IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Company Petition No. 150 of 2010 (O&M)
Date of decision : 11.12.2015

M/s NKS Investment

....Petitioner

M/s Rahul Sales Limited

...Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Manish Jain, Advocate, for the petitioner.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. Arun Shukla, Advocate, for the respondent.

Rajesh Bindal, J.

The petitioner has sought winding up of the respondent-company on the ground of inability to pay its debts. In support of his claim, the petitioner has produced a certificate dated 24.9.2010 issued by ICICI Bank stating that the petitioner is having a current account with the Bank. Against cheque No.869543, the petitioner got a demand draft issued in favour of the respondent for ₹ 4,00,000/-, which was issued on 21.11.2007. Further a cheque No.869554 for ₹ 6,00,000/- in favour of the respondent was debited in the account of the petitioner on 11.12.2007. Placing reliance upon the aforesaid certificates, it was claimed that the fact that ₹ 10,00,000/- were credited in the account of the respondents, which were given by the petitioner as loan and the respondent-company having failed to re-pay the same despite statutory notice, it deserves to be wound up.

Learned counsel for the petitioner also referred to the order dated 1.8.2013, wherein certain observations made by this Court. He further submitted that if the observations were not correct the respondent could have filed application seeking modification thereof, but none was filed.

On the other hand, learned counsel for the respondent-company submitted that though it is claimed that the petitioner had granted a loan of ₹

10,00,000/- to the respondent-company, but there is no document produced in support thereof. Merely by transfer of the amount in the Bank account of the respondent from the account of the petitioner will not make the transaction a loan, as there is no privity between the parties. Had it been a loan transaction, there would have been certain agreement between the parties settling the terms thereof, but nothing has been produced by the petitioner.

He further submitted that the respondent-company is carrying on various activities and for one such activity i.e. mining of black granite, the agreement was entered into with Samrath Bhardwaj. In terms thereof, certain payments were to be made by him. From where he sourced the payment, was none of the business of the respondent. In fact, the amount, which has been shown to have been paid by the petitioner is shown in the credit in the account of Samrath Bhardwaj maintained in the books of account of the respondent to in his account. Finally the respondent-company has to recover ₹ 3,65,104/- from him instead of paying any amount. He got the present litigation initiated claiming that the company is to recover the amount from the respondent, which is nothing else but arm twisting. The fact that the present petition was filed about three year after the amount was allegedly advanced by the petitioner with no correspondence during the interregnum, shows that the petitioner was not privity to any transaction with the respondent. The debt being seriously disputed, the petition deserves to be dismissed.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, the only document, reliance of which was placed by the petitioner, shows that certain amount was transferred vide two transactions from the account of the petitioner to the account of the respondent, which was sought to be claimed as a loan transaction. There is no document produced in support of that claim. The company, if invites fixed deposit, for any deposit received, acknowledgment is issued. For any loan raised by a company, certain terms are settled, but there is nothing in the case produced by the petitioner. The petition was filed just before the expiry of three years from the alleged transaction. Besides this the stand of the respondent is that in fact, there was privity of contract of the respondent with one Samrath Bhardwaj, who was to pay certain money to the respondent-company. From where he sourced the money, was none of the business of the respondent-company. In the books of account of the respondent-company, the amount has been shown in the credit of the account of Samrath Bhardwaj, which according to the respondent was not finally settled by him, as the respondent-company is still to recover sum of ₹ 3,65,104/- from him.

With the aforesaid material on record, in my opinion, it cannot be opined that the debt as is sought to be claimed by the petitioner can be said to be undisputed on account of alleged non-payment of which, the petition for winding up of the respondent-company deserves to be admitted. There is apparent serious dispute, which is required to be established in property proceedings.

For the reasons mentioned above, I do not find any merit in the present petition. The same is accordingly, dismissed.

(Rajesh Bindal)
Judge

11.12.2015
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