

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CP No.132 of 2009 (O&M)
Date of decision : 18.05.2015

Century Metal Recycling Pvt. Ltd.

...Petitioner

Versus

Tex Corp. Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. O.P. Goyal, Sr. Advocate with
Mr. R.S. Kang, Advocate for the petitioner.

Mr. Shailendra Sharma, Advocate
for the respondent No.1.

AMIT RAWAL, J. (Oral)

The present petition has been filed by the petitioner under Sections 433(e) and (f) read with Section 439 of the Companies Act, 1956 for winding up of the respondent company on the premise that on the basis of the agreement dated 01.02.2008 (Annexure P-1), the respondent company was to lift 40 MT of Zinc Alloy Zamak-5 in a span of one year at a specified rate. The case of the petitioner is that the respondent-company did not lift the material and, thus a sum of ₹5,24,199/- is outstanding against the respondent company.

Preceding to filing of the petition, legal notices dated 30.03.2009 and 22.04.2009 have been sent. In response to the said letters,

the respondent-company is stated to have replied vide letter dated 30.04.2009, wherein they have challenged the authenticity/genuinity of the agreement, much less, account statement by stating that they have cleared dues in respect of invoices towards full and final settlement.

Be that as it may. The respondent company has raised disputed question of law, and the admission and denial of the documents cannot be determined in a summary proceeding, by invoking power under Sections 433 and 434 of the Companies Act. Since disputed questions of fact are involved in this case, much less, even no document has been placed on record to show the admitted liability of the respondent-company. Accordingly, I deem it appropriate not to entertain the petition and adjudicate the lis between parties and relegate the petitioner to invoke jurisdiction of trial Court.

The petitioner shall be at liberty to file a civil suit for recovery of amount if any by taking the aid of provision of Section 14 of the Limitation Act, if permissible in law and in case, the petitioner chooses to file written statement, the respondent-company shall file the same on the first date. After framing of the issues, the trial Court shall give two opportunities to each party in support of the claim/counter-claim and proceed to decide the civil suit, if filed.

The petition is disposed of accordingly.

18.05.2015

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**(AMIT RAWAL)
JUDGE**