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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.PET. 206/2007**

M/S ARINITS SALES PVT. LTD Petitioner

Through Mr. R.K. Dhawan, Ms.Richa Dhawan
and Mr.V.K.Teng, Advs.

versus

ROCKLITE RESINS & CHEMICALS P.LTD. Respondent
Through Mr.K.K.Aggarwal, Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **01.11.2017**

CO. Appl. 2245/2011

1. This application is filed under Rule 9 of the Companies (Court) Rules 1959 to recall/modify the order dated 04.07.2011 and to set aside the directions given to the respondent to deposit the suit amount in court.
2. The above winding up petition has been filed by the petitioner in view of the fact that as per the petitioner, the respondent has failed to pay the admitted dues of the petitioner. On 04.07.2011, this court concluded that there is an unambiguous and clear admission of debt of Rs.16,37,684.71/- in the respondent's balance sheet dated 31.03.2007. Hence, a direction was passed to the respondent to deposit the said admitted amount in his balance sheet within a period of 12 weeks with the Registry of this court. Upon the said amount being deposited, the Registry was directed to keep the same in a

Fixed Deposit Receipt in a nationalised bank. The amount deposited in court was to abide by any decree/judgment that might be passed by the civil court which was seized of the recovery proceedings initiated by the petitioner Company. In the eventuality that the respondent failed to deposit, the respondent Company was held liable to be wound up.

3. It transpires that the petitioner have also filed a suit under Order 37 CPC for recovery of the said amount against the respondent. The Single Judge of this court had granted conditional leave to defend to the respondent subject to the respondent depositing the suit amount. The above order was also upheld by the Division Bench of this Court. However, the Supreme Court in the SLP has stayed the directions regarding deposit of the amount and also stayed further proceedings in the suit. The SLP is still said to be pending.

4. Against the order of this court dated 04.07.2011, the respondent filed an appeal before the Division bench. The Division Bench on 05.10.2011 noted the plea of the respondent regarding the stay order granted by the Supreme Court. The Division Bench also noted that this aspect of the matter about the stay order passed by the Supreme Court had not been dealt with by this court while passing the impugned order. Hence, liberty was given to the respondent to file an appropriate review application to bring the aforesaid fact regarding the matter being pending before the Supreme Court to the notice of this court. This application has been filed pursuant to the said liberty granted by the Division Bench in its order dated 05.10.2011.

5. I have heard learned counsel for the parties.

6. A perusal of the order dated 04.07.2011 would show that the deposit that was to be made by the respondent was to abide by the decree/judgment

that was to be passed by the civil court. It is manifest that the directions to deposit are correlated to the proceedings in a civil court. As the Supreme Court has stayed further proceeding in the suit and also has stayed the directions passed in the suit to deposit the suit amount, in my opinion, it would be appropriate that the directions of this court dated 04.07.2011 be modified to be in consonance with the directions of the Supreme Court. Accordingly, I modify the order dated 04.07.2011 to the extent that the directions to deposit the amount of Rs. 16,37,684.71/- is subject to further directions that may be passed by the Supreme Court in SLP No.21258/2009/C.A. 10370/2010 which still is pending. Hence, the respondent will abide by the directions of the Supreme Court. In the eventuality of any directions to deposit any amount, the respondent will deposit that amount. On failure to deposit that amount, the respondent Company is liable to be wound up.

7. The application stands disposed of.

JAYANT NATH, J

NOVEMBER 01, 2017

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