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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**Reserved on: 22nd May, 2017
Pronounced on: 29th May, 2017**

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CO.PET. 584/2014

**CHANGZHOU TRINA SOLAR
ENERGY CO. LIMITED**

..... Petitioner

versus

HINDUSTAN POWER PROJECTS (P) LTD.

..... Respondent

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CO.PET. 585/2014

**CHANGZHOU TRINA SOLAR
ENERGY CO. LIMITED**

..... Petitioner

versus

HINDUSTAN POWER PROJECTS (P) LTD.

..... Respondent

Presence : Mr.Vivek Sibal, Ms.Pooja M.Saigal, Advocates for
petitioner.

Ms.Maneesha Dhir, Mr.KPS Kohli and Mr.Milin Singh
Negi, Advocates for respondent.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

CA No. 9/2016 in CO.PET. 584/2014;

CA Nos.10/2016 in CO.PET. 585/2014

1. These applications have been moved by the petitioner under
Rule 6 & 9 of the Companies (Court) Rules, 1959 praying for revival

of the Company Petitions bearing Nos.584 and 585 of 2014 and consequently for the liquidation of respondent company. The petitions were disposed of vide order dated 12.01.2015.

2. Both the parties had entered into a settlement and filed the consent terms with this Court along with a settlement agreement dated 08.01.2015. As per the settlement, an amount of USD 30,379,115.60 cents were to be paid by the respondent company to the petitioner, in 12 equal monthly installments as enumerated in the said agreement. The said agreement was entered pursuant to the mutual discussions where such an amount was offered by the guarantors in full and final settlement of total outstanding of USD 35,740,136 (including principal amount of USD 34,038,225 and liquidated damages to the tune of USD 1,701,911).

3. Per clause 4 of the said settlement agreement, the guarantor had undertaken that in case of a default / deviation in the payment schedule of settled amount of USD 30,379,115.60 cents, the entire outstanding amount of USD 35,740,136 (including the liquidated damages to the tune of USD 1,701,911 less any amount paid by the guarantor under that agreement) along with interest @ 12 % per annum on the balance amount starting from the date of such default till the payment, shall immediately become due and payable by the respondent to petitioner.

4. The petitioner says that barring first six installments, none of remaining installments were paid in time and were rescheduled again

and again at the instance of the respondent company. Reference was made to an order dated 12.01.2015 of this Court where the undertaking given by the respondent was accepted by the Court and the respondent was directed to remain bound by the same.

5. But since there was default so CA No.3055/2015 and 3057/2015 were moved in Company Petition Nos.584/2014 and 585/2014 respectively seeking revival of the petitions in terms of the order dated 12.01.2015 stating *inter alia* that the respondent had failed to perform its obligation in terms of the settlement.

6. Notices were issued to the respondent company. Appearance was entered on behalf of the respondent and on 09.10.2015 it was pleaded that default occurred due to adverse business conditions beyond the control of the respondent and it reiterated that the respondent shall be committed to make the outstanding payments as envisaged in the settlement between the parties on or before 15.11.2015 along with the interest @ 12% pa. Looking at the overall circumstances and with a view to assess the bonafides of the respondent, the matter was listed for further consideration on 04.12.2015.

7. On 04.01.2016, yet again CA Nos.9/2016 and 10/2016 were moved in respective petitions stating *inter alia* that the respondent had again failed to adhere to the settlement terms and hence Liquidation Petition(s) be revived again. Notices were issued and even the assistance of the learned Official Liquidator was sought. On

19.02.2016, the learned counsel for respondent submitted that the total outstanding amount is USD 30,379,115.60 cents, out of which an amount is 18 Million USD along with interest @ 12% pa has already been paid and that the respondent would clear the entire balance amount by 30th April, 2016. However, even the date of 30.04.2016 was not adhered to hence it is argued by the petitioners that their application bearing CA Nos.9/2016 and 10/2016 respectively be allowed and the liquidation proceedings against the respondent be revived.

8. On the contrary, the learned counsel for the respondent argued that they had cleared the entire payment as envisaged in the agreement by 03.05.2016 and had rather paid about USD 1 Million towards interest for delayed payment of the agreed principal amount of USD 30,379,115.60 and as the entire payment was cleared by 04.05.2016, including the default amount with agreed interest of 12% p.a., the liquidation proceedings cannot be revived against its running company with 4200 employees, especially when the petitioner had not offered to deposit the amounts so received by it under the settlement agreement. It is argued that though there was delay in payment of installments but the time to pay the installments was extended by the Court and thus such delayed payments were made though, with interest @ 12% pa.

9. Admittedly, the amount so settled between the parties was to be paid by 30th April, 2016 and that it could not be paid by the respondent by such date and the time was extended by the orders of

this Court firstly till 15.11.2015 with interest @ 12% p.a., and then for further periods till the entire payment was cleared by the respondent by 03.05.2016.

10. Thus where the petitioner company had received an huge sum of USD 31 million approx. under the settlement agreement would it then be entitled to seek revival of the liquidation proceedings, seeking resort to Clause 4 (supra). The answers would be “No”.

11. It is the settled law that if the time limit is provided by a consent order, the Court has the jurisdiction / power to extend such time on the basis that when such consent terms are filed by the parties and accepted by the Court, such terms merge in the order of the Court and then the Court is well within its power to extend the time for making payments of the installments. Rule 9 of the Company (Court) Rules confers inherent powers upon this Court to pass any order in the interest of justice and hence it has the discretion to grant extension of time.

12. In *Marketing and Advertising Associates Pvt Ltd vs. Telerad Private Limited* (1969) 39 Company Cases 436 (Bombay) it was held as under:-

30. It was next urged that the order was, so to say, an automatic order making a complete provision for all matters settled between the parties and that therefore the court was precluded from interfering with that order in any way and extending the time was such an interference. In the first place we do

not see what is really implied by saying that an order is automatic or self-operative. Every order passed upon consent makes provision for the fulfillment of certain terms by either party and usually provides for what is the consequence of breach of any of its terms.

31. In that sense every order is an order which is self-operative, but we do not see how, assuming that an order is self-operative in this sense, it can necessarily be inferred that the court's jurisdiction to pass such orders as it deems fit in the interests of justice, can be limited or taken away. Turning to the consent terms upon which the order was passed it is clear that the consequence of the non-payment of the instalments is provided in clause 4 of the consent terms and the consequences which flow are four in number. Firstly, that the petition for winding up would stand admitted; secondly, that the creditor (the appellants before us) would be at liberty forthwith to apply for consequential directions regarding advertisement and returnable date; thirdly, that the respondent-company would not be able to oppose such a application and, lastly, that the entire amount of Rs.1,50,000 or the balance remaining due on the date of default would become payable immediately. Though these consequences are provided in the settlement itself and the order passed on the basis of the settlement, we cannot see how these consequences lead to the conclusion that the court's power of extension of time is in any way curbed or taken away. None of these clauses refers to the question of extension of time or the condonation of delay in the payment of the installments and we think that much more than is stated in clause 4 would be necessary before an ouster of the statutory power of the court conferred by rule 7 can be inferred.

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34. Therefore, even automatic or self-operative orders passed upon consent do not necessarily oust the jurisdiction of the court to condone delay and extend time.

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45.There is no indication therefore in clause 4 to suggest that it was the intention of the parties that the order upon consent should be, so too say, a Code in itself taking effect automatically without any further reference to the Court.

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51..... The question then is, should this court in appeal lend its assistance to a petition for winding up the company when, although the petitioner is being paid the full amount which he bargained for, he deliberately does not accept it and insists on the company being wound up. We do not think that we can lend the aid of the court to such a party."

13. Thus, per law discussed above, since the petitioner company has accepted the payments in the extended period and that too with interest on the default installments, then simply because there was delay in making the payments under the settlement agreement, it would not be justifiable to take recourse to clause 4 of the Settlement Agreement and thus vitiating the efforts made by the Court to conclude the settlement. After receiving huge payments with interest and yet again making the respondent suffer liquidation proceedings would be asking too much. The conditional offer made by the learned counsel for the petitioner to deposit the amount so received only once

a liquidator is appointed is not acceptable and such a plea cannot be allowed.

14. In view of above, the applications for revival of the liquidation proceedings are dismissed. No order as to cost.

CA Nos.3055/2015 and 481/2016 in CO.PET. 584/2014;
CA Nos.3058/2015 and 474/2016 in CO.PET. 585/2014

15. In view of above order, the remaining applications stands disposed of having become infructuous.

YOGESH KHANNA, J

MAY 29, 2017

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