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

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Date of Decision: 17.11.2022

+ **CO.APP. 18/2019**

HARI OM

..... Appellant

Through: Mr Sadre Alam with Mr Saurabh Kumar, Advs.

versus

RST SEMICONDUCTORS PRIVATE LIMITED
& ANR.

..... Respondents

Through: Mr Saurabh Rajpal with Mr Ashwin Garg, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

CM Appl.40979/2019 [Application filed on behalf of the appellant seeking condonation of delay of 140 days in filing the appeal]

1. This is an application seeking condonation of delay in filing the appeal.

1.1. According to the counsel for the appellant, the delay involved is 140 days.

2. Mr Saurabh Rajpal, who appears on behalf of the non-applicant/respondent no.1, does not oppose to the prayer made in the application.

3. The delay is, accordingly, condoned.

4. The application is disposed of in the aforesaid terms.

CO.APP. 18/2019 & CM Appl.40977/2019 [*Application filed on behalf of the appellant seeking interim relief*]

5. We have heard the counsels for the parties for some time. As a matter of fact, we had passed over the matter to enable the counsels for the parties to obtain instructions in the matter for arriving at a possible settlement with regard to *inter se* disputes.

6. To be noted, respondent no.1/company has filed a winding up petition i.e., CO.PET.770/2015, against the company going by the name, “Make India Smart Private Limited” [in short “MISPL”]. The appellant before us is the erstwhile director of MISPL.

7. The impugned orders dated 16.05.2019 and 29.01.2019 have been passed in CO.PET.770/2015.

8. At the heart of the dispute obtaining between the parties is the dues claimed by respondent no.1/company. The allegation made in the company petition was that because MISPL was not able to pay the dues, it was insolvent, and therefore, it should be wound up.

9. Counsel for the parties say that the appeal as also the winding up petition should be closed based on the following agreed terms:

(i) The appellant will pay for and on behalf of MISPL, Rs.20,00,000/- to respondent no.1/company, out of the total amount deposited with this Court; the record shows that pursuant to the order dated 13.09.2019 passed in the instant appeal, Rs.21,79,997/- stands deposited with the Registry of this Court.

- (ii) The Registry will, accordingly, release Rs.20,00,000/- to respondent no.1/company via its authorized representative.
- (iii) On release of the said amount, respondent no.1/company will approach the learned Company Judge for withdrawal of the company petition.
- (iv) The learned Company Judge will recall the order whereby the Official Liquidator (OL) was directed to take control of the affairs and possession of the assets of MISPL.
- (v) Once Rs.20,00,000/- are released to respondent no.1/company, no further claims will be made in respect of the dispute, which is the subject matter of the proceedings before this Court.
- (vi) The balance amount with interest will be released to MISPL, *albeit*, via its authorized person.

9.1. It is ordered accordingly.

10. As noted hereinabove, the Registry will forthwith release the money to respondent no.1 via its authorized person. For this purpose, list the matter before the concerned Registrar on 29.11.2022.

11. We also make it clear that the parties will remain bound by the terms of the settlement.

11.1. Parties will file their respective affidavits stating that they will abide by the terms of settlement, within ten (10) days from today.

11.2. Besides this, an affidavit will also be filed by the Director of MISPL ratifying the terms of settlement.

12. The appeal is disposed of in the aforesaid terms.

13. The order passed today will be placed before the learned Company Judge. The Company Judge will pass orders in the company petition in

accordance with the settlement arrived at between the parties; as recorded hereinabove.

14. Pending application shall stand closed.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

NOVEMBER 17, 2022
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