IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Company Petition No. 129 of 2012 (O&M)
Date of decision: January 27, 2015.

The Bank of New York Mellon

.. Petitioner

v.

Rasandik Engineering Industries India Ltd.

.. Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Alok Jain, Advocate for the petitioner.
Mr. Gurpreet Randhawa, Advocate for the respondent.

...

Rajesh Bindal J.

The present petition has been filed for winding up of the respondent-company by the trustee on behalf of the bond holders.

The contention of learned counsel for the petitioner is that on 7.4.2006, the respondent-company issued Foreign Currency Convertible Bonds (for short' FCCBs') with maturity date as 8.4.2009. The total value was US $ 10 millions. On maturity, the amount repayable was US $ 11,011,000. After the bonds matured, the petitioner sent a notice of default dated 6.5.2009 to the respondent. Thereafter, the respondent-company remitted a sum of US $ 149,975. The liability on account of FCCBs is admitted in the annual report of the respondent-company for the years 2008-09, 2009-10 and 2010-11. It is specifically mentioned that the bonds had matured on 8.4.2009 and are due for payment. Before the FCCBs became due for payment on 8.4.2009, a communication was sent to the petitioner in advance on 26.3.2009, which was replied to by the respondent vide communication 28.3.2009 admitting that the bonds will mature on 8.4.2009, however, due to current economic slowdown in automotive sector, the company is witnessing unprecedented crisis. The efforts are being made to arrange the funds. A statutory notice dated 28.1.2011 for winding up got issued by the petitioner. In reply dated 17.2.2011, the debt was disputed, whereas vide communication of the same date, the respondent-company directly approached the bond holders with a proposal for payment of the amount due, which was not accepted by the bond holders. The submission is that as the respondent-company has failed to pay the debt along with future interest thereon, the petition is liable to be admitted.

On behalf of the respondent-company, merely a request for adjournment was made, which was declined. The judgment was reserved on 2.12.2014 by passing the following order:

> "Heard learned counsel for the petitioner. Learned counsel for the respondent sought adjournment which is declined considering the fact that it is a bunch of two petitions. Arguments were being heard together for 11 days. In the other petition, arguments have been concluded today. Request for adjournment on behalf of the respondent is declined.
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> Judgment reserved."

After hearing learned counsel for the parties, for the detailed reasons recorded in Company Petition No. 106 of 2012—The Bank of New York Mellon, London Branch v. JCT Limited, the petition filed by the trustee on behalf of the bond-holders is held to be maintainable.

The bonds were due for payment on 8.4.2009. The amount having not been paid and there being no arguments raised on behalf of the respondent, in my opinion, the petition deserves to be admitted.

Admitted.

However, publication of citation is deferred for a period of six months giving still an opportunity to the respondent-company to settle and pay the amount due to the bond holders. In case of failure, the citation shall be published after six months.

Adjourned to 28.9.2015.

(Rajesh Bindal)
Judge

January 27, 2015
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