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

COMPANY PETITION NO.347 OF 2016

Maritime Industrial Services Company Limited Inc. ….Petitioner

Vs.

M/s. Essar Offshore Subsea Limited ….Respondent

Ms. Anamika I/b. HSA Advocates for petitioner.
Mr. Ashish Pyasi a/w. Ms. Pragya Khaitan and Mr. Umag Thakar I/b. Dhir and Dhir Associates for respondent.
Mr. Manoj Agarwalla, CFO of respondent company present.

CORAM : K.R.SHRIRAM, J.
DATE : 2nd AUGUST 2018

P.C.:

1 On 5th February 2018 consent terms were entered into between petitioner and the company under which the company agreed to pay a sum of USD 1,850,976 in twelve installments as mentioned in paragraph 4.1 of the consent terms. No amount was paid until 26th March 2018 and therefore, by an order dated 26th March 2018 the petition came to be admitted.

2 Ms. Anamika, counsel for petitioner states that some time in the end of April 2018, the company paid about Rs.3 Crores, which would effectively relate to the first two installments and thereafter no amount has been paid. On 13th July 2018 the following order came to be passed :

> *1. Parties had entered into consent terms on 5.2.2018 which the company has breached. The petition therefore came to be admitted on 26.3.2018. In the consent terms there is also an undertaking by the company that they shall not commit any default and this undertaking has been accepted by the Court. In the order of 5.2.2018 it is mentioned that "All undertakings including the undertaking of*

respondent that they shall make payments as mentioned in clause-4 to petitioner, is accepted and so ordered". Therefore, respondent is also in breach of its undertaking given to the Court.

2. Ms. Khaitan appearing for the company states that by 31.7.2018, the company is expecting inflow of funds and therefore, by first week of August, company should be in a position to make payments.

3. Mr. Gupta appearing for petitioners states his instructions are to agree for two weeks extension to make the payments. At the same time, Mr. Gupta also states that petitioners have not advertised the petition as per the directions given in the order dated 26.3.2018. Mr. Gupta states that by 17.7.2018 petitioners will advertise the petition in "Free Press Journal" and "Navshakti" and also make the payments to Maharashtra Govt. Gazette. Statement accepted.

4. Stand over to 2.8.2018 on which date if the company has not made payments or parties do not file revised consent terms, the company will be ordered to be wound up subject to petitioners also complying with the directions regarding advertising the petition. Petitioners are put to notice that if they do not comply with the directions regarding advertising of the petition, petition itself will be dismissed for want of prosecution. Respondent is also put to notice that Court will not hesitate to issue notice to show cause as to why contempt proceedings should not be initiated against the company and its Board of Directors.

3 Ms. Anamika, counsel for petitioner states that parties have not been able to enter into further consent terms and tenders an affidavit of one Manoj Gamre affirmed on 2nd August 2018 confirming advertising the petition in Free Press Journal and Navshakti on 16th July 2018 and in the Maharashtra Government Gazette for the period 19th July – 25th July 2018 at serial no.M-18119.

4 Mr. Pyasi, counsel for respondent company states that the company is not been able to make any payment but still seeks time to make the payment. Mr. Pyasi is unable to tell the Court how the company is going to make the payments.

5 It is rather obvious that the company is commercially insolvent. The amounts payable to petitioner were payable some time in 2012 and for six years the company has not made the payment to petitioner when admittedly the amount was due and payable as reflected in the consent terms filed. Even after entering into consent terms, the company did not honour its commitment and undertakings given to this Court. The very first two installments, the company committed default and after the petition came to be admitted, paid those installments. The remaining installments were due from 30th April 2018. The installments that were payable on 30th April 2018, 31st May 2018, 30th June 2018 and 31st July 2018 totaling to about USD 640,000 has not been paid. Even today there is no idea how this money is going to be paid. Therefore, it is quite obvious that the company is commercially insolvent and the attempt is only to drag on the matter. It has to be noted that even after the company made defaults and committed breach of undertakings given to this Court, the management of the company did not consider necessary and fit to even approach this Court for an extension explaining the reason for their default. *Ex-facie,* therefore, there is breach of undertaking given to this Court by the company.

6 Therefore, company petition is allowed in terms of prayer clauses – (a) and (b) which read as under :

> *(a) That the respondent company, viz., M/s. Essar Offshore Subsea Limited, having CIN No.U11101MH2008PLC179089,*

having its registered office at Essar House, 11, K.K. Marg, Mahalaxmi, Mumbai – 400 034, Maharashtra, India, be wound up by and under the orders and directions of this Hon'ble Court under the provisions of the Companies Act, 1956;

(b) That the Official Liquidator of this Hon'ble Court be appointed as Liquidator of the Respondent Company, with all powers under Section 457 of the Companies Act, 1956, to take charge of the assets, business affairs, properties, bank accounts, books of accounts, documents, etc. of the Respondent Company, with all powers under the provisions of the Companies Act, 1956.

7 Official Liquidator, within two weeks, to take steps upon receiving an authenticated copy of this order from the advocate for petitioner without waiting for any notification. The counsel for petitioner is also directed to forward a copy of this order to National Company Law Tribunal for information.

8 Upon receipt of the authenticated copy from petitioner's advocate, Official Liquidator shall forthwith cause notice to all concerned Directors calling upon them to file their respective statement of affairs strictly in consonance with the provision of law. All Directors of respondent company, now in liquidation, are hereby directed to file their respective statement of affairs as required under Section 454 of the Companies Act 1956, failing which Official Liquidator shall proceed further and lodge criminal complaint against the erring Directors, without seeking prior sanction of this Court for initiation of criminal prosecution.

9 Company petition accordingly stands disposed.

10 Prothonotary and Senior Master, High Court, Bombay to refund the amount of Rs.15,000/- deposited by petitioner towards advertisement, subject to deductions, if any.

11 Registry to issue notice to the company and all directors of the company as to why they should not be held guilty of contempt of Court for committing breach of undertaking given to this Court. Notice to be made returnable on 14th September 2018. On the returnable date, all the directors of the company and the person who has signed the consent terms shall remain present in Court.

Gauri Amit Gaekwad
Digitally signed by Gauri Amit Gaekwad
Date: 2018.08.03 18:47:13 +0530

(K.R.SHRIRAM, J.)