

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

TCP/529 (IB)/CB/2017

Under Sections 433 (e) & (f), 434 (i) (a) and 439 (i) & (b) of the
Companies Act 1956

In the matter of

**M/s. Global Communication Services Holdings Limited
& Anr.**

Vs

M/s. Siva Industries and Holdings Limited

Order delivered on 24th August, 2017

CORAM :

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For the Petitioner(s) : Mr. Arun Karthik Mohan Counsel
For the Respondent(s): Mr. Pawan Jhabakh

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under Adjudication is a Company Petition No.359 of 2014 that has been transferred from the Hon'ble High Court of Madras to this Bench. The Company Petition has been filed under Section Under Sections 433 (e) & (f), 434 (i) (a) and 439 (i) & (b) of the

Companies Act 1956 on the ground that the 1st respondent Company was not able to repay its debts and the prayer was made to appoint official liquidator to take charge of the assets of the Company including the books of accounts etc. It was also prayed to grant Interim Injunction restraining the respondents, its Directors from alienating the assets of the Company etc.

2. The Hon'ble High Court of Madras vide order dated 17.11.2014 issued notice to the respondents returnable in three weeks and also allowed private notice to be served on the respondents. It is on record that the Hon'ble High Court heard the company petition and an order came to be passed on 12th of February 2015, on 12th of March 2015 and on 19th of March 2015, that reflect that some portion of the arrear was settled. Then on 1st of April 2015, a schedule for payment of the arrear was filed by way of an affidavit as reflected from the said order. Based on which the Hon'ble court recorded that the payment

shall be effected by the respondent on or before 10th of every month as scheduled and it was made clear that if there is any default then it will be open to the petitioner to proceed with the winding up the proceedings and the case was to be listed for compliance and further orders on 13th of July 2015. The copy of the order dt. 1st of April 2015 is placed on file.

3. The case has been transferred to this bench and matter was fixed for hearing on 22nd of August 2017. A query was raised that since the Hon'ble High Court is already seized of the matter then as to why this petition has been transferred to this Bench. The counsel for the petitioner and the respondent referred to an order that came to be passed in C.P.Nos.14/2015, 239/2015, 242/2015, 94/2016 and 364/2016 on 11th of January 2017 by Hon'ble Justice T.S.Sivagnanam, J. under which the interpretation of Rule 26 and Rule 96 of the Company Court Rules 1959 read with Rule 5 of the Companies (transfer of pending proceedings) Rules

2016 was made. After elaborate discussion the Learned Single Judge of the Hon'ble High Court of Madras has concluded that reference to Rule 26 of the Company Court Rules 1959 should definitely mean the notice on admission and not a pre-admission notice as no such procedure is contemplated under the statute. It has been laid down that all Company Petitions which have not been admitted and where notice has not been served on the respondent under Rule 26 have to be necessarily transferred. The gist of the order is as follows:

26. Accordingly, it is held that all company petitions filed for winding up under Section 433 (e) of the Companies Act, 1956 in which pre-admission notices have been served, unserved or in the process of service are to be transferred to NCLT. All company petitions which have been admitted and notice has not been served on the respondent as required under Rule 26 of the Company Court Rules, 1959 shall also be transferred to NCLT. The above direction be complied with by the Registry expeditiously.

4. In view of the above and record placed on file it appears that the Hon'ble High Court is already seized of the matter and has passed an order on 01.04.2015 as mentioned above. Therefore, the petition under

reference is returned to the Registry of the Hon'ble
High Court of Madras for necessary action at their end.

S. Vijayaraghavan

S. VIJAYARAGHAVAN
MEMBER (T)
PAM

CH. MOHD SHARIEF TARIQ
CH. MOHD SHARIEF TARIQ
MEMBER (J)