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

+ Co. App. No.84/2012, CM No.17727/2012 (for stay) & CM No.17728/2012 (for exemption).

M/S HAILLEX APPLIED POWER PVT. LTD Appellant
Through: Mr. Neeraj Kishan Kaul, Sr. Adv.
with Mr. Sanjeev Narula, Adv.

versus

M/S GULATI AGENCIES (P) LTD. ... Respondent
Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

12.10.2012

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1. This appeal impugns the order dated 26th September, 2012 of the learned Company Judge admitting Co. Petition No.131/2010 filed by the respondent for winding up of the appellant Company and though appointing the Provisional Liquidator but deferring the said appointment as well as citation of the petition for two weeks, to give opportunity to the appellant Company to make payment of Rs.14,47,024/- along with interest @ 18% per annum in which amount the appellant Company has been found to be indebted to the respondent.

2. The learned Company Judge has found that the appellant Company had placed purchase orders on the respondent for supply of goods which were duly received and consumed by the appellant Company and the appellant Company in payment of price thereof had issued a cheque dated 30th March, 2009 for Rs.15,72,024/- in favour of the respondent; that the

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said cheque was however dishonoured; that part payment of Rs.1,25,000/- was made by the appellant Company to the respondent on 19th September, 2009 leaving the balance of Rs.14,47,024/- for which the Demand Notice prior to the institution of the petition was issued; that though the appellant Company had denied the receipt of the said Notice but the said receipt stood proved from the 'AD' Card thereof returned to the respondent; that another cheque dated 12th October, 2009 for Rs.15 lac was issued by the appellant Company in favour of the respondent though as security and which also stood dishonoured; that the appellant Company has also issued 'C' Forms under the Sales Tax/VAT to the respondent which also constituted admission of the transaction; that the appellant Company had taken conflicting pleas of non-receipt and return of the goods; that the appellant had in the e-mail correspondence also admitted the liability to the respondent.

3. The senior counsel for the appellant Company has contended that in the face of the disputes of fact raised by the appellant Company, no case for entertaining the petition for winding up was made out and the appellant Company, to show its *bona fide* is willing to deposit in the Court a part of the amount claimed by the respondent and that the respondent should be directed to institute a suit for recovery of the amounts claimed to be due against the appellant Company. It is further argued that once no case of commercial insolvency of the appellant Company is made out, winding up in any case cannot be ordered.

4. We have enquired from the senior counsel for the appellant Company

as to which period the transaction of sale of goods relates and when the appellant Company claims to have received and rejected and returned the goods. The senior counsel on instructions replies that the goods were received as well as returned in the year 2008. We have next enquired as to whether the 'C' Forms were issued contemporaneously with the receipt of goods or subsequently. The senior counsel, again on instructions states that the 'C' Forms were issued subsequently in the year 2009. To our query as to why, if the goods had been rejected and returned, were the 'C' Forms issued subsequently, there is no reasonable explanation. The only argument which could be coughed up is that the same were given in view of the 'ongoing relationship'. However to our further query as to what was the need for giving the 'C' Forms relating to specific transactions which according to the appellant Company did not take place or fructify and as to what were the 'ongoing transactions', again there is no explanation.

5. The same in our view is sufficient for us to hold that the defence of the appellant Company to the petition for winding up is a make belief and an afterthought and *mala fide*.

6. Similarly, if the argument of the appellant Company of no order for winding up being possible if the Company is in a solvent condition were to be accepted, it would make the provision for winding up redundant.

7. We therefore do not find any merit in this appeal and dismiss the same.

No costs.


CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J
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OCTOBER 12, 2012/pp..