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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 2nd November, 2012

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CO.APP.No.88/2012

M/S BEETAL PLANTATION PVT LTD. Petitioner

Through: Mr. Rajesh Aggarwal and
Dr. B.K. Dash, Advocates.

Versus

M/S HOTEL QUEEN ROAD PVT. LTD Respondents

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This appeal under Section 483 of the Companies Act, 1956 impugns the order dated 5th September, 2012 of the learned Company Judge of this Court dismissing *in limine* and with costs of Rs.25,000/- Company Petition No.414/2012 filed by the appellant for winding up of the respondent Company. The learned Company Judge has held the amount in which the appellant was claiming the respondent Company to be indebted to the appellant, to be barred by time.

2. The winding up petition was filed averring that the appellant had given a corporate loan of Rs.1,90,00,000/- to the respondent Company through eight cheques, between 3rd September, 2007 and 19th November, 2007; that the said loan was for a period of three years and the respondent Company had agreed to pay interest at the rate of 18% per annum; that the respondent Company in its ledger account between 1st April, 2004 to 1st October, 2008 had acknowledged receipt of the aforesaid amount; that the appellant had vide letters dated 1st July, 2008 and 10/17th March, 2009 demanded refund of the loan together with interest; that in response thereto, a meeting was held in the office of the respondent Company where it was agreed that the said loan of Rs.1,90,00,000/- with agreed interest amount would be returned by the respondent Company to the appellant after December, 2010; that the respondent Company had shown to the appellant its ledger dated 31st March, 2009 where, as on 1st October, 2008, the said loan was shown; similarly the appellant was shown the ledger of the respondent Company for the period 1st April, 2009 to 30th May, 2009; that the respondent Company had been showing the appellant as one of its creditors till 31st March, 2011 but had thereafter transferred the said loan amount to “un-claimed balance”. It was thus the plea of the appellant that

loan amount stood admitted by the respondent Company in its books of account till 31st March, 2011 and hence winding up petition filed in or about August, 2012 was on the basis of debt suit for recovery whereof was within the period of limitation.

3. The contention of the counsel for the appellant is that the learned Company Judge has not considered the aforesaid pleas and has held the debt to be barred by time merely on the basis of loan having been given in the year 2007 and the petition for winding having been filed in August, 2012.

4. Undoubtedly the learned Company Judge, in dismissing the winding up petition, has not taken note of or dealt with the pleas aforesaid, of the respondent Company having admitted liability in its books of accounts till 31st March, 2011. The counsel for the appellant has also invited our attention to –

- i. ***Mahabir Cold Storage Vs. Commissioner of Income Tax*** AIR 1991 SC 1357 holding that entries in the books of account amount to acknowledgment of liability within the meaning of Section 18 of the Limitation Act, 1963 and extend the period of limitation for the discharge of liability as debt;

- ii. ***Hiralal Vs. Badkulal*** AIR 1953 SC 225 laying down that acknowledgement gives a fresh cause of action and the onus to produce documents is on the party in possession thereof;
- iii. ***The Commissioner of Income Tax Vs. Shri Vardhman Overseas Ltd.*** MANU/DE/7014/2011 where, in the case of limited company, it was held that the liability shown in the balancesheet amounted to acknowledging the debts within the meaning of Section 18 of the Limitation Act;
- iv. ***Larsen & Tubro Ltd Vs. Commercial Electric Works*** 67(1997) DLT 387 where also outstanding shown in the balance sheet was held to be an acknowledgement within the meaning of Section 18 of the Limitation Act;
- v. ***Bhajan Singh Samra Vs. M/s Wimpy International Ltd*** 185 (2011) DLT 428;
- vi. ***Rishi Pal Gupta Vs. S.J. Knitting And Finishing Mills Pvt. Ltd.*** 73 (1998) DLT 593;
- vii. ***Shri Roshan Lal Goyal Vs. Arti Solvex Limited*** 2005 (82) DRJ 182;
- viii. ***Rathi Bars Ltd. Vs. Deepak Casting Ltd*** 137(2007) DLT 491;
- ix. ***Bengal Silk Mills Co. Vs. Ismail Golam Hossain Ariff*** AIR 1962 Cal 115 (DB);
all to the same effect.

5. There can possibly be no doubt as to the aforesaid proposition. However we find that the respondent Company in the reply given by it to the notice preceding the winding up petition had *inter alia* stated that the demand in the notice was only to pressurise the new Management of the respondent Company, at the behest of Mr. R.P. Mittal who controlled/managed the Company for some time in the past; that the said Mr. R.P. Mittal had indulged in dishonestly misappropriating the moneys, creating fictitious liabilities and manipulation of books of account, statutory records etc., creating fictitious and non-existent liabilities in favour of various persons including the appellant herein; that the respondent Company had preferred a suit being CS(OS) No. 161/2012 on the Original Side of this Court against Mr. R.P. Mittal and his associates, challenging the transactions and paper entries so created and that the transactions relied upon by the appellant were nothing but part and parcel of the same conspiracy and design of Mr. Mittal.

6. We may also mention that a winding up petition filed by some other person against the respondent Company had also been dismissed and an appeal being Co.App. No.65/2012 thereagainst had come up before the Division Bench of this Court of which one of us (Rajiv Sahai Endlaw, J) was

a member and was dismissed. We inquired from the counsel for the appellant, whether the appellant was aware of the same. It was also inquired as to whether the various acknowledgements of liability relied upon by the appellant were of the period when the Management of the respondent Company was with Mr. R.P. Mittal or any acknowledgement of the new Management also existed. No clear answer to the said question was forthcoming. On our coaxing however the counsel for the appellant handed over copy of the order dated 25th July, 2012 in Company Appeal No. 65/2012 titled *Sudershan Dhoop Pvt. Ltd Vs. Hotel Royal Plaza* being the order of the dismissal of appeal aforesaid. We find the position in the present appeal to be nearly the same as in Company Appeal No. 65/2012, save that the appellant in that case had already filed a Civil Suit for recovery of monies which the appellant claims it has not filed as yet. The same however will not make any difference. We do not find any reason to take a different view than already taken in the order dated 25th July, 2012. Rather we are constrained to observe that the counsel for the appellant, admittedly possessed of the order in the other Company Appeal, ought to have mentioned the same in the memorandum of appeal and/or shown the same to us on his own.

7. Faced therewith the counsel for the appellant states that the observations made by the learned Company Judge while dismissing the winding up petition may come in the way of a suit for recovery of money to be filed by the appellant and seeks a clarification as made in the order dated 25th July, 2012 (supra) to the said effect.

8. Accordingly, while dismissing the appeal, we clarify that the observations of the learned Company Judge that the amount is time barred would not come in the way of the appellant leading evidence in the suit for recovery of money to be filed by the appellant and in establishing that the claim is within the period of limitation.

No costs.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

NOVEMBER 02, 2012
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