

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.310 OF 2018

Borouge Pvt.Ltd. ...Appellant
vs.
Multi Flex Lami Print
Ltd Company Ltd. ...Respondent

Ms Shivani Soni i/b Deven Dwarkadas & Partners for
the appellant

CORAM : A.S.OKA, &
M.S.SONAK,JJ.
DATE : OCTOBER 22, 2018

P.C.:

1 A company petition for winding up was filed by the appellant before the learned Company Judge. The company petition was filed on 11th February 2014. On 20th October 2013, the Board for Industrial and Financial Reconstruction (for short "BIFR") passed an order on the reference made by the respondent company rejecting the reference. Against the order of BIFR rejecting the reference, an appeal was preferred before the Appellate Authority for Industrial and Financial Reconstruction (for short "AAIFR") which was pending on the date of filing the company petition for winding up the concerned company. In the company petition filed by the appellant, a specific assertion was made by adding paragraph 20A by hand that no reference before BIFR or an appeal before the AAIFR is pending in respect of the respondent company. It is in view of this

statement that on 5th February 2015, the company petition for winding up was made absolute. A company application was moved by the respondent for recall of the aforesaid order dated 5th February 2015 passed by the Company Judge. By order dated 7th July 2017, the Company Application No.119 of 2017 was allowed in terms of the prayer clauses (a) and (b) thereof for the reasons set out therein. Thus, the order dated 5th February 2015 passed in the Company Petition filed by the petitioners was set aside. As a result of the said order, the Company Petition for winding up preferred by the appellant was restored.

2 The material part of the order dated 7th July 2017 reads thus:

“2 In the present application the applicant has prayed that the order dated 5.2.2015 passed in Company Petition No.700/2014 ordering winding up of the respondent company Multi Flex Laxmi Print Ltd. (in liquidation) be recalled. **It is submitted that while filing the ssaid company petition a categorical statement has been made by the petitioner namely Borouge P. Ltd that no reference before the BIFR and the appeal before the AAIFR is pending in respect of the respondent company i.e Multi Flex Lami Print Ltd. The record indicates that BIFR had in fact passed an order dated 20.10.2013 in a reference made by the applicant/original respondent company and an appeal was preferred against the rejection of the said reference. Thus, it clearly appears that when the present company petition was filed on 11.2.2014 the final reference order of the BIFR dated 20.10.2013 was already in existence and the petitioner has made wrong statement in para 21A of the petition. In view thereof, the order dated 5.2.2015 is hereby recalled.**

3 Application is allowed in terms of prayer clause (a) and (b).”

3 As stated earlier, prayer clause (a) in Company Application No.119 of 2007 was for setting aside the order dated 5th February 2015. The order dated 7th July 2017 has become final. Thereafter, the restored Company Petition came up before the learned Company Judge on 22nd June 2018 when the learned Company Judge noted the order dated 7th July 2017. Paragraphs 3 and 4 of the said order reads thus:

“3 This order came to be recalled by an order dated 7th July 2017 because the Court observed that when the petition was filed, BIFR had already passed an order dated 20th October 2013 on the reference and an appeal was preferred against rejection of the said reference. The Court has also observed that when the petition was filed on 11th February 2014 petitioner has made wrong statement in paragraph 21A of the petition. Petitioner has not filed any affidavit explaining the reason for making a wrong statement in the petition. The said order dated 7th July 2017 was passed in company application No.119 of 2017 taken out on behalf of the company.

4 **In the circumstances, petitioner is directed to file an affidavit of a person not below the rank of Director of the company explaining why and how a wrong statement came to be made in the petition. This affidavit to be filed and copy served upon the company by 3rd July 2018, failing which the petition will stand dismissed without further reference to this Court.”**

(emphasis added)

4 Notwithstanding the above directions, when on

9th July 2018, Company Petition appeared before the Company Judge for admission, it was noticed that an affidavit explaining the wrong statement in the company petition was not filed. That is how by the impugned order dated 9th July 2018, the Company Petition filed by the petitioner (appellant) for winding up was dismissed.

5 The submission of the learned counsel for the appellant is that the appellant-Company is from Singapore and the concerned Director who was traveling could not file an affidavit. Her submission is that if the time is extended, the appellant-company will comply with the directions contained in clause 4 of the order dated 22nd June 2018.

6 We have considered the submissions. The relevant part of the order dated 7th July 2017 passed by the learned Company Judge which we have quoted earlier, has become final. Thus, it was established that not only that a false statement was made in paragraph 20-A of the Company Petition filed by the appellant to the effect that there were no proceedings pending before the BIFR or an appeal pending before AAFR, the appellant indulged in suppression of material facts. In the Company Petition filed by the appellant, on the basis of the said false statement made in paragraph 20-A, a very drastic order of winding up of the company was passed on 5th February 2015. After noticing the

falsehood of the statement made by the appellant on 7th July 2017, the learned Company Judge recalled the order dated 5th February 2015 on the ground that the appellant made a wrong statement. The order dated 7th July 2017 which we have quoted above has become final. In fact, the obligation of the appellant was to immediately file an affidavit after the order dated 7th July 2017 was passed explaining as to why such a false statement was made in the Company Petition. No order of the Company Judge was necessary for the appellant to file an affidavit clarifying the reasons for making a false statement. Nothing was done by the appellant for a period of about one year and therefore, the order dated 22nd June 2018 was passed. In fact, paragraph 4 of the order itself is self operative which records that if the affidavit is not filed by 3rd July 2018, the Company Petition will stand dismissed for non prosecution without further reference to the Court. The appellant did not apply for extension of time in writing. The appellant did not challenge the order dated 22nd June 2018. On 9th July 2018, when the impugned order dismissing the Company Petition was passed, the petition already stood dismissed in view of the self operative order. Moreover, even while passing the order dated 7th July 2017, after noticing the suppression of material facts by the appellant, the learned Company Judge could have dismissed the petition for winding up. However, leniency was shown on 7th July 2017 as well as on 22nd June 2018.

7 The jurisdiction of the Company Court ordering winding up is always discretionary. Considering the conduct of the appellant, the impugned order has been rightly passed. Even if the Company Petition is dismissed, the claim of the appellant made in the Company Petition is not affected in the sense that the appellant can always file appropriate proceedings for recovery of the amount claimed in the Company Petition.

8 Subject to what is observed above, no interference is called for. Appeal is dismissed with no order as to costs.

(M.S.SONAK,J.)

(A.S.OKA,J.)