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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) NO.490 OF 2018

IN

COMPANY PETITION NO.538 OF 2014

ALONGWITH

NOTICE OF MOTION (L) NO.1176 OF 2018

IN

APPEAL (L) NO.490 OF 2018

Gammon India Limited

.... Appellant/
Orig. Respondent.

V/s

State Bank of India

.....Respondent/

—

Orig. Petitioner.

Mr. V. R. Dhond, Senior Counsel alongwith Ms. Smruti Kanade, Ms. Jigisha Vadodaria i/b M/s. Negandhi Shah & Himaytullah for the Appellant/Applicant.

Mr. Akshay Patil alongwith Mr. Sameer Bindra i/b M/s. Juris Corp. for the Respondent.

**CORAM: B. R. GAVAI &
RIYAZ I. CHAGLA, JJ.**

DATE: 13th December, 2018

P.C.:-

1] Appeal is taken up for final hearing.

2] Appellant challenges the Order dated 29/10/2018 passed by the learned Single Judge in Company Application No.63 of 2015 in Company Petition No. 538 of 2014. The Company Application was made for reviving the Company Petition No.538 of 2014. The learned Single Judge vide Order dated 29/10/2018 allowed the Company Application and revived the Company Petition No.538 of 2014. However, by the same order, the learned Single Judge also admitted the Company Petition.

3] It is the basic grievance of the Appellant that the order of admitting the Company Petition has been passed without giving an opportunity of being heard to the Appellant. It is submitted that though the matter was listed for some other purpose and though the attempt was made to argue the matter opposing admission, the learned Single Judge, without granting any opportunity of being heard to the Appellant, has admitted the Company Petition. It is submitted that admission of the Company Petition has serious consequences. It is also submitted on behalf of the Appellant that in the Appellant-

Company, majority of the share holding viz 63.65% is held by Lenders/Financial Institutions. We have also perused the list of Lenders, most of which are Nationalized Banks. It is submitted on behalf of the Appellant that with the assistance of Lenders/Institutions, an attempt is made to run the Company in efficient manner. It is however submitted that if the order of admission is permitted to remain in operation, a serious prejudice would be caused to the functioning of the Appellant-Company.

4] Mr. Patil, the learned Counsel appearing on behalf of the Respondent/Bank, opposed the appeal.

5] Taking into consideration the fact that most of the shareholding of the Appellant-Company is now controlled by the Nationalized Banks of high repute, we find that one more opportunity needs to be given to the Appellant. We are of the considered view that merely on account of default in payment of two installments, a drastic step for winding up of the Company could not have been taken. However, while quashing and setting aside the order of admission of the

Company Petition, we are also inclined to put the Appellant to certain terms. It is informed that last of the installments payable to the Respondent by the Appellant-Company would fall in the month of March, 2019. As per the revised offer given by the Appellant-Company, copy of which is placed on record, we direct that the last installment should be paid on 28th of March, 2019. The Chart prepared by the Respondent/Bank is taken on record and marked "X" for the purpose of identification.

6] In the result, appeal is allowed. The impugned order dated 29th October, 2018 is quashed and set aside. The Appellant is directed to make payment of installment as per the Chart which is placed on record. We clarify that in the event of default in payment of any of the installments, the appeal shall stand automatically dismissed and the order passed by the learned Single Judge dated 29th October, 2018 shall stand restored. Needless to state that the amount of Rs 2 crores deposited in this Court is permitted to be withdrawn by the Respondent/Bank, which shall be adjusted towards the repayment of loan to be made by the Appellant-Company as per the Chart.

7] Since the appeal is allowed and disposed of, no orders are necessary in the Notice of Motion and the same is also disposed of.

(RIYAZ I. CHAGLA J.)

(B. R. GAVAI, J.)