IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THE HON'BLE SRI JUSTICE K. LAKSHMAN
AND
THE HON'BLE SMT. JUSTICE K. SUJANA

ORIGINAL SIDE APPEAL No.4 of 2016
(CNR NO. HBHC010836542016)

DATE OF JUDGMENT: 28.09.2026

Between:

Bharat Bijlee Limited

Appellant.

AND

ECI Engineering and Construction Company Limited

Respondent.

JUDGMENT *(Per Hon'ble Sri Justice K.Lakshman)*

Heard Mr.Nithin Prasad, learned counsel representing Mrs.K.Yashoda Devi, learned counsel for the appellant and Dr.Venkat Reddy Donthireddy, learned Senior Counsel appearing for the respondent.

2. Feeling aggrieved and dissatisfied with the Order, dated 26.02.2016, in Company Application No.110 of 2016 (wrongly mentioned as Contempt Application No.110 of 2016 in the impugned order) in Company Petition No.243 of 2014 passed by

the learned Single Judge of this Court, the appellant herein preferred the present appeal.

3. Appellant had filed a petition *vide* Company Petition No.243 of 2014 under Sections 433(e), 433(f) and 434 read with Section 439 of the Companies Act, 1956, seeking to pass an order for winding up of the respondent – Company on the ground of its inability to pay debts.

4. During the pendency of the said Company Petition, both the appellant and respondent settled the dispute by entering into Settlement Agreement, dated 09.10.2015 on the specific terms and conditions. As per the said Settlement Agreement, dated 09.10.2015, respondent agreed to pay an amount of Rs.2.18 Crores in two equal installments through RTGS to the account of the appellant in Bank of India and the said account details are specifically mentioned in clause (1) of the said agreement.

5. In clause (5) of the said Settlement Agreement, both parties agreed that in the event the respondent breaches any of the conditions of the said Settlement Agreement, the appellant shall have unbridled right to continue the said Company Petition

for winding up of the respondent – Company and also to file a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter, 'the NI Act').

6. Both the parties have filed a Joint Memo, dated 12.10.2015, in the said Company Petition No.243 of 2014 along with the copy of Settlement Agreement, dated 09.10.2015. Considering the said Joint Memo and Settlement Agreement, dated 09.10.2015, the learned Single Judge of this Court passed an Order, dated 13.10.2015, holding that both the parties have settled the dispute and the said Company Petition may be closed. With the said observation, learned Single Judge of this Court *vide* Order, dated 13.10.2015, disposed of the said Company Petition No.243 of 2014 as settled out of Court.

7. Thereafter, appellant herein had filed Company Application No.110 of 2016 (wrongly mentioned as Contempt Application No.110 of 2016 in the impugned order) in Company Petition No.243 of 2014 under Rule 9 of the Company Court Rules, 1959, to recall the Order, dated 13.10.2015, passed in Company Petition No.243 of 2014 and restore the Company

Petition to its original file and also for further hearing and adjudication.

8. Appellant herein specifically contended that the respondent did not pay the amount in terms of the said Settlement Agreement, dated 09.10.2015. *Vide* the impugned Order, dated 26.02.2016, the learned Single Judge of this Court dismissed the said Company Application holding that there is no revival clause in the said Settlement Agreement, dated 09.10.2015. Further, since the Company Petition was disposed of basing on the settlement of the parties without giving any right to either of the parties to seek restoration of the Company Petition, the Order dated 13.10.2015 in Company Petition No.243 of 2014 cannot be recalled and restored. Challenging the said Order, appellant preferred the present appeal.

9. As discussed *supra*, it is the specific contention of the appellant herein that the respondent did not pay the amount as agreed in the Settlement Agreement, dated 09.10.2015. Respondent has also contended the same before the learned Single Judge. Even then, without considering the said aspect,

learned Single Judge, dismissed Company Application No.110 of 2016 in Company Petition No.243 of 2014.

10. Dr.Venkat Reddy Donthireddy, learned Senior Counsel appearing for the respondent, on instructions, would submit that with great difficulty, he contacted the person concerned of the respondent – Company and came to know that the respondent – Company did not pay the amount as agreed in the Settlement Agreement, dated 09.10.2015. Further, he would submit that the respondent – Company is an Asset Reconstruction Company (ARC). The appellant herein instead of availing alternative remedies, filed the present appeal.

11. As discussed *supra*, appellant herein filed the aforesaid Company Petition No.243 of 2014 seeking to pass an order for winding up of the respondent – Company on the ground of its inability to pay the debts. During the pendency of the said Company Petition, both the appellant and respondent entered into Settlement Agreement, dated 09.10.2015, on the specific terms and conditions mentioned therein. Thereafter, the respondent failed to comply with the conditions of the

Settlement Agreement, dated 09.10.2015. Respondent did not pay the agreed amount. Therefore, appellant has filed Company Application No.110 of 2016 seeking to recall the Order, dated 13.10.2015 passed in Company Petition No.243 of 2014 and to restore the said Company Petition to its original file for hearing and adjudication. The said aspects were not considered by the learned Single Judge while dismissing the Company Application filed by the appellant holding that even if the said Settlement Agreement, dated 09.10.2015, contained a term that in the event the respondent commits breach of any of the terms of the agreement, the appellant is entitled to seek restoration of the Company Petition, such liberty was not granted to the parties by Order, dated 13.10.2015. As the Company Petition was disposed of based on the settlement of parties and without giving any right to either of the parties to seek restoration of the Company Petition, learned Single Judge did not find any reasons to restore the Company Petition.

12. As discussed *supra*, in clause (5) of the Settlement Agreement, dated 09.10.2015, both the parties have specifically

agreed that if the respondent breaches any of the conditions of the agreement, the appellant shall have the unbridled right to continue the Company Petition filed for winding up and also to file complaint under Section 138 of NI Act. There is no consideration of the said clause by the learned Single Judge while dismissing the Company Application. Therefore, the impugned order is liable to be set aside.

13. In the light of the aforesaid discussion, this Original Side Appeal is allowed as follows:

i) The impugned Order, dated 26.02.2016, in Company Application No.110 of 2016 in Company Petition No.243 of 2014, passed by the learned Single Judge of this Court, is set aside.

ii) Company Application No.110 of 2016 in Company Petition No.243 of 2014 is allowed. Consequently, the Order, dated 13.10.2015, in Company Petition No.243 of 2014 passed by the learned Single Judge of this Court is recalled and Company Petition No.243 of 2014 is restored to its original file for hearing and adjudication.

Miscellaneous applications pending, if any, shall stand closed. In the circumstances of the case, there shall be no order as to costs.

K. LAKSHMAN, J

K.SUJANA, J

28th September, 2026.
ynk

THE HON'BLE SRI JUSTICE K. LAKSHMAN
AND
THE HON'BLE SMT. JUSTICE K. SUJANA

ORIGINAL SIDE APPEAL No.4 of 2016
(CNR NO. HBHC010836542016)

28th September, 2026.
ynk