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

APPEAL LODGING NO. 111 OF 2018
IN
COMPANY APPLICATION NO. 532 OF 2017
WITH
NOTICE OF MOTION LODGING NO. 208 OF 2018
IN
APPEAL LODGING NO. 111 OF 2018

Paradise Consumer Products Limited
Formerly known as -
Paradise Polymers Limited

.. Appellant

Vs.

Varsha Corporation Limited

.. Respondent

Mr. Nitin Thakkar, Senior Advocate a/w Mr. Anilkumar Patil i/by Pankaj Pandey for appellant.

Mr. Pradeep J. Thorat i/by Suryajeet P. Chavan for respondent.

Mr. Anuraj Gokhale for O.L.

CORAM: NARESH H. PATIL &
G. S. KULKARNI, JJ.

MARCH 07, 2018.

P.C.

1. Heard the learned counsel for the parties. We have perused the consent terms dated 25/1/2017 submitted in Company Petition No. 301 of 2015, the order passed by the learned Single Judge (Coram: A.K.

Menon,J.) dated 26/9/2016 in Company Petition No. 301 of 2015, order dated 25/1/2017 passed by the learned Single Judge (Coram: R. D. Dhanuka,J.) in Company Petition No. 301 of 2015 and the impugned order dated 27/2/2018 passed by the learned Single Judge (Coram: K. R. Shriram,J.) in Company Application No. 532 of 2017 in Company Petition No. 301 of 2015.

2. The appellant failed to make payment in accordance with the schedule of payment mentioned in the Consent Terms. The respondent filed Company Application No. 532 of 2017 and prayed for reliefs in terms of prayer clauses (a) and (b). The learned Single judge by the impugned order dated 27/2/2018 allowed the said Company Application. A show cause notice was issued to the appellant (Original Respondent) and its Directors for initiating proceeding for contempt of court for breach of undertaking given to the court. Said show cause was made returnable on 3/5/2018.

3. The learned Senior Counsel Mr. Thakkar appearing for the appellant submits that the appellant is yet to file reply in the Company Application. Certain proposals were exchanged and discussed, after filing

of the Company Application, in respect of the transaction entered into by the parties and, therefore, the appellant could not file reply to the Company Application. It is submitted that the appellant has raised substantial issues for the consideration of the court. In case the appellant is permitted to file reply to the Company Application, appellant would be in a position to bring certain facts and circumstances before the court due to which appellant did not make further payment to the respondent. The learned counsel further submitted by RTGS an amount of Rs.10 lakhs, from June to August 2017, was paid to the respondent. In all, an amount of Rs.25,00,000 + Rs. 10,00,000 = Rs. 35,00,000/- was paid to the respondent, according to the learned counsel.

4. The learned counsel appearing for the respondent submits that there was abnormal delay on the part of the appellant to file reply to the Company Application. The consent terms were violated by the appellant. The contentions raised before this court were neither raised before the learned Single Judge nor they are acceptable to the respondent. Due to want of payment on the part of the appellant, the respondent is facing hardship, according to the learned counsel.

5. In the facts of the case, we find that an opportunity is required to be provided to the appellant to file reply to the Company Application. The issue which the appellant has raised before this court could be considered and appreciated by the learned Single Judge in the proceedings pending before the court. The questions of facts raised before this court could be considered and appreciated by the learned Single Judge. We are, therefore, inclined to remand the matter back to the learned Single Judge for fresh consideration of the Company Application on its own merits, after filing of reply by the appellant, but subject to condition.

ORDER

- (a) The impugned order dated 27/2/2018 passed by the learned Single Judge in Company Application No. 532 of 2017 in Company Petition No. 301 of 2015 is set aside and the matter is remanded back to the learned Single Judge for fresh consideration on its own merits, after filing of reply by the appellant, subject to appellant depositing an amount of Rs.10,00,000/- (Rupees Ten Lakhs only) by 16/3/2018 with the office of

Prothonotary and Senior Master of this court.

- (b) The appellant shall file reply to the Company Application No. 532 of 2017 by 19/3/2018.
- (c) In case the appellant fails to deposit the afore-stated amount and file reply within the time stipulated, the order passed by the learned Single Judge stands revived.

6. The appeal is allowed to the above extent. Notice of Motion Lodging No. 208 of 2018 does not survive and disposed of as such.

7. It is clarified that we have not expressed any opinion on merits of the matter. All issues on merits are kept open.

(G. S. KULKARNI J.)

(NARESH H. PATIL,J.)