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

APPEAL NO.171 OF 2017
IN
COMPANY PETITION NO.658 OF 2013

Ashish Narendrakumar Garg .... Appellant

versus

The Official Liquidator for M/s Promart Retail India Pvt. Ltd. & Anr. ... Respondents

…....

- Mr.Atharva A. Dandekar i/b. Ameya Malkar, Advocate for the Appellant.
- Mr.Manoj G. Agre i/b. G.B. Kedia, Advocate for the Respondents.
- Mr.L.T. Satelkar for Official Liquidator.

CORAM : SMT. VASANTI A. NAIK &
SARANG V. KOTWAL, JJ.
DATE : 20th DECEMBER, 2017.

P.C. :

By this Company Appeal the appellant has appealed against the order of the learned Single Judge dated 26/09/2014, allowing the petition for winding up in terms of prayer clause (a) and (b) and appointing the official liquidator, High Court Bombay as the liquidator of the company. By the order appealed against, the learned Single Judge had directed the official liquidator to take steps for winding up of the company without waiting for any notification. When this appeal came up for admission before this Court on 15/06/2015, the learned Senior counsel for the appellant-company had informed this Court that a sum of Rs.7,20,107/- was paid by the appellant to the respondent and the remaining dues of Rs.1 lakh would be paid within one week. In view of the no objection from the respondent for setting aside the order of the learned Company Judge dated 26/09/2014 if the amount of Rs.1 lakh was paid, this Court directed the official liquidator to publish an advertisement recording the said arrangement pertaining to the proposed withdrawal of the winding up petition upon depositing of Rs.25,000/- with the official liquidator.

The learned counsel for the respondent fairly states that in pursuance of the order dated 15/06/2015 the remaining dues of Rs.1 lakh were cleared by the appellant and the said amount is received by the respondent-creditor. It is stated that in view of the aforesaid and in view of the order dated 15/06/2015, the order dated 26/09/2014 could be set aside.

It is stated by the official liquidator that in pursuance of the advertisement issued by the official liquidator, the government has approached the official liquidator with the claim of certain dues payable by the appellant. It is submitted that the appellant has not cleared the dues of the government. It is further stated that if this Court passes an order in pursuance of the order dated 15/6/2015, either of the parties may be directed to deposit a sum of Rs.25,000/- with the official liquidator so that an appropriate advertisement/notice could be published.

Since the respondent had filed the company petition for winding up of the company of the appellant and since the entire dues of the respondent are cleared by the appellant in terms of the order dated 15/06/2015, it would be necessary to set aside the order dated 26/09/2014 in view of the order dated 15/06/2015. If any dues are payable by the appellant to the government, the government may take appropriate steps. That cannot be a matter for the winding up of the company when in view of the agreement between the parties this Court had observed that the order dated 26/09/2014 would be set aside if the entire dues of the respondent are paid by the appellant. Since the entire dues of the respondent are cleared by the appellant, it would be necessary to set aside the order dated 26/09/2014. It would also be necessary for the official liquidator to issue an advertisement/notice for information that the order dated 26/09/2014 is set aside and no further steps for winding of the company of the appellant would be undertaken in pursuance of the order dated 26/09/2014.

Hence we dispose of a company appeal by setting aside the order of the learned Single Judge, dated 26/09/2014. The official liquidator may take immediate steps to make it known to the public that the company would not be wound up as the order dated 26/09/2014 no longer survives. The appellant would be liable to pay a sum of Rs.25,000/- to the official liquidator within two weeks for the issuance of the advertisement/notice. The official liquidator should publish the advertisement within one week from the date on which the amount of Rs.25,000/- is received from the appellant.

Order accordingly.

(SARANG V. KOTWAL, J.) **(SMT. VASANTI A. NAIK, J.)**