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

APPEAL (Lodging) No.309 of 2018
in
COMPANY PETITION NO.434 OF 2016

Auram Machines (I) Pvt.Ltd …. … Appellant
vs
M/s Liang Lih Machine Co Ltd... … Respondent

with
NOTICE OF MOTION (Appeals) (Lodging) No.669 of 2018
in
APPEAL (Lodging) No.309 of 2018

Auram Machines (I) Pvt.Ltd …. … Appellant
vs
M/s Liang Lih Machine Co Ltd..... … Respondent

Ms.Priya Rambade with Mr.Aniket Worlikar
I/b M/s.Deven Dwarkadas & Partners for Appellant.
Mr.Ankur Shah I.b. Mr.Hemant Sethi for Respondent

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

DATED : <u>18TH JULY 2018</u>

<u>P.C.</u> :

This appeal is directed against the order dated 15th June 2018 passed by the learned single Judge directing that the appellant-company "M/s Auram Machine (I) Pvt.Ltd" be wound-up under the provisions of the Companies Act. Notwithstanding an order to wind-up the appellant, the learned single Judge in paragraph 22 of the order granted one more chance to the appellant to redeem itself by depositing Rs.50 lakhs with the

Prothonotary and Senior Master, High Court, Bombay within four weeks from the date of the order and in the event the amount is deposited, the petition will be placed for direction and if not deposited, liquidation proceedings will commence forthwith.

2. Learned counsel for the appellant in assailing the impugned order submits that there are arbitration proceedings which are pending between the parties as also there is a counter-claim which is made against the respondent as the parties are well connected with each other not only in regard to the share holding of the appellant-company but, even otherwise in business transactions. In this situation, the learned single Judge ought not to have allowed the petition to wind up the appellant-company.

3. On the other hand, learned counsel for the respondent supported the impugned order. It is submitted that there is no dispute on the liability of the appellant towards unpaid amount of loan and in fact there was an admission of the liability. It is submitted that all the pleas which are argued, are appropriately considered by the learned single Judge in allowing the winding up petition by the impugned order.

4. We have heard learned counsel for the parties. We have also perused the impugned order and record. The respondent had approached

the company Court with the winding up petition on the ground that the appellant-company is unable to pay its debts in regard to the loan of USD 1,00,000 styled as 'External Commercial Borrowings (ECB). The said borrowings was under an agreement dated 9th July 2011 executed between the appellant and the respondent. It is not in dispute that an amount of USD 1,00,000 was received by the appellant as a loan on appropriate RBI approval being obtained. Further, part of the principal amount of USD 30,000 was repaid by the appellant leaving a balance of USD 70,000. A statutory notice dated 2nd November 2015 was issued by the respondent to the appellant. As no payment was made despite receipt of the said notice, the respondent filed the company petition in question.

5. By an order dated 10th July 2017 the company petition was admitted by the learned single Judge. In the order admitting the petition, the learned single Judge observed that by a communication dated 1st January 2015 the appellant assured the respondent that the said loan would be repaid by selling the assets of the company as per the schedule. It was observed that in reply to the statutory notice, the appellant raised a dispute on issues which were outside the scope of loan agreement. These issues were of passing off of trade-mark 'Auram KTK' and 'KTK' since 2005 and that the respondent was liable to pay damages to the appellant. A defence on a separate agreement which was for supply of certain goods was put up so as to avoid the liability under the ECB loan agreement. The

learned single Judge therefore, observed that the defence was totally illusory and that the appellant was unable to pay the debts of the respondent and is commercially insolvent.

6. We find that the defence to the winding up petition at the final hearing was no different from what was urged at the time of admission of the petition. Even before us, learned counsel for the appellant has attempted to connect the loan agreement in question with other agreements/trades without any material to show that both the dealings are inter-connected with each other so as to not discharge the admitted liability under the ECB loan agreement. The counter claim which arose under different business transactions is also unsupported for the Court to reach to a conclusion that there is no liability of the appellant to pay the ECB loan as received by it. The learned single Judge in paragraph 4 has clearly observed that despite repeated opportunities to the appellant to place on record the documents relating to counter claim, no clear material to that effect was placed on record. It was thus, observed that the entire defence as urged on behalf of the appellant was nothing but, an afterthought. The learned single Judge has observed that the company had infact repaid part of the principal amount as also interest paid was USD 585.80 and there was no dispute that balance amount of USD 70,000 was due and payable. The learned single Judge has referred to various e-mails dated 1st January 2015, 10th February 2015, 25th February 2015 and 3rd April 2015 whereby

the appellant has clearly admitted its liability under the said ECB loan agreement but, also that payment would be effected. There was no material to indicate that there was any genuine dispute between the parties and more particularly a dispute which would show that the amounts under the ECB loan was not due and payable. During the course of hearing of this appeal on the last two occasions, we had asked the learned counsel for the appellant whether the appellant is willing to deposit an amount of Rs.50 lakhs as directed by the learned single Judge in paragraph 22. However, there was no willingness of the appellant to deposit the said amount. It is thus clear that the appellant is commercially insolvent and unable to pay its debts.

7. For the above reasons, we find no merit in the present appeal. The appeal is rejected. No costs.

{G.S.KULKARNI, J} **{NARESH H.PATIL, J}**