

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 19424-19425 OF 2017  
[ARISING OUT OF SPECIAL LEAVE PETITION  
(CIVIL) NO(S). 17088-17089 OF 2015]

KOTAK MAHINDRA BANK  
LIMITED . . . APPELLANT (S)

VERSUS

SIMPLEX PROJECTS  
LIMITED . . . RESPONDENT (S)

ORDER

1. Leave granted.
2. The appellant - Bank had moved a winding up petition against the respondent - Company for its alleged failure to pay its debt which was quantified in the Company Petition at Rs.5,76,34,517.13p. The learned Company Judge of the High Court by his order dated 9<sup>th</sup> December, 2014 took the view that as the statutory notice (dated 9<sup>th</sup> October, 2014) issued by the appellant - Bank was not responded to, the

Company had acknowledged its liability and, therefore, directed that the said amount be paid together with interest thereon within a period of four weeks failing which the winding-up petition would be advertised.

3. In appeal by the respondent - Company, the Division Bench of the High Court held that the order of the learned Company Judge of the High Court was perfectly justified. However, it modified the part of the order of the learned Company Judge with regard to payment by directing the respondent - Company to pay a sum of Rs.4.64 crores in 30 equal monthly installments along with interest as mentioned in the order of the Division Bench of the High Court dated 11<sup>th</sup> March, 2015. The Division Bench of the High Court also directed that in the event payment in terms of its order dated 11<sup>th</sup> March, 2015 is not made the winding-up proceedings will be revived and the Bank (respondent before

the High Court) would be at liberty to approach the learned Company Judge for appropriate directions for advertisement. However, if the amounts are paid the Division Bench directed that the petition for winding-up shall remain permanently stayed. Aggrieved, this appeal has been filed.

4. We have heard the learned counsels for the parties and have considered the matter.

5. If the order of the learned Company Judge was found to be just and proper by the Division Bench of the High Court and we are also inclined to take the same view, we do not see how in the exercise of its company jurisdiction the High Court could have directed for payment of a lesser amount (i.e. Rs.4.64 crores) and that too in 30 equal monthly installments and further directed that if such payment is

made the winding-up petition will be remained permanently stayed. The claim of the creditor Bank in the Company Petition, as already noticed, was for a sum of Rs.5,76,34,517.13p. as on 9<sup>th</sup> October, 2014.

6. In the aforesaid circumstances, we are of the view that Company Petition should be allowed to be proceeded with and the order of the Division Bench of the High Court so far as the part payment/payment in installments of Rs.4.64 crores along with the conditions stipulated, as noticed above, should be set aside. We order accordingly and allow the present appeals in the above terms and direct that the Company Petition pending before the High Court i.e. Company Petition No.954 of 2014 be heard and decided. We further direct that payments made till date by the respondent to the Bank need not be refunded but there will be no further payment by the respondent. The payment(s) already made

will, naturally, stand adjusted at the time of final adjudication of the Company Petition.

7. The appeals are disposed of in the above terms.

.....,J.  
(RANJAN GOGOI)

.....,J.  
(L. NAGESWARA RAO)

NEW DELHI  
NOVEMBER 20, 2017

ITEM NO.4

COURT NO.3

SECTION XVI

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S).  
17088-17089/2015

(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 11-03-2015  
IN ACO NO. 33/2015 IN APOT NO. 90/2015 IN CP NO. 954/2014 AND ACO  
NO. 34/2015 IN APOT NO. 91/2015 IN CP NO. 954/2014 PASSED BY THE  
HIGH COURT AT CALCUTTA)

KOTAK MAHINDRA BANK LIMITED

PETITIONER(S)

VERSUS

SIMPLEX PROJECTS LIMITED

RESPONDENT(S)

(IA NO.100906/2017-CLARIFICATION/DIRECTION)

Date : 20-11-2017 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s)

Ms. Madhavi Divan, Adv.  
Ms. Sonia Dube, Adv.  
Mr. S. Chakraborty, Adv.  
For M/S. Legal Options, AOR

For Respondent(s)

Mr. S.D. Singh, Adv.  
Ms. Bharti Tyagi, AOR  
Mr. Ram Kripal Singh, Adv.  
Mrs. Surabhi Shukla, Adv.  
Mr. Jitender Singh, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeals are disposed of in terms of the  
signed order. Consequently, all pending applications  
are also disposed of.

[VINOD LAKHINA]

[ASHA SONI]

AR-cum-PS

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]