

In the High Court of Judicature at Madras

Dated : 17.10.2016

Coram :

The Honourable Mr.Justice NOOTY.RAMMOHANA RAO

and

The Honourable Dr.Justice ANITA SUMANTH

Original Side Appeal No.205 of 2016
& CMP.Nos.16249 & 16250 of 2016

Mediaone Global Entertainment
Ltd., Chennai-17.Appellant

Vs

1.Globecast Asia Pte.Limited,
through its Director & CEO,
No.21, Media Circle, No.10-01/10,
Infinite Studios, Singapore-138562.

2.The Official Liquidator, High Court of ,
Madras, Chennai-600 001.Respondents

APPEAL under Clause 15 of the Letters Patent against the
order dated 22.9.2016 made in C.P.No.7 of 2015.

For Appellant :Mr.P.Aravind Pandian, SC for
Mr.T.T.Ravichandran

For Respondent-1:Mr.R.Senthilkumar for
M/s.DUA Associates

JUDGMENT

(Judgment was delivered by NOOTY.RAMMOHANA RAO,J)

This original side appeal has been preferred calling in
question the order dated 22.9.2016 made in C.P.No.7 of 2015 by
the learned Company Judge.

2. C.P.No.7 of 2015 is a creditor's petition instituted by
the first respondent herein, seeking winding up of the appellant
company for the ostensible inability of the appellant company to

liquidate the liability of the petitioner/creditor in the company petition. The said company petition was admitted and ordered to be notified as well. To that extent, no issue is to be raised or entertained, as the matter has attained finality in view of the disposal of O.S.A.No.227 of 2015 vide judgment dated 13.6.2016.

3. The learned Company Judge, after having considered the matter elaborately, directed the appellant, by the present impugned order, to deposit in Indian rupees, an amount equivalent to four invoices, which have been referred to in the impugned order, at the exchange rate that was operating as on 9.9.2015. The deposit was directed to be made with the Registrar General of this Court and the Registrar General was also directed to invest the money in an interest bearing fixed deposit, initially for a period of 61 days. Further, 10 days' time was granted to comply with the said order and in case of default, the Official Liquidator attached to this Court was appointed as the Provisional Liquidator of the appellant company and was directed to take charge forthwith, of all the assets, books of accounts, records, documents, etc., of the appellant company. Challenging the said order passed by the learned Company Judge, the appellant is before this Court.

4. Heard Mr.P.Aravind Pandian, learned Senior Counsel appearing on behalf of Mr.T.T.Ravichandran, learned counsel on record for the appellant and Mr.R.Senthilkumar, learned counsel appearing for the first respondent.

5. Though several contentions have been canvassed with great emphasis, however, we need not advert to all of them, as we are clearly of the opinion that the present impugned order passed by the learned Company Judge is more in the nature of an interlocutory order. The learned Company Judge made it very clear by observing that such an order has been passed with a view to afford an opportunity to the appellant company herein to establish its bona fides.

6. We are conscious of the fact that it is for the Company Court to arrive at an independent finding with regard, to the inability of the company sued for its winding up to clear the debt due to the creditor/petitioner, if the same is established by leading appropriate evidence in that regard. We are also equally conscious that an effective defence can be raised by any such company, against which, winding up proceedings have been initiated to establish that there is 'a bona fide dispute' between the parties with regard to the alleged payments due but not the inability to pay the debt, which is the root cause for the debt.

7. Therefore, we are of the opinion that at this stage, it will not be advisable for this Court to enter into the merits or for that matter, the lack of it in the rival submissions. On the other hand, if an order is passed by a Company Court to protect the interests of the petitioner in the company petition, it cannot be completely faulted on the score that the respondent in the company petition has got a good case on merits. We find that the present order is purely a step in aid for the purpose of deciding the company petition ultimately and it may facilitate the creditor, who may succeed in the company petition, to realize the monies due and receivable by it without much difficulty or hindrance thereafter.

8. Further, at the time of final hearing, even if the Company Court were to come to a conclusion that there are no bona fides behind the claim of the respondent company in not promptly liquidating the liability of the petitioner in the company petition, it may not hasten to order for its winding up in view of the availability of money in deposit of the claim amount and accordingly modulate the relief to be granted. Therefore, in many respects, orders of this nature could help the Court to ultimately regulate its jurisdictional exercise appropriately. Though it might appear that the appellant has been denied the advantage or benefit of utilizing it's capital productively for the period it gets locked up in the fixed deposit receipt, but however such short term inconvenience may be warranted.

9. Thus, examined from that background, we find no infirmity, especially in the order passed by the learned Company Judge, against which, the present appeal has been preferred.

10. However, we may hasten to add, with a view to avoid any possible complications at a later point of time, the following directions :

(i) The Registrar General of this Court shall deposit the monies in an interest bearing fixed deposit with any of the branches of the State Bank of India, which normally deals with foreign exchange. It is made clear that the money shall be kept in deposit initially for a minimum period of 61 days, to be renewed automatically till such time the said company petition is decided finally by further similar periods without any specific reference being made to the Company Court in that regard.

(ii) Time is granted upto 15th November 2016 for deposit of the money. If, for any reason, the money is not deposited with the Registrar General of this Court before the expiry of office timings of 15th November 2016, the Registrar General shall notify the Official Liquidator attached to this Court, to enable him to act upon the order passed by the learned Company Judge promptly thereafter and

(iii) It goes without saying that no observations contained either in this order or any other order passed so far, will weigh with the learned Company Judge, who tries finally the said company petition, to adjudicate the same on merits.

11. With the above directions, the above original side appeal is disposed of. No costs. Consequently, the above CMPs are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Registrar General,
High Court, Madras.

2.The Sub Assistant Registrar
Original Side, High Court, Madras.

3.The Official Liquidator,
High Court, Madras, Chennai-1.

Copy to

The Section officer,
Account Section,
High Court, Madras.

+1cc to Mr.T.T.Ravichandran, Advocate sr.58915
+1cc to Mr.R.Senthilkumar, Advocate Sr.58512

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Nos.16249 & 16250 of 2016

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