

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

COMPANY APPEAL No.46 of 2014 (O&M)
DATE OF DECISION: 06.04.2015

Inder Surgical

....Appellant

versus

City Clinic (P) Ltd.

.....Respondent

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Rakesh Bhatia, Advocate for the appellant
Mr. Anil K. Aggarwal, Advocate for the respondent
..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral):

This is an appeal against the order and judgment of the learned single Judge dated 04.11.2014 dismissing the appellant's petition for winding up the respondent-Company *inter alia* on the ground that it is unable to pay its debts.

2. The appellant regularly supplied various material to the respondent which runs a hospital. The only item in dispute is a sum of Rs.3,64,000/- in respect of a pacemaker supplied by the appellant to the respondent. The invoice states that the same was for one Nachhatar Singh. The respondent does not deny the receipt of the material. The respondent, however, states that the pacemaker was actually supplied for one Jagir Singh who was covered under the ECHS Scheme of the Ministry of Defence (MoD). This makes no difference. Admittedly, the material was supplied to the respondent. The respondent retained and appropriated the same without any protest or demur as to quality or price. The respondent contends that when the material was supplied it was informed that the pacemaker ought to have been of a different specification.

There is nothing on record to establish the same. In any event, the material was retained by the respondent. The respondent never rejected the same. The respondent did not even offer to return the same. The claim, therefore, is for all practical purposes admitted.

3. The only contention now is that the respondent was not bound to make payment in respect thereof unless and until it in turn receives payment for the same from the MoD. The appellant is not concerned with the same. Having supplied the goods to the respondent, the appellant was entitled to be paid for the same. There is nothing on record to establish any agreement between the parties that the appellant would be entitled to the payment in respect of the goods sold and delivered only in the event of the respondent being paid for the same in turn by the MoD.

4. The reliance upon the letter dated 15.12.2011 to establish such an agreement is not well founded. This letter, addressed by the respondent to the appellant, stated that the amount of Rs.3,64,000/- for the pacemaker used for the said Jagir Singh would be paid upon receipt of payment from ECHS. This was only an assertion/statement by the respondent. It does not establish any agreement by which the appellant was not entitled to payment unless and until the respondent received the same from the ECHS.

5. The appellant served a statutory notice dated 07.12.2012. There was no reply to it from the respondent.

6. The learned Judge, however, dismissed the petition on the ground that the respondent is ready and willing to make payment upon receiving the same from the MoD and on the ground that the respondent is a running hospital and earning profits.

7. With respect, this does not entitle the respondent to refuse to make payment. It is admitted before us that the respondent has the money and is able to pay but refuses to pay on a ground which we find unsustainable.

8. There appears to have been some animosity/ misunderstanding between the officers of the parties. The respondent seems to have been upset by the petitioner's attitude. We refer to this only to give the respondent an opportunity of meeting its obligation without suffering an order of admission of the winding up petition.

9. The invoices stipulate interest at 24% per annum. For the purposes of this appeal, we are inclined to limit this interest to 10% per annum.

10. In the circumstances, the appeal is disposed off by the following order:-

The impugned order and judgment is set aside. In the event of the respondent paying the appellant a sum of Rs.3,64,000/- together with interest at 10% per annum from 31.07.2007 till payment on or before 31.05.2015, the petition shall stand dismissed. However, in the event of the respondent failing to make the payment, as aforesaid, the petition shall stand admitted and shall be advertised in accordance with the rules and shall be made returnable on 22nd June 2015.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

06.04.2015
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(G.S. SANDHAWALIA)
JUDGE