THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS

<u>OSA No. 41 OF 2015</u>

<u>J U D G M E N T:</u> ***(per Hon'ble Sri Justice Nooty Ramamohana Rao)***

This OSA is preferred calling in question the correctness of the order dated 16.02.2015 passed by the learned Company Judge in Company Petition No. 21 of 2014.

The respondent herein moved the said Company Petition for winding up the appellant company for its inability to liquidate the amount due and payable to it.

The respondent has pointed out in the Company Petition that the appellant is a manufacturer of drugs and other pharmaceutical preparations and that the respondent used to supply material to the appellant company based upon purchase orders placed on it and several invoices were raised from time to time and that the appellant has fallen in arrears of payment of Rs.57,95,735/- on account of its unit-I and an amount of Rs.27,65,699/- on account of Unit-II, aggregating to Rs.85,61,434/- as on 31.03.2011 which remained unpaid. This apart, the appellant company has specifically acknowledged as due a sum of Rs.71,03,491/- as on 18.05.2010 and agreed to pay the said amount in a phased manner on or before 31.03.2011. The appellant company has also agreed to place fresh orders for supply of material by issuing post-dated cheques of 60-days duration. Accordingly, supplies were made to the appellant company between 30.08.2010 and 13.11.2010 and that it has failed to honour its commitments and that the cheques issued by the appellant for liquidating the liability to the extent of Rs.23,63,226/- were dishonoured when presented. Consequently, 14 criminal cases under Section 138 of the Negotiable Instruments Act, 1881 have been initiated and that sensing the distressful conditions in which the appellant company is functioning and its inability to clear the debts, the respondent has issued the notice, as required by Section 433 read with Section 434 of the Companies Act, 1956, on 15.10.2013, and the said notice has been returned with an endorsement as 'not claimed'. In those set of circumstances, the Company Petition seeking winding up of the appellant company has been moved.

During the course of hearing of the Company Petition, the respondent, the appellant herein, has filed its counter-affidavit. It was subsequently, on 15.09.2014, the Company Court has admitted the Company Petition and on behalf of the respondent company, P.W.1 was examined and Exs.P1 to P20 were got marked and thereafter, the case was adjourned to 28.01.2015 for the evidence of the respondent in the Company Petition. However, either on 28.01.2015 or on 09.02.2015, none appeared on behalf of the respondent-appellant company to lead evidence in the matter. Hence, the Company Court has forfeited the right of the respondent before it to lead evidence and thereafter, the Company Petition was posted for hearing, but none appeared in the matter.

The learned Company Judge has observed that in Ex.P6, dated 26.08.2010, the Managing Director of the respondent-appellant company has admitted that the outstanding dues of Rs.80,74,155/- would be cleared latest by the end of March 2011, but however, it has not cleared the said debts. Since the amount due was more than Rs.80 lacs and the respondent-appellant is unable to clear its debts, the learned Company Judge has ordered its winding up. It is this order that was passed by the Company Court on 16.02.2015 which is in Appeal.

On 23.11.2015, Sri Ashwin Kumar, learned counsel appeared on behalf of the appellant and after hearing him, we adjourned the matter by a couple of weeks to enable the appellant company to explore the possibility of making repayment of a substantial amount to the respondent company and when the matter was again taken up by us on 07.12.2015, unfortunately, none appeared on that day and hence, it was posted to today.

Today also, none appears on behalf of the appellant company. However, Sri Damodar Mundra, learned counsel for the respondent would submit that no payments have been made by the appellant company, as desired and expected by this Court, by its order dated 23.11.2015. We are therefore, of the opinion that the appellant company is not seriously interested in liquidating its liability towards the respondent company. Except taking a plea that there are disputes with the respondent company, in this Appeal, there is no tangible material that has been placed for our appreciation in that regard. Further, there is also no explanation as to why, when an opportunity has been provided to the appellant herein by the Company Court, it has failed to avail the same and lead evidence to demonstrate about the disputes that are persisting between the parties. When once the respondent has supplied certain material and the receipt of such material was not disputed and such material has been utilized by the appellant company without returning the same for want of specified standard of quality or for some other similar reason, a presumption is liable to be drawn that the material supplied by the respondent company has been utilized in the manufacturing process undertaken by the appellant company. Therefore, merely raising a plea that there are disputes between the parties is not enough. There should be something more that is required to be demonstrated in a case of this nature. Since there was no such material to demonstrate that there are genuine disputes, which are legitimately being attempted to be resolved, the order passed by the learned Company Judge cannot be characterized as not sustainable.

Accordingly, we do not find any merit in this O.S.A. and it stands dismissed. No costs.

NOOTY RAMAMOHANA RAO, J

ANIS, J

09th December 2015

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