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

APPEAL NO. 438 OF 2018

in

COMPANY PETITION NO. 845 OF 2015

with

APPEAL NO. 42 OF 2018

in

COMPANY PETITION NO. 845 OF 2015

with

NOTICE OF MOTION (ST.) NO. 235 OF 2018

RTG Infrastructure and Realtors Ltd. ... Appellant/Petitioner.

V/s.

Land Mark Realty. ... Respondent.

With

APPEAL (Lodg.) NO. 123 OF 2018

in

COMPANY PETITION NO. 728 OF 2015

With

NOTICE OF MOTION (ST.) NO. 234 OF 2018

With

CHAMBER SUMMONS (ST.) No. 1832 OF 2018

With

CHAMBER SUMMONS (ST.) No. 1833 OF 2018

With

CHAMBER SUMMONS (ST.) No. 1835 OF 2018

With

CHAMBER SUMMONS (ST.) No. 1836 OF 2018

in

APPEAL (ST.) NO. 123 OF 2018
in
COMPANY PETITION NO. 728 OF 2015

RTG Infrastructure and Realtors Ltd. ... Appellant/Petitioner.

V/s.

M/s. National Steel Enterprises. ... Respondent.

Mr. Ashok Saraogi for the Appellants in all Appeals.

Mr. A.J. Almeida a/w. P.S. Gujar for the Applicant in CHSL 1832/18, 1833/18, 1835/18 and CHSL 1836/18.

Mr. L.T. Satelkar for Official Liquidator.

***CORAM : NARESH H. PATIL, C.J. &
N.M. JAMDAR, J.***

DATE : 20 FEBRUARY, 2019.

P.C. :-

These Appeals arise from the orders passed by the learned Company Judge admitting and allowing the Company Petitions filed by the Respondents – Petitioners and directing that the Appellant - Company to be wound up and a Liquidator be appointed.

2. The Appeal No. 438 of 2018 challenges the order dated 21 November 2017 and order dated 1 March 2018 passed by the learned Single Judge in Company Petition No. 845 of 2015 filed by

M/s. Landmark Realty. The Appeal (St.) No. 123 of 2018 challenges the order dated 28 June 2017 and order dated 1 March 2018 passed by the learned Single Judge in Company Petition No. 728 of 2015 filed by M/s. National Steel Enterprises. The effect of the orders is that the Appellant – Company is directed to be wound up.

3. The Respondent – Petitioners filed the Company Petitions seeking winding up of the Appellant – Company on the ground that the Appellant has been unable to pay its debt due to them. By a detailed order, the Company Judge admitted the Petitions. Even the amount of Rs.3980282/- which the Appellant was directed to deposit was not deposited. At the time of hearing, the Company Judge noted the order of admission of the Petition was challenged before the Appellate Bench with delay and no steps were taken in furtherance of the same. Thereafter, by a common order dated 1 March 2018 the learned Company Judge allowed the Petition and ordered winding up of the Appellant – Company.

4. When the Appeal came up on board on 25 April 2018, the Appeal Bench observed that in case the Appellant deposits an amount of Rs.6,10,888/- within two weeks, no further steps be taken pursuant to the order passed by the Company Judge. Thereafter, the Appeals are adjourned from time to time on the ground that the Appellant and the Petitioner are seeking to settle the dispute. Now

the Appellant and the Original Petitioners have sought to enter into a compromise on monetary terms.

5. Notice of the intended settlement was given to the Official Liquidator. The Official Liquidator pointed out that if the Appeals are to be disposed of by giving permission to withdraw the Petition, then an advertisement will have to be published. Accordingly, it was directed that the advertisement be published.

6. Thereafter, the Chamber Summons have been taken out in these Appeals by the Applicants claiming rights in the property of the company as well as the claims have been lodged with the Official Liquidator. The Official Liquidator has submitted a report in respect of the claims received with his comments thereupon.

7. We have heard this matter from time to time. Pursuant to the advertisement claims have been lodged and also Chamber Summons have been filed. Original Petitioner's dues are sought to be paid and the Appellant seeks recall of the winding up order.

8. The learned Counsel for the Petitioner, the learned Counsel for the Applicants and the Official Liquidator are *ad-idem* that the Appeals can be disposed of giving liberty to the Appellant to apply to the Company Court for recalling/setting aside the order of winding up, to be decided by the Company Court as per law and

procedure. Before the Company Judge the contentious issues raised by the Applicants and Claimants can be decided. The learned Counsel for the Appellant submitted, which is also not opposed by the Applicants and the Official Liquidator, that another advertisement need not be issued and the claim received pursuant to the advertisements issued can be processed. It is also submitted that the Chamber Summons, Official Liquidator's report and the claims and other documents be transmitted to the Company Court to save time of the Court as well as the parties.

9. We find the cause of action appropriate in the facts and circumstances. In view of this consensus at the bar, we dispose of the Appeals as under :-

(a) The Appellant/Original Petitioners are given liberty to apply to the Company Court for withdrawal/recall of the order of winding up.

(b) No fresh advertisement indicating the intention to withdraw the Petitions be issued. The record and proceedings of these Appeals be transmitted to the Company Court.

(c) We make it clear that we have not commented upon the contentions raised in the Chamber Summons

and in the claims lodged before the Official Liquidator. The same be decided on their own merits by the Company Judge.

(d) The Company Court is requested, of course subject to it's time bound commitments, to consider taking up these proceedings early.

(e) The Registry to take necessary steps as above.

10. Appeals are accordingly disposed of.

N.M. JAMDAR, J.

CHIEF JUSTICE