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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CO.APP.89/2012

ROYAL TRADERS LTD. Appellant

Through: Mr. Rajesh Aggarwal, adv.

Versus

HOTEL QUEEN ROAD PVT. LTD. Respondent

Through: None.

AND

14.

+ CO.APP.90/2012

VIKAS HOLDING PVT. LTD. Appellant

Through: Mr. Rajesh Aggarwal, adv.

Versus

HOTEL QUEEN ROAD PVT. LTD. Respondent

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

09.11.2012

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1. These appeals under Section 483 of the Companies Act, 1956 impugn the orders dated 5th September, 2012 of the learned Company Judge of this Court dismissing *in limine* Co. Pet. No.415/2012 and Co. Pet No.416/2012 respectively filed by the appellants for winding up of the respondent Company with costs of Rs.25,000/- in each case. The learned Company Judge has held, the amount in which each of the appellants was claiming the respondent Company to be indebted to them, to be barred by time.

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2. We have vide our judgment dated 2nd November, 2012 dismissed Co. App. No.88/2012 preferred by M/s Beetal Plantation Pvt. Ltd. against another order also dated 5th September, 2012 of the learned Company Judge also dismissing *in limine* and with costs of Rs.25,000/- the petitioner for winding up of the same respondent Company. The facts in these two appeals appear to be similar to that case. The counsel who represents the appellants herein was also the counsel for the appellant M/s Beetal Plantation Pvt. Ltd. We have as such enquired as to why the same judgment should not follow in these appeals also.

3. The counsel for the appellants has cited only one difference in the present appeals from the company appeal filed by M/s Beetal Plantation Pvt. Ltd. He has contended that in these cases there is an acknowledgment of liability by the new management of the respondent Company also.

4. We have perused the documents relied upon in support of the aforesaid plea. The said documents are the same as in the appeal preferred by M/s Beetal Plantation Pvt. Ltd. Even otherwise the plea of the respondent Company in response to the Demand Notice preceding the winding up petitions in these appeals also was of the transactions subject matter of these appeals being also subject matter of the suit already filed and pending before the Original Side of this Court.

5. We, in the entirety of the facts and circumstances and especially considering the dismissal not only of the appeal by M/s Beetal Plantation Pvt. Ltd. but also another appeal being Co. App. No.65/2012 titled

Sudershan Dhoop Pvt. Ltd. Vs. Hotel Royal Plaza (referred to in the judgment dated 2nd November, 2012 supra), are not inclined to entertain a winding up petition against the respondent Company or to take a different view.

6. The counsel for the appellants reiterates the request for clarification as made in the judgment dated 2nd November, 2012.

7. Accordingly, while dismissing these appeals, we clarify that the observations of the learned Company Judge that the amount is time barred would not come in the way of the appellants establishing in a suit for recovery of monies that the claim is within the period of limitation.

8. The counsel for the appellants also seeks waiver of the costs imposed by the learned Company Judge. We are not inclined to do so. However we refrain ourselves from imposing any costs of these appeals.


CHIEF JUSTICE


RAJIV SAHAI ENDLAW, J

NOVEMBER 09, 2012
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