REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7373 OF 2005

STANTECH PROJECT ENGG. PVT. LTD. …APPELLANT

VERSUS

NICCO CORPORATION LTD. …RESPONDENT

WITH

C.A.NO. 7374 OF 2005

J U D G M E N T

VIKRAMAJIT SEN, J.

1 Both these Appeals assail the common impugned Order passed by the Division Bench of the High Court at Calcutta on 29.9.2003, setting aside the Order passed by the Company Judge rejecting the plea of the Respondent that the so-called concession made by the Junior Counsel should not be given curial recognition.

2 The facts, succinctly stated, are that the Appellant had filed Winding-up petitions against the Respondent on the asseveration that debts admittedly payable by the Respondent to the Petitioner had remained outstanding even subsequent to

the issuance of a statutory Notice issued under Section 434 of the Companies Act. 1956. Keeping in perspective the nature of the question of law raised before us, we need not go into the genesis or the characteristics of the contract between the parties. So far as Civil Appeal No. 7373 of 2005 is concerned, the claim was for a sum of Rs.3,54,500/- together with interest at the rate of ten per cent per annum together with Rs.1,09,958/- deducted by the Respondent on account of the tax deducted at source (TDS). These amounts have remained unpaid even after the receipt of the statutory notice. It is palpably clear that the statement made by the learned counsel for the Respondent that these amounts would be paid in ten equal installments commencing from 16.8.2002, was so done in order to avert the ordering of an advertisement/citation in the proceedings by the Company Judge. In Civil Appeal No. 7374 of 2005, the claim was for a sum of Rs.8,08,314/- together with interest at the rate of ten per cent per annum together with Rs.1,24,984/- which had been deducted by the Respondent on account of TDS. It appears that these amounts were admitted by the Respondent in terms of its letter dated 8.2.2000 as also in the Affidavit of the Manager (Corporate) of the Respondent who, at the material time, was its Principal Officer. In the said Affidavit, it was admitted that the total amount payable was Rs.8,05,664/- which was being retained awaiting final clearance from TISCO who had floated the subject turnkey project. As in the foregoing instance, the Company Judge recorded

the statement of the counsel for the Respondent offering to pay the principal sum of Rs.8,05,664/- together with Rs.1,24,984/- in four equal installments commencing from 6.8.2002. It had been made clear by the Company Judge vide Orders dated 24.7.2002 that if these payments were not made, the Winding-up petitions would stand admitted and it would be open to the Appellant to pray for advertisement/citation. A fortnight later, i.e. on 8.8.2002, the foregoing Orders were modified by the consent of the parties to the effect that it would be open to the Respondent to pay off the dues together with the interest accrued in eight monthly installments instead of four monthly installments as was directed in the Order dated 24.7.2002.

3 In these circumstances, these orders passed on the concession of the learned counsel for the Respondent were challenged by the Respondent before the Division Bench of the High Court, which we cannot but view as extraordinary. The Division Bench disposed of the Appeal in terms of its Order dated 6.1.2003 with the observation that an application should be preferred before the learned Company Judge for modification of the order, which were assailed before this Court. We had disposed of the Special Leave Petition on 3.3.2003 thus:- "Whether such application for modification is at all maintainable is a question which is expressly left along with other questions for being decided by the learned Single Judge if and when such application for modification is filed by the Respondent".

4 Thereafter, a detailed Order came to be passed by the learned Company Judge on 22.8.2003 rejecting the prayer for re-hearing or modification of the consent Order, primarily on the premise that the so-called junior and an inexperienced counsel had rightly made the statement that the admitted debt would be paid in installments. The learned Company Judge had recorded that the Respondent Company was fully aware that Winding-up petitions were going to be admitted, which situation is always stigmatic and therefore to be strenuously avoided since it inexorably leads to a commercial death. The learned Company Judge found the conduct of the Respondent not to be *bona fide*. The second salvo of litigation, therefore, proved to be unsuccessful so far as the Respondent is concerned as the petition/application was dismissed by the Company Judge with costs assessed at 600 GMs. Thereafter, these Orders dated 24.7.2002 came to be assailed once again before the Division Bench, which then passed the Orders now impugned before us. The Division Bench was of the view that the concession was made mistakenly by the counsel appearing for the Respondent and on this predication, the Order was set aside and the Company Petition was remanded to be heard once again.

5 We find no justification whatsoever, in law or in equity, for the rationale adopted by the Division Bench in the impugned Order. The Company Judge had no alternative but to proceed for Winding up of the Respondent Company since it had

failed to discharge the admitted debt even after the service of the afore-noted statutory notice. The said junior Advocate of the Respondent had, in fact, displayed legal sagacity in getting the winding-up of the Company postponed and avoided the publication in the Winding-up petition by praying for and obtaining leave to pay the debt in installments. Had he not done so, the Respondent would have had to pay the entire debit at once or face certain commercial death as a consequence publication/citation of Winding-up petition. It is note worthy that the Respondent so is transacting business even today. The Division Bench has been inexplicably and unjustifiably considerate towards the Appellant. It is this kind of leniency that results in proliferation and prolongation of litigation, which approach has led to an almost insurmountable pendency of litigation. Learned counsel for the Appellant rightly relies on the decisions of this Court in Shrimati Jamilabai Abdul Kadar v. Shankarlal Gulabchand (1975) 2 SCC 609 and State of Maharashtra v. Ramdas Shrinivas Nayak (1982) 2 SCC 463.

6 We accordingly set aside the common impugned Order of the Division Bench of the High Court. The Respondent has abused the judicial process in order to delay the discharge of an acknowledged debt for almost a quarter of a century, in which period it has continued in business.

7 These Appeals are allowed. We, however, modify the Orders of the learned Single Judge by directing the Respondent to pay the said admitted dues of

Rs.3,54,500/- and Rs.8,08.314/- together with interest at the rate of ten per cent per annum, as also the costs imposed by the learned Company Judge at 600 GMs. If the two sums of TDS of Rs.1,09,958/- and Rs.1,24,984/- have not been deposited with the Income Tax Department, these sums shall also be paid to the Appellant. The Respondent shall also pay to the Appellant the costs of these proceedings quantified at Rs.20,000/-. All these amounts are payable within 45 days from today. No extension for payment shall be granted since the accommodation and the indulgence granted by the learned Company Judge has been abused by the Respondent. In the event of failure to make the above mentioned payments, the Appellant shall be entitled to once again move the learned Company Judge, who will thereupon admit the Winding-up petition, and proceed with expedition under the relevant provisions of law.

.....J.
[VIKRAMAJIT SEN]

.....J.
[SHIVA KIRTI SINGH]

New Delhi,
August 13, 2015.