

Amk

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

COMPANY PETITION NO. 1248 OF 2015

Sunil Anand & Anr.

.. Petitioners

Vs.

Gini and Jony Ltd.

.. Respondent

Mr. Akshay Puranik a/w. Mr. Sachin Choudhari i/b Dharam & Co. for the Petitioners.

Mr. A. J. Rizvi a/w. Mr. B. Palai for the Respondent.

CORAM : A. S. GADKARI, J.

DATE : 19th JULY, 2017.

P. C. :

1. This is a petition under Sections 433(e), 434 read with Section 439 of the Companies Act, 1956 for winding up of the respondent-company, namely, Gini and Jony Ltd.

2. It is the case of the petitioner that the respondent is liable to pay the principal sum of Rs.11,41,852/- along with interest of Rs.1,02,767/-, aggregating to Rs.1244619/- as on the date of filing of the petition.

3. The record indicates that in pursuance of the order dated 27.04.2017, the respondent has deposited a sum of Rs.11,41,852/- in the Registry of this Court. The said amount of Rs.11,41,852/- is the principal amount claimed by the petitioners. Thus, it is, prima facie, clear that the respondent is commercially solvent to pay the dues of the petitioner.

4. In view of the above, I am inclined to relegate the petitioner to adopt the remedy of filing a suit for adjudication of its claim.

Hence, the following order:

(i) If the petitioner files a suit before the Court of Competent Jurisdiction, within a period of four weeks from today, the Prothonotary and Senior Master of this Court is directed to transfer the aforesaid amount so deposited by the respondent, to the Registry of the said Court within a period of three weeks from the date of intimation of filing of Suit.

(ii) The amount so transferred in the Registry of the concerned Court will remain with the said Court till the conclusion of the said Suit and the concerned Civil Judge before whom the said suit will be filed shall adjudicate the claim of the parties herein and shall pass appropriate orders in respect of the apportionment and/or appropriation of the said amount.

(ii) The petition is disposed of in the aforesaid terms.

[A. S. GADKARI, J.]