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

APPEAL NO.361 OF 2016
IN
COMPANY PETITION NO.114 OF 2012

Majestic Infracon Pvt. Ltd. : Appellant (Orig. Respondent No.2)
versus
Etisalat Mauritius Limited & ors. : Respondents.

ALONG WITH
NOTICE OF MOTION (LODGING) NO.1443 OF 2015
IN
APPEAL NO.361 OF 2016
IN
COMPANY PETITION NO.114 OF 2012

Majestic Infracon Private Limited : Applicant (Orig.Appellant)

In the matter between :

Majestic Infracon Pvt. Ltd. : Appellant (Orig. Respondent No.2)
versus
Etisalat Mauritius Limited & ors. : Respondents.

Mr. Chirag Mody a.w Mr. Rishikesh Soni and Ms. Prachi Garg i/by DSK Legal for the Appellant/Applicant.
Mr. Anurag Gokhale for the Official Liquidator
Mr. Zal Adhyarujina, Mr. Srisabari Rajan and Ms. A A Mujawar i/by Economic Laws Practice for the Respondent No.1.
Mr. V V Tulzapurkar, Senior Advocate a/w Mr. Bhalchandra Palav i/by Cyril Amarchand Mangaldas for the Intervenor – Citibank.

CORAM : R. M. SAVANT &
SARANG V KOTWAL, JJ.
DATE : 01st November 2017

P.C.

1 The above Appeal filed by the original Respondent No.2 takes exception to the judgment and order dated 20/02/2015 passed by a learned

Single Judge of this Court (S. J. Kathawalla) by which order the above Company Petition came to be allowed in terms of prayer clauses (a) and (b) and the directions came to be issued which are contained in the operative part of the said order which for the sake of ready reference are reproduced herein under :-

> i] The Company Petition is allowed in terms of prayer clauses (a) and (b) which are reproduced hereunder:-
>
> a) That the Company, that is, Etisalat DB Telecom Pvt. Ltd. be ordered and directed to be wound up by and under the directions of this Hon'ble Court, and in accordance with the provisions of the Companies Act, 1956;
>
> (b) That the Official Liquidator, High Court, Bombay be appointed Liquidator of the Company with all powers under the provisions of the Companies Act, 1956."
>
> (ii) The Official Liquidator to act on an ordinary copy of this Order duly authenticated by the Learned Associate of this Court without waiting for any further notification.
>
> (iii) The Official Liquidator shall be at liberty to move an application/s to this Court under Section 459 of the Companies Act read with Rule 307 of the Companies (Court) Rules, 1959 seeking sanction of this Court to engage the services of a legal practitioner to assist him in the performance of his duties including representing him before the courts of law.
>
> The above Company Petition is accordingly disposed off.
>
> The Learned Advocate appearing for the Respondent No.2 applies for stay of this order. Since the Company has stopped its operations and a Provisional Liquidator has already taken charge, the question of granting any stay does not arise. The Application is therefore rejected.

It is required to be noted that the above Company Petition filed by the Respondent No.1 herein was supported by the other creditors of the Appellant namely the Standard Chartered Bank and the Citi Bank.

2 On behalf of the Respondent No.1 a preliminary objection is raised to the maintainability of the above Appeal inter-alia on the ground that there is a deliberate and inordinate delay in complying with the office objections and therefore the above Appeal is required to be dismissed on the said ground. The second objection raised is that during the interregnum period from passing of the impugned order till filing of the above Appeal, the Official/Provisional Liquidator has disposed of the large part of the material and substantial assets of the Company resulting in the Company, for all intents and purposes, being brought to a close and/or wound up. The third objection is that the Appeal is founded on the same grounds as the grounds on which the Appeal against the the order admitting the above Company Petition was challenged and since the said grounds have been negatived by the Appeal Court whilst dealing with the Appeal filed against the order admitting the Company Petition, and since the order passed by the Appeal Court has been upheld by the Apex Court, the instant Appeal though challenging the final order disposing of the Company Petition being founded on the same ground is required to be dismissed. It was also the submission of the learned counsel appearing for the Respondent No.1 that no useful purpose would be served by entertaining the above Appeal, having regard to the outstanding debts of the Appellant and the steps taken by

the Official Liquidator.

3 In view of the preliminary objection raised by the Respondent No.1, this Court ventured to consider the said preliminary objection. In so far as the first preliminary objections is concerned, it is required to be noted that the above Appeal has been filed on 21/05/2015 and has been numbered on 29/04/2016 after removal of the office objections. In terms of Rule 986 the time period for removal of office objection in an Appeal is 30 days. Hence in the instant case, the office objections have been removed long after the 30 days period is over. It is also required to be noted that despite knowing that pursuant to the passing of the impugned order, the Official Liquidator is continuously taking steps in furtherance of the liquidation of the Respondent No.2 Company i.e. the Appellant, the Appellant has not removed the office objections so as to facilitate the listing and the hearing of the above Appeal. As a result, it is now impossible to revive the Appellant. Hence in our view the aforesaid fact impinges upon the maintainability of the above Appeal.

4 In so far as the second objection is concerned, it is required to be noted that the Official Liquidator during the interregnum period has disposed of large material and substantial assets of the Company in liquidation. The employees of the Company have also been drastically reduced from a few hundred to only a skeletal set of about 5 employees who are required to

facilitate the orderly winding up of the Appellant Company. The Official Liquidator has also taken various actions which have brought about a virtual closure of the totally, commercially insolvent Appellant Company, whose substratum has stood eroded even prior to the passing of the impugned order. The aforesaid fact has resulted in the Appellant Company, for all intents and purposes, being brought to a close and/or wound up.

5 In so far as the last objection is concerned, it is required to be noted that the instant Appeal raises the same grounds as in the Appeal filed against the order admitting the above Company Petition. The said grounds having been dealt with exhaustively by a learned Single Judge whilst admitting the above Company Petition. The learned Single Judge has reiterated the said findings whilst disposing of the above Company Petition by the impugned order. Since the Appeal is founded on the same grounds which were the grounds on which the Appeal against the order admitting the above Company Petition was filed and since the Appeal has been dismissed which dismissal has been upheld by the Apex Court, in our view, there is no merit in the challenge to the impugned order based on the said grounds.

6 In so far as the scheme of revival of the Appellant is concerned, the scheme as propounded was rejected by the learned Single Judge and thereafter confirmed by the Appeal Court in the Appeal filed against the order

of admitting the above Company Petition. As indicated above during the interregnum, the liquidation of the Appellant has almost been completed whereby the substantial assets of the Appellant have been disposed of and most of the premises have been returned and there is today no functioning Board of the Appellant Company. What remains are merely a few technical assets which the Official Liquidator, appointed under the impugned order, is in the process of completing the inventory/valuation for the purposes of sale/auction thereof. Hence as of date, for all practical purposes the Appellant Company stands wound up with no scope for revival. The facts which militate against the revival of the Appellant are as under :-

1] UASL licenses cancelled and the Appellant is restrained from submitting any subsequent bids by the Apex Court by its order dated 02/02/2012

2] ***Substratum of the Appellant totally eroded:-***

There is no prospect of revival of the Appellant Company as on 18/11/2013 the claims made by the creditors amount to at least Rs.4230.54 crores which is recorded in the order passed by the Appeal Court.

3] ***Tax and Regulatory claims.***

The regulatory and tax authorities are claiming over Rs.4500 Crores from the Appellant Company.

4] Claim of approximately Rs.1465 of the Standard Chartered Bank by virtue of the Consent Decree.

5] ***Complete Deadlock***

Complete deadlock in the management of the Appellant Company.

6] ***No Employees***

The number of employees of the Appellant Company has been reduced from 286 to 5.

7] ***2G Trial***

The Appellant Company is an accused in the Criminal Case commonly known as "the 2G Trial" and the PMLA proceedings before the Court of the Special Judge (CBI)/(PMLA), Patiala House, New Delhi.

8] ***Monthly expenses of the Respondent No.2 Company.***

The monthly expenses of the Respondent No.2 Company are presently such as would make the functioning or the revival of the Appellant Company totally unviable.

7 Hence the preliminary objections raised on behalf of the Respondent No.1 herein are required to be sustained. No useful purpose would be served by entertaining the above Appeal, since there is absolutely no chance for revival of the Appellant Company having regard to the huge outstanding debts which the Appellant Company owes to the creditors. In our

view, for the reasons stated herein above, there is no merit in the above Appeal which is required to be dismissed and is accordingly dismissed.

8 In view of the dismissal of the above Appeal, the Notice of Motion (Lodging) No.1443 of 2015 filed by the Applicant/Appellant for staying the operation of the impugned order dated 20/02/2015, does not survive and the same to accordingly stand disposed of as such.

[SARANG V KOTWAL, J] **[R.M.SAVANT, J]**