

IN THE HIGH COURT OF JUDICATURE AT PATNA

Company Appeal (DB) No.2 of 2015

IN

COM PET 4 of 2012

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M/s Aglowmed Limited, a limited company incorporated under the provisions of the Companies Act, 1956, having its registered office at Exhibition Road, P.S. - Gandhi Maidan, Patna, Bihar through its authorized signatory Sri Manoj Kumar, S/o Sri Madhaw Prasad, resident of Mohalla Chhotibadalpura, P.S. Danapur, District- Patna.

.... Appellant

Versus

1. The official Liquidator Patna High Court, 4th Floor, Block- A, Mauryalok Complex, Dak Bungalow Road, Patna, P.O.G.P.O., P.S.Kotwali.

2. M/s Parekh Enterprise through its Proprietor, Hiten Parekh, having its head office at A/409, Fairdeal House, Opp. St. Xavier's Ladies Hostel Swastik Cross Road, Nagpur, Ahmedabad, Gujrat-9, Shifted to A-811, Siddhi Vinayak Tower, Behind DCP office, P.O. - Vejalpur, P.S. - Sarkhaj, Ahmedabad-1.

.... Respondents

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Appearance :

For the Appellant : Mr. N.K.Agrawal, Sr. Advocate
Mr. Prakash Chandra Agrawal, Advocate

For the Official Liquidator: Mr. Alok Kumar Agrawal, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 04-03-2015

This Company Appeal under Section 483 of the Companies Act, 1956 is preferred against the order dated 05.02.2015 passed by the learned Company Judge in Company Petition No. 4 of 2012.

The 2nd Respondent filed the Company Petition No. 4 of 2012 under Section 433 (e) of the Companies Act for winding up of the appellant Company (for short, 'the

Company'). The 2nd Respondent stated that there existed business transactions between it and the Appellant, upto the value of Rs. 87,91, 914/- and as against that amount the Appellant is said to have paid Rs.63,93,083/- and that there existed balance of Rs.23, 98,831/-. According to it the Appellant did not pay the balance amount, in spite of repeated demands.

The Appellant contested the Company Petition, by pleading that though alternative remedies are available for recovery of the amount, the Company petition has been filed for winding up the Company. It was also urged that the amount was swollen to Rs.54,06,878.09, without any basis.

The learned Company Judge ordered issuance of notice, as required under the relevant provisions of Companies Act and the Company (Court) Rules. 1959 (for short 'the Act and Rules'). The Company Petition was admitted on 24.04.2014, on finding that the Appellant failed to file its affidavit, in defence. Thereafter an advertisement, as provided under the law was issued. The matter underwent several adjournments. Observing that the appellant did not file its counter affidavit in spite of repeated adjournments, Learned Company Judge passed the order under appeal, directing that the appellant Company be wound up. The Official Liquidator was directed to take steps for assuming the physical possession of the assets of the Company, within a period of one month. Hence this appeal.

Sri N.K.Agrawal, learned Senior Counsel for the Appellant submits that there was some communication gap between the



appellant and their counsel, in the context of filing affidavit before admission. He contended that even if there was any lapse on the part of the appellant in delivering its defence, the 2nd Respondent is under obligation to adduce the evidence, to satisfy the Court as to the legality of its claim. He submits that the lapse on the part of the appellant, in delivering defence, by itself cannot be a basis for ordering winding up of the Company.

Sri Alok Kumar Agrawal, learned counsel for the 2nd Respondent, on the other hand, submits that the appellant did not avail the opportunity at any stage of the proceedings, whatsoever. He contends that with the admission of the Company Petition, the winding up process has commenced and once there was no defence whatever in the form of written statement or affidavit the learned Company Judge was left with no alternative, except to order winding up of the Company. He submits that the order under appeal is totally justified.

Filing a winding up petition by a creditor, against a Company is no doubt, permissible under the law. However, the gist of the precedents handed out by Hon'ble Supreme Court is to the effect that mere existence of dues from a Company cannot, by itself treated as a basis for taking recourse to extreme step of winding up of the Company. We do not address that sensitive area in the instant case, particularly when the pleadings are not complete, in that behalf.

The admission of Company Petition is an important step before commencement of the winding up proceedings. Obviously



for that reason the Act and the Rules stipulate several conditions to be complied, before a Company Court directs issuance of advertisement or admits Company petition. There was a serious lapse on the part of the appellant in filing the affidavit after it was served a notice in the Company Petition. The Company did not challenge the order of admission. The grievance is only about the subsequent proceedings.

It is no doubt true that the appellant did not file counter affidavit even after admission of the Company Petition. However, the Company Court was required the 2nd Respondent to prove its case or to satisfy itself about the legality and merits of the claim before the winding up was ordered and the Official Liquidator is entrusted with the property. The situation can be compared to an instance of a Suit being decreed only because the written statement was not filed. The judgments are galore where the Supreme Court held that mere failure to file written statement, by itself does not constitute a ground for a Civil Court to decree the Suit and it must satisfy itself about the merit of the claims in the Suit. That can be done only when the plaintiff adduced evidence. In the instant case also, the 2nd Respondent did not adduce any evidence whatsoever. We are therefore, satisfied that the Appeal deserves to be allowed and the case, be remanded. The appellant Company deserves to be given an opportunity, subject to certain conditions and terms.

Across at Bar it is stated that the actual amount due to the 2nd Respondent is Rs.19,67,404/-, though higher amount is

claimed. We are of the view that the ends of justice would be met if the appellant is given an opportunity to contest subject to the condition that it will pay a sum of Rs. 20,00,000/- to the 2nd Respondent.

Therefore, the Appeal is allowed and the order under appeal is set aside. We direct that if the appellant deposits a sum of Rs.20,00,000/- with the 2nd Respondent within a period of six weeks from today, the order under appeal as well as the order dated 24.04.2014 through which the Company petition was admitted shall stand set aside. On filing a memo of proof of payment of amount, the Registry shall post this case before the learned Company Judge. On the date fixed for further steps, the Appellant shall be ready with its affidavit, provided for under Rule 103 of the Rules. The case shall be dealt with, on its own merits.

We permit the Banker of the Appellant to prepare a demand draft for a sum of Rs, 20,00,000/- in favour of the 2nd Respondent. As and when such amount is paid, the assets of the Appellant Company shall be handed over to it and the freezing of the Bank accounts shall cease.

Interlocutory Application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

A.F.R.
Chandran/Md.Ibrarul

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(Vikash Jain, J)