

\$~CP-6

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

%

Date of decision: 05.10.2018

+ CO.PET. 407/2012, CA 419/2013, 922/2014, 255-256/2015,
823/2017

SAMRATH GUPTA

..... Petitioner

Through: Mr Anil Kumar Aggarwal, Advocate.

Versus

M/S MADHUBAN ELECTRONICS PVT LTD Respondent

Through: Mr. Rajesh Agrawal, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This petition is filed under Sections 433(c) of the Companies Act, 1956 seeking winding up of the respondent - Company.
2. The case of the petitioner is that the respondent Company was incorporated on 02.09.2005 but even after the expiry of seven years, the Company has not commenced any business activity.
3. The petitioner is a director of the Company. The petitioner along with three other persons, namely, Mr.Girish Bansal, Mr.Ashok Aggarwal and Mr.Anoop Aggarwal had purchased all shares of the Company. The old promoters have resigned from the Company.
4. Prior to the purchase of the shares of the Company, the respondent Company had purchased land measuring 13 Kanal 2 Marlas situated at Village Mewla Maharajpur, Tehsil & District, Faridabad in the State of

Haryana from M/s Escorts Limited on 07.09.2005.

5. The grievance of the petitioner is that the Company, since its inception, has not carried out any business in accordance with the objects as stated in the Memorandum of Association. It is further stated that the only income of the Company is rental income received from the lease of the agricultural land situated at District Faridabad, Haryana. Hence, it is pleaded that the respondent company be wound up.

6. It has also been pointed out that the petitioner had filed a similar Company Petition being CP No.154/2011 which was dismissed by this court. Against the said judgment, the petitioner filed an appeal before the Division Bench of this Court. The appeal was dismissed as withdrawn by the Division Bench on 27.05.2011 being Co. Appeal. 36/2011. The Division Bench had noticed the plea of the petitioner that he shall wait for six months to await the outcome of the Company's application for Change of Land Use.

7. I have heard learned counsel for the parties.

8. Learned counsel for the petitioner submits that the main object of the Company was running of electronic business, which has completely failed since inception. The Company has not done any business. As the objects for which the company was incorporated are not being achieved, namely, to carry on business of servicing and electronics etc, it is pleaded that company is liable to be wound up. The only income of the company is rental income, which is received from the lease of the agricultural land situated at District Faridabad, Haryana. Learned counsel has relied upon the judgments of the Division Bench of the Calcutta High Court in ***Kumarapuram Gopal Krishnan Ananthakrishnan versus Burdwan-Cutwa Railway Co.Ltd., [1978] 48 Comp Case 611 (Calcutta); Kaithal Cotton & General Mills Co.***

Ltd. , [1961] 31 Comp.Cas.461(Punjab); and Registrar of Companies vs. Shreepalpur Cold Storage (P.) Ltd.(1974) 44 Comp. Cas.479(Pat.) to support his plea.

9. Learned counsel for the respondent states that an attempt was made to change the user of the land of the Company. He further submits that an appropriate application for changing the user of land was filed but was not allowed by the concerned Faridabad Municipal Corporation. Litigation was initiated by the respondent company before the Punjab & Haryana High Court and thereafter in the Supreme Court of India. However, the respondent company was not successful. He, however, submits that the company is a profitable company which has no outstanding. There are some loan given by all the four shareholders but all the shareholders are regularly receiving interest on the loans. He further submits that the land of the respondent company is let out on rent and the company is receiving a rental income from the said land. He further submits that the petitioner is a resident of USA and not interested in the affairs of the company. He submits that the petitioner is adopting the present petition as a device to liquidate his share holdings.

10. Section 433(c) of the Companies Act, 1956 reads as follows:-

“433 . Circumstances in which company may be wound up by Court. A company may be wound up by the Court:-

(a)

(b)

(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year.”

11. I may deal with the contention of learned counsel for the petitioner that the respondent company is unable to fulfil the objects for which it was incorporated. The main objects of the company for which the company was incorporated is stated in Clause III (A) of the Memorandum of Association of the company, which read as follows:-

(1) To carry on the business of servicing, repair, maintenance, marketing, trade, install or otherwise deal in all kinds, descriptions and form of machines, transistors, transformers, receivers, conductors, magnetic materials, microwave components, video games, tapes, discs fitting switches and all hardware, software and peripheral thereof, professional iron dryers, hot plates, ovens, boilers, grillers, cooking ranges, heaters, coolers, stoves, dish geysers, toasters, juicers, mixers, grinders, flour makers, heating appliances, cooling appliances, fans, bulbs, tubes, lighting instruments, washing machines, electric and auto bulbs, plastic and thermostats, radios, televisions, tuners, VCR & VCP, computers, computer accessories, speakers, multimedia keyboards, monitors, CD Roms, floppy drives, RAM, hard disks, printers, cellular phone, pager, fax, phone, cordless phone, stereo systems, heat convertors, refrigerators, air conditioners, CVT, UPS & decorative lights of all kinds and all kinds of electronic components.

(2) To carry on the business of servicing, repair, maintenance, marketing, install or otherwise deal in all kinds, descriptions and all types of fans including air circulators fans, exhaust fans, inverters, water purifiers, vacuum cleaners, cables, wires, cable network, electrical and electronic items and products, cooler kits, switches, motors, starter/delta starter, relay, condensers, tools, motor starter, regulators, transformers, lamps, stabilizers, power plants, generators, resistances, battery, elements, control panels, magnetic amplifiers, reactors, chokes, light fittings and parts components, accessories of above items.

(3) To carry on the business of providing Business Process out sourcing, IT job work, IT enabled services, call centres, medical transcription services, back office service, data processing, internet services, maintenance, support & service, enter into any collaboration, after sales and other technical services, to carry on business as marketing consultants and technical consultants both in domestic & global marketing.

(B) THE OBJECTS INCIDENTAL OR ANCILIARY TO THE ATTAINMENT OF THE MAIN OBJECTS ARE:-

1. To acquire by purchase, lease, exchange or otherwise any movable or immovable property and any rights or privileges which the company may deem necessary or convenient for the purpose of its main business.
2. To enter into partnership or into any arrangement for sharing profits, union of interest, joint venture, reciprocal concession or co-operation with persons or companies carrying on or engaged in the main business or transaction of his company.
....”

12. A perusal of the object shows that one of the incidental objects is to purchase immovable properties. Hence, it may not be entirely appropriate for the petitioner to argue that the objects of the respondent company have completely not being fulfilled. Even otherwise, earlier an attempt was made by the company to start a business by applying for Change of Land User of the land which is the asset of the company. The said endeavour did not succeed. With the urban areas expanding, it is quite possible that in course of time, the company may get necessary Change of Land User which would unlock a very valuable asset of the company for a profitable venture.

13. Further, the bonafide of the petitioner is in doubt. He is a minority share holder and seems to be only interested in liquidating the company so

that he liquidate his shares. A grievance of a minority share holder cannot normally be dealt with by means of a petition under section 433(c) of the Companies Act. In this context reference may be had to the relevant portion of A. Ramaiya Guide to the Companies Act (17th Edition), which reads as follows:

“Collateral purpose in petition:- It was held that winding up is a discretionary relief which the court should grant if it is satisfied that the existence of the company will cause immense prejudice to all concerned. The order of winding up being a death sentence of a juristic person should be made in a rarest of the rare cases, and discretion to wind up should not be exercised when there is any slight hope of revival of the company. Where the petitioner has a collateral purpose in filing a petition, for example, to obtain possession of land by way of summary proceedings before company court without waiting for a decree from the appropriate civil court, the company court will refuse to pass winding up order. *East India Wires Ltd. Re*, (2003) 56 CLA (Snr) 9: (2003) 2 Cal LT 634 (Cal).”

14. Reference may also be had to the judgment of this court in ***Jumbo Chemicals And Allied Industries Pvt. Ltd. v. Arjun Industries Ltd.*** 210 (2014) DLT 726, where the court spelt out the principles to be considered while determining a petition under section 433(c) of the Companies Act, as follows:

“16. In order to consider whether a company should be wound up under Section 433(c) on account of non-commencement of public suspension of business, it would be necessary to investigate whether there is a good reason for the same and whether there is reasonable chance for the company to be revived. The Patna High Court in the case of Registrar of companies v. Bihar Wire and Wire Products (P.) Ltd.: (1975) 45 Com Cases 194 (Pat) has listed out the various principles that must be considered while determining whether a company should be wound up under Section 433(c) of the Act:-

(1) That the mere fact that business has not been commenced within a year or that business has been suspended for a whole year or more by itself is not a ground for a court to order winding up, although they give the jurisdiction to the court to do so.

(2) That it has to be found out whether the non-commencement or suspension of business was for some good reason accounting for it.

(3) That the fact of non-commencement or suspension of business is an evidence which indicates that the company has no intention of carrying on business or that it is not likely to do so.

(4) That the decisive question is whether there is a reasonable hope of the company commencing or resuming business and doing it at a profit, and whether the substratum of the company has disappeared.”

15. Hence, winding up is a discretionary relief and cannot be used for a collateral purpose. In case the petitioner has a grievance of mismanagement or oppression of minority share holders he has a remedy to approach NCLT under the appropriate provisions of law.

16. The learned counsel for the petitioner has relied upon the judgment of the Division Bench of the Calcutta High Court in ***Kumarapuram Gopal Krishnan Ananthakrishnan***(supra). I may look at the said judgment of the Calcutta High Court. In that case, the court was dealing with a winding up petition filed by the Registrar of the Companies. The Court had held as under:-

“58. Even if it is accepted that the company is entitled to carry on only other railway business on the acquisition or taking over of the railway business in 1966, no such business has been undertaken by the company during the material time nor any

steps had been taken to start such business. It is also a fact to be taken into account that the railways on all major routes for a long time had been taken over and run by the Central Government. For railways in small gauges there may be some railways still run by private sector but there is no possibility in the absence of any material to indicate that it is still possible to carry on the railway business elsewhere. In this situation it appears that there is no escape from the position that while the subject-matter of the company as disclosed in its name is gone, the object for which the company was incorporated had substantially failed and it is no longer possible to carry on the business of railways. The substratum of the company is, therefore, gone which accordingly renders it just and equitable to wind up the company.”

17. Hence, in this fact, the Court had come to the conclusion that the subject matter of the Company as disclosed in object was gone, the object for which the company was incorporated had substantially failed and it is no longer possible to carry on the business of railways. The substratum of the company had gone which accordingly rendered it just and equitable to wind up the company. Hence, the judgment was passed on the facts of that case. The said judgment would not be of any assistance to the petitioner.

18. In my opinion, in the facts of this case, no grounds are made out for this court to pass a winding up order against the respondent company. The substratum of the company has not gone. The company is making a profit. The petition is without merit. The petition and all pending applications, if any, are dismissed.

JAYANT NATH, J.

OCTOBER 05, 2018/sn/v

corrected and released on 22.10.2018