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

APPEAL NO. 192 OF 2019
IN
COMPANY PETITION NO. 276 OF 2011
WITH
NOTICE OF MOTION NO. 286 OF 2019
IN
APPEAL NO. 192 OF 2019

Subhabrata Sudhanshu Datta ..Appellant
Versus
State Trading Corporation of India Ltd. ..Respondent

Mr. Rahul Narichania, Sr. Advocate a/w. Mayur Khandeparkar i/b. Jamshed Ansari, for Appellant.
Mr. Jehangir Jejeebhoy, for Official Liquidator.
Mr. Darshil Jain i/b. S. I. Shah & Co. for Respondent.

CORAM : K. K. TATED &
SARANG V. KOTWAL, JJ.
DATED : 09th MARCH, 2020.

PC :

1. Heard the learned Senior Advocate appearing on behalf of the Appellant and the learned counsel for the Respondent.

2. By this Appeal, the Appellant is challenging the order dated 04/06/2018 passed by the learned single Judge in Company Petition No. 276 of 2011 holding that the

respondent has made out a case for admission of the said company petition for winding up the same. The operative part of the said order reads thus:-

> "58. Therefore, the petition is allowed in terms of prayer clause (a) and (b) which read as under:
>
> *"(a) that the Respondent Company, i.e. Indo Bonito Multinational Ltd. Be ordered to be wound up by an order of this Hon'ble Court;*
>
> *(b) that the Official Liquidator, High Court,Bombay be appointed as liquidator of the Respondent Company with all powers under the Companies Act, 1956 including the power to take possession of all the assets, books of account, stock in trade, cash on hand, moveable properties including furniture and fixtures as well as all immovable properties of the Respondent Company."*

3. Learned Senior advocate for the petitioner submits that, in the present proceeding, admittedly, the respondent has issued notice dated 29/06/2014 U/s.434(1)(a) of the Companies Act, on a address which was not registered address of the company. In support of his contention, the learned senior counsel for the appellant relies on Form No.18 which shows that the appellant company has changed their registered address on 08/04/2011. He submits that, this itself

shows that the notice issued by the respondent U/s.434(1)(a) was not on the registered address and, therefore, the learned single Judge ought to have dismissed the petition filed by the respondent. He further submits that, even considering the fact that the petition was filed by the respondent U/s.434(1)(c), in that case, the duty casts upon the respondent to plead material on record to that effect. He further submits that, bare reading of the petition shows that the respondent has failed to comply even section 434(1)(c) of the Companies Act. In support of his contention he relies on the Judgment of this court in the matter of ***N.L.Mehta Cinema Enterprises Pvt. Ltd. Versus Pravinchandra P. Mehta, 1989(3) Bom.C.R. 101***. He relies on para 13 of the said Judgment which reads thus:-

> "13. It is undoubtedly true that a Rule similar to Rule 33 of the Companies (Court) Rules was not under consideration by the Calcutta High Court. In our opinion, the said Rule is of no assistance to the petitioner as it has no application to a notice of demand to be served under section 434. The requirement contained in section 434 has to be strictly complied with in order to raise the legal fiction. It was certainly open to the petitioner to make a claim in the alternative *viz.* That the Company is not only deemed to be unable to pay its debts but that in fact also it is unable to pay its debts. For the latter allegation, however, sufficient particulars must be given in the petition for winding up. These are not

> found in the present petition and, in our view, the petitioner has rested his case only on the fiction which was not available to the petitioner because he did not address the notice of demand to the registered office of the Company, the petition is liable to be dismissed."

4. On the basis of these submissions, the learned senior advocate appearing on behalf of the petitioner submits that the present appeal is required to be admitted and stayed the further proceeding.

5. On the other hand, the learned counsel appearing on behalf of the respondent-original petitioner vehemently opposed the present appeal.

6. It is to be noted that, in the present proceeding, the respondent had filed company petition as the appellant has failed and neglected to clear their dues to the tune of Rs.184.90 crores approximately. Not only that, the appellant had issued cheques to clear their dues as stated by the respondent in their petition in Para 17, 18, 19 and 20. Those cheques were dishonoured for want of funds. Learned counsel for the Respondent further submits that as on today more than Rs.184 crores is due and payable by the appellant to the respondent.

7. The question is whether the respondent has made out a case U/s.434(1)(c) or not is required to be decided at

the time of final hearing. During the pendency of the present Appeal, the appellant has to deposit atleast 50% of amount in the Registry of this court.

8. Considering these facts, following order is passed:

Appeal No. 192 of 2019.

a) Admit.

Notice of Motion No. 286 of 2019.

a) The operation and implementation of impugned Judgment dated 04/06/2018 passed by the learned Single Judge in Company Petition No.276 of 2011 is stayed during the pendency of the present Appeal on condition that, the appellant shall deposit 50% of amount with interest due and payable to the Respondent company in the Registry of this court on or before 30/04/2020, failing which, the Notice of Motion No. 286 of 2019 shall stand dismissed without referring back to the court.

b) If the amount is deposited in time, the Registry is directed to invest the said amount in a Fixed Deposit in any Nationalized bank for the initial period of one year and the same to be continued till further orders.

c) Liberty is granted to the respondent-original petitioner to make appropriate application, if they so desire, for withdrawal of that amount and that application will be decided on its own merits.

d) It is made clear that the observations made by this court in the present order should not be come in the way of both the parties in pending other litigation between them.

e) The Notice of Motion No. 286 of 2019 stands disposed of accordingly.

f) No order as to costs.

(SARANG V. KOTWAL, J.) **(K.K.TATED, J.)**
