IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Company Petition No. 206 of 1999 O&M)

Date of decision : 27.1.2015

M/s Punjab Alkalies & Chemicals Limited ..... Petitioner

vs

M/s Mukerian Papers Limited ..... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.

Present: Mr. Arun Nehra, Advocate, for the petitioner.

Mr. Jainainder Saini, Advocate, for the respondent.

Rajesh Bindal, J.

The present petition was filed seeking winding up of the respondent company alleging that principal amount of ₹ 2,20,92,998.34 as on 30.6.1999 was not paid by M/s Mukerian Papers Limited and its unit namely M/s Oswal Papers and Allied Industries Limited, despite notice. Initially, hearing of the petition was adjourned sine die as the matter was pending before the BIFR. However, after the matter before the BIFR was disposed of, the present petition was revived.

Letters dated 12.7.2011, 26.7.2011 and 7.12.2012, produced by learned counsel for the respondent in Court, are taken on record.

Learned counsel for the respondent stated that as per proposal dated 12.7.2011 the matter in dispute with the petitioner company was settled on payment of ₹ 43,90,355.34, out of which ₹ 12 lacs were paid immediately, whereas for balance amount of ₹ 31,90,355.34, post dated cheques were to be issued.

Vide communication dated 26.7.2011 from the petitioner company to the respondent company, the proposal dated 12.7.2011 was accepted in principle, however, the same was to be put up before the Board of Directors of the petitioner company for final approval. To same effect was the communication dated 7.12.2012 from the petitioner company to the respondent company. It was submitted that in terms of the proposal made and accepted in principle by the petitioner company, the last payment of ₹

4,40,363/- was made by the respondent company to the petitioner company vide bank draft dated 5.12.2012, hence, no amount is due.

Learned counsel for the petitioner while referring to letters produced by learned counsel for the respondent stated that seven complaints under Section 138 of the Negotiable Instruments Act, were filed on account of dishonour of the cheques issued by the respondent company. It was the dispute pertaining to the seven criminal complaints filed by the petitioner company against the respondent company which was settled and not the entire amount due. He further submitted that in the meeting of the Board of Directors on 21.5.2012, it was resolved that the winding up petition already filed against the respondent company be pursued.

After hearing learned counsel for the parties, in my opinion, the present petition does not deserve to be admitted. In the communication dated 12.7.2011 sent by the respondent company to the petitioner company, it is mentioned that on reconciliation of account, an amount of ₹ 43,90,355.34 was found payable. It is not in dispute that the amount of seven cheques which were dishonoured was ₹ 42 lacs. Meaning thereby some more amount was being paid on reconciliation of the accounts. It is not in dispute that ₹ 31,90,355.34 was paid by the respondent company to the petitioner company in instalments as ₹ 12 lacs had been paid prior thereto.

The proposal as given on 12.7.2011 was accepted by the petitioner company vide communication dated 26.7.2011 subject to approval by the Board of Directors. It is claimed that the matter was put up before the Board of Directors on 21.5.2012, where it was decided to pursue the winding up petition, however, the fact remains that even thereafter on 7.12.2012, the petitioner company wrote letter to the respondent company and bank draft dated 5.12.2012 for a sum of ₹ 4,40,363/- was received by the representative of the petitioner company from the respondent company.

Issue sought to be raised by the petitioner is that settlement was only of principal amount, whereas the plea of the respondent is that amount was paid as full and final settlement of account. This is a disputed fact. However, it is not disputed that amount as settled was paid.

These disputed issues cannot be gone into in the winding up jurisdiction. Hence, the present petition is dismissed.

27.1.2015 **(Rajesh Bindal)**
vs **Judge**