

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

O.S.A.No.36 of 2017
and C.M.P.No.3194 of 2017

M/s.SSD Oil Mills Company Limited,
No.132, Village Road,
Iyappanthangal,
Chennai - 600 056.
Represented by its Director,
Mr.Deepan Dorai.

... Appellant/
Respondent in CP.270/12

vs.

Tristar Global Sdn Bhd
3-11, Block B, Phileo Damansara
II No 15, Jalan, 16/11, Off
Jalan Damansara, 46350,
Petaling Jaya Selangor, malaysia
Represented by it's duly
Authorized Director
Mr.Divakaran Nadarajan

... Respondent/
Petitioner in CP 270/12

Original Side Appeal filed under Order 36 Rule 9 of
O.S.Rules r/w clause 15 of the Letters Patent Act against the
Fair and Decretal order dated 05.01.2017 made in C.P.No.270 of
2012.

Prayer in C.P.270/12:-

- 1.To wind up the respondent company namely of SSD oil mills
Co.Ltd, under the provisions of Companies Act 1956.
- 2.Appointing the official Liquidator, High Court, Madras as
Liquidator of the Company SSD oil Mills Co.Ltd.
- 3.directing that the costs of the Petition to come out from the
assets of the company SSD oil mills Ltd & render Justice.

For Appellant : Mr.HemKumar for
M/s.Ganesh and Ganesh
For Respondent : Mr.Uttam Joseph Cheriyan
for M/s.George Cheriyan

JUDGMENT

[Judgment of the Court was made by RAJIV SHAKDHER, J.]

1. This is an appeal against the judgment and order dated 05.01.2017 passed by the learned single Judge.

1.1. By virtue of the impugned judgment and order, the learned company Judge has observed that the order dated 01.07.2014, admitting the company petition, shall stand revived, which in effect, results in the company petition being revived.

2. Briefly, this order came to be passed on account of the fact that when in the earlier round company petition was admitted, vide order dated 01.07.2014, the appellant had preferred an appeal with the Division Bench, which was numbered as O.S.A.No.177 of 2014. In the said appeal, a settlement was arrived between the parties, whereby, the appellant was called upon to pay sums, as per the details given hereinafter:

S.No	Date (on or before)	Amount (in USD) will be deposited in equivalent rupees into this Hon'ble Court
1	30.09.2014	\$ 50,000
2	15.11.2014	\$ 50,000
3	31.12.2014	\$ 10,05,000
4	31.03.2015	\$ 10,05,000

2.1. Based on the settlement, both the appeal as well as the company petition were disposed of.

3. Since, the appellant committed a default, an application was filed for revival of the aforementioned company petition.

3.1. The learned company judge taking note of the fact that the default continued to subsist, revived the company petition.

4. It is not disputed before us by the counsel for the appellant that the entire dues, as per the settlement, have not been paid.

5. Counsel for the appellant says that there is a possibility of arriving at a settlement with the respondent. The counsel for the respondent says he does not have any such instructions.

5.1. Furthermore, the counsel for the appellant says that the order dated 01.07.2014, could not be revived by the learned single Judge, by treating the observations of the Division Bench in the earlier round disposing the company petition, as a typographical error.

5.2. It is argued before us that the Division Bench while passing the order dated 27.08.2014, had further observed that the respondent would take appropriate legal action for recovery of the amount undertaken to be paid.

5.3. Based on this, counsel for the appellant says that the impugned judgment and order needs to be reversed.

6. As indicated by us herein above, it is quite obvious that while the company judge revived the order dated 01.07.2014, by which, the company petition was admitted he has, in effect, revived the company petition. Furthermore, as seen from paragraph 6 of the order of Division Bench dated 27.08.2014, the appellant was directed to deposit the money undertaken to be paid to the credit of the company petition.

6.1. We are, also, informed that since the part of the agreed amount was deposited, applications were moved by the respondent for withdrawal of sums deposited by the counsel for the appellant.

6.2. It is not disputed by the counsel for the appellant that the appellant had granted its no objection for withdrawal of moneys by the respondent.

7. Therefore, it is our opinion, while it may not have been appropriate for the learned company judge, to have treated the observations of the Division Bench in the earlier round, as a typographical error, since according to us error, if any, could have been corrected only by that bench which had passed the order there is, however, according to us, no error in reviving in effect, the company petition which resulted in resurrection of order dated 01.07.2014.

8. The other argument advanced on behalf of the appellant, which is that, since the Division Bench, vide order dated 27.08.2014, had directed the respondents to take appropriate legal action for recovery of the amount undertaken to be paid, and therefore the company petition could not have revived, according to us, is misconceived.

8.1. To our minds, the respondent had two courses open to it, upon default of the settlement by the appellant, in order to demonstrate its inability pay its debts. First, to revive the

pending company petition. Second, to file a fresh company petition. Either way the effect would be the same, as the order of the Division Bench cannot be construed as emasculating the right of the respondent to take recourse to a legal remedy provided in law. Winding up action not being stricto sensu an action for recovery of dues, it is independent of any right that the appellant may have to recover moneys owed by the appellant.

9. Having regard to the facts and circumstances of the case, we are of the view that no interference is called for vis-a-vis the impugned judgment and order passed by the learned company Judge. Settlement, if any, can always be put forth before the learned company Judge in the pending company petition.

10. The appeal, is accordingly, dismissed. Consequently, the interim order dated 24.02.2017, shall stand vacated. The application i.e., C.M.P.No.3194 of 2017 shall stand dismissed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vsm

To

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

+2cc to M/S.Ganesh & Ganesh, Advocate Sr. 52933
+1ccc to M/S.George Cheriyan, Advocate Sr. 52910

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O.S.A.No.36 of 2017

SVI (CO)
VR(18/8/2017)