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

APPEAL (L) NO.240 OF 2018
IN
COMPANY PETITION NO.974 OF 2014

SRK Shelters Pvt. Ltd.

... Appellant.

V/s.

George T.J.

... Respondents.

Mr. Surel Shah a/w Mr. Prashant Darandale for the Appellant.

Mr. M.S. Dehlvi and Co. for the Respondent.

Mr. L.T. Stelkar for the O.L.

CORAM : A.S.OKA AND M.S. SONAK, JJ.

DATE : 7th SEPTEMBER 2018.

P.C. :

1 We have taken up the appeal for admission as we are informed that amicable settlement is not possible. The appellant has taken an exception to the order dated 16th March, 2018 passed by the learned Single Judge by which the appellant company has been ordered to be wound up under clauses (e) and (f) of Section 433 of the Companies Act, 1956. We have heard the submissions of the learned counsel appearing for the appellant. We have perused the impugned order and other material on record.

2 In paragraph 2 of the impugned order, the learned Single Judge has referred to the earlier order dated 18th April 2016 under which the parties to the company petition arrived at a settlement. The appellant agreed to pay a sum of Rs.90 Lakhs in full and

final settlement of the claim of the respondent. The said amount was to be paid in 19 installments as set out in the order dated 18th April 2016. The impugned order records an undisputed position that only first three installments of total sum of Rs.15 lakhs were paid by the appellant.

3 In paragraph 3 of the impugned order, the learned Single Judge has referred to the affidavit-in-reply filed by the appellant in which the respondent's claim was again admitted. A statement was made on behalf of the appellant that as and when certain amounts were received by the appellant in terms of the award of the learned Arbitrator, a sum of Rs.68,79,645/- will be paid by the appellant. However, the amount as promised was not paid. Paragraph 3 of the order records that the appellant refused to pay 50% of the balance amount payable. Even during the pendency of this appeal, the appellant has not paid any amount.

4 That is how we find no error in the view taken by the learned Single Judge that the appellant is unable to discharge its debts and is commercial insolvent. Hence, there is no merit in the appeal and the same is rejected. Notice of Motion does not survive and the same is disposed of.

(M.S. SONAK, J.)

(A.S.OKA, J.)