$~S-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CO.APP. 25/2019, CM APPLs. 721-22/2021

PCI LIMITED .....Appellant

Through: Mr.Prashant Mehta with Ms.Divita Vyas and Mr.Abdullah Tanveer, Advocates.

versus

PILLER GERMANY GMBH AND CO.KG .....Respondents

Through: Mr.Gyanendra Kumar, Advocate.

% Date of Decision: 15th January, 2021

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J: (Oral)

C.M.No.722/2021

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

C.M.No.721/2021

1. Present application has been filed by the appellant-applicant seeking modification of order dated 17th December, 2019 passed by this Court and to discharge the appellant-applicant from its obligations as recorded thereunder in view of the full and final payment of all outstanding dues.

2. Learned counsel for the appellant-applicant states that the appellant-applicant had paid the first two instalments which was accepted by the

respondents but the appellant-applicant was unable to pay the third and fourth instalment on time due to covid-19 pandemic and the resultant economic conditions.

3. He further states that on account the said delay, the respondents moved an application before the Company Court who refused to grant the appellant any additional time for payment, even when the appellant had offered to pay additional interest to settle the dispute. However, he points out that the outstanding amount of third and fourth instalments now stands paid on 31st December, 2020 and 4th January, 2021.

4. He states that the appellant is a profit generating company and financially sound as there is no inability to pay its financial debt and it would not be prudent to wind up a solvent company.

5. Per contra, Mr. Gyanendra Kumar, learned counsel for the respondents submits that the petitioner company is not solvent inasmuch as it has total open charges approximately of Rs.1,185 crores. He also points out that another winding up petition is pending against the appellant and third winding up petition had been settled only after dismissal of the appeal by a Division Bench. He emphasises that there are adverse remarks against the appellant by its auditors in its balance sheet. Mr. Gyanendra Kumar also prays for time to file a reply-affidavit to the present application.

6. This Court may mention that, on the last date of hearing, it had extensively heard the counsel for the parties and had given its mind that subject to payment of costs, the time for making the payment would be extended. Between the last date of hearing and today, Mr.Gyanendra Kumar has placed on record additional documents, which have already been taken into account while recording the contentions and submissions of the

respondents. Consequently, this Court is of the view that no useful purpose will be served by granting time to file a reply-affidavit. Accordingly, the request for filing a reply-affidavit to the present application is declined.

7. Balancing the competing claims, namely, factum of delay in making payment of the instalments as well as the economic slowdown due to Covid-19 pandemic, this Court condones the delay in making payments by the appellant subject to making payment of Rs.20 lakhs as additional costs and interest to the respondents on or before 31st March, 2021.

8. In the event, the aforesaid additional amount is paid to the respondents on or before the stipulated date, the delay in making the payment shall stand condoned and the winding up petition shall be deemed to have been dismissed against the appellant.

9. With the aforesaid directions, the present application stands disposed of.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

JANUARY 15, 2021
KA