 Despite this restructured payment schedule, the company defaulted. Therefore, by the order dated 16th September, 2015 the court noted that the petition has already stood admitted and the Official Liquidator was already appointed as Provisional Liquidator. Though the court recorded that the company shall not seek any further extension, still as and by way of indulgence, the company was directed to make some substantial payment by the next date, at which time, the application for extension of time could be considered. The matter was stood over to 28th September, 2015 and in the meantime, the petitioner was directed not to advertise the petition and the Official Liquidator was directed not to take any steps in the matter. On 28th September, 2015 the ad-interim order dated 16th September, 2015 was continued till the next date.

7 By an order of 4th December, 2015 since the counsel for the company stated that the Joint Lenders' Forum meeting has taken place and three out of four banks in the consortium have signed and the fourth was expected to meet on 10th December, 2015, the Official Liquidator was directed only to take symbolic possession and the company registrar/petitioner was directed not to advertise until 18th December,

2015.

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.

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.

11 The Official Liquidator also to take possession of the books of accounts as well as movable and immovable assets of the company forthwith.

12 In view of the above, the company application (lodging) no.833 of 2015 stands rejected. The applicant is directed to remove all office objections and get the application numbered.

13 All parties to act on an ordinary copy of this order duly authenticated by the Associate of this court.

COMPANY APPLICATION (LODG.) NO.834 OF 2015

In view of the above, this application also does not survive and is rejected. The applicant is directed to remove all office objections and get the application numbered.

(K.R.SHRIRAM,J)