

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

CP No. 30 of 2011 (O&M)

Date of Decision : 09.3.2014

M/s Supriya Pharmaceuticals Limited ... Petitioner

VS

M/s Ranbaxy Laboratories Limited ... Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL.

Present: Ms. Rupa Pathania, Advocate, for the petitioner.
Mr. Anand Chhibbar, Senior Advocate with
Mr. Deepak Suri, Advocate, for the respondent.

RAJESH BINDAL J.

The present petition has been filed for winding up of the respondent company on the plea that it is unable to pay its admitted debt.

Learned counsel for the petitioner submitted that the respondent company had entered into a purchase agreement with the petitioner company for purchase of drugs, which are manufactured by the petitioner company for the purpose of export by the respondent company. Raw material was to be imported by the respondent company as per the terms of agreement. Raw material purchased by the respondent company and supplied to the petitioner was to be debited in the account of the petitioner, whereas value of the manufactured medicines supplied by the petitioner were to be credited. On 5.8.1998, the petitioner received a consignment of raw material containing Penicillin-G consisting of 30,000 BOU amounting to ₹ 1,72,88,254/-. The amount was debited in the account of the petitioner by the respondent company. However, on testing it was found that the material was spurious. The respondent company was informed by the petitioner on 7.8.1998 with a request not to make the payment of the material to the supplier.

Learned counsel for the petitioner company further submitted that raw material was to be imported by the respondent company and it was its responsibility to ensure that the raw material was of good quality, but still when the quality thereof was intimated, the respondent company vide letter dated 19.5.1999 informed the petitioner company that it has made a claim with the insurance company and any benefit received after settlement will be passed on to the petitioner company, whereas the petitioner company had nothing to do as the import was made by the respondent company. Ultimately the insurance claim was declined. Statutory notice dated 3.10.2009 was got issued to the respondent company, which was replied to by taking false plea that in fact the respondent company is to recover a sum of ₹ 3,05,48,689/- from the petitioner company for which there was no basis. The defence sought to be taken was totally sham. It was taken just with a view to defeat the rightful claim of the petitioner company. In support of the plea that the petition filed was not belated, learned counsel for the petitioner referred to the order passed by the BIFR dated 25.3.2009 where it was observed that the petitioner company shall take immediate steps for recovery of the dues of ₹ 1,72,00,000/- from the respondent company. The petition was filed immediately thereafter.

On the other hand, learned counsel for the respondent company submitted that the present petition deserves to be dismissed as the claim sought to be made is highly belated. A time barred debt cannot be used to arm twist the respondent company under the threat of winding up. The issue was pertaining to the year 1998. The petition was filed about 13 years thereafter in the year 2011. He further submitted that merely because the petitioner company was before the BIFR, the same will not stop the period of limitation for making any claim. If the petitioner company had to raise the claim against the respondent company, the same could be within the period of limitation. In support of the plea, reliance was placed upon a judgment of this Court in Company Petition No. 101 of 2010 M/s Apple Credit Corporation Limited vs M/s Prakash Industries Limited decided on 27.8.2014. The respondent company used to supply raw material to the petitioner company, which was doing job work of manufacturing medicines.

The value of the raw material was being debited in its account. In the process of those transactions, a sum of ₹ 1,72,88,254/- dated 31.3.1999 was debited in the account of the petitioner company on account of supply of raw material. The petitioner company has not produced the copy of the account along with the petition to show as to what was the balance due in the account. It is not the case of the petitioner company that the material supplied was ever returned or the drugs manufactured therefrom were supplied to the respondent company. In the absence of that, no claim can be made for recovery of that amount, as the debit note to that extent was admittedly issued for the raw material supplied by the respondent company. He further submitted that the order of BIFR sought to be relied upon by the petitioner company does not in any way suggest that there was a direction for filing of the winding up petition. It was merely a statement made by counsel for the petitioner company there.

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

In my opinion, the present petition deserves to be dismissed only on the ground that debt sought to be enforced is time barred besides not being admitted. The undisputed case of the petitioner company is that transaction took place way back in the year 1998. The debit note was issued by the respondent company on account of supply of raw material for manufacture of drugs on job work basis. It is claimed by the petitioner company that the raw material supplied was spurious, hence, the amount should not have been debited in the account of the petitioner company. The petitioner company has not produced on record any copy of the account to show as to what was the final balance in the account of the petitioner company. Even if there was any such dispute, the same could be raised within the period of limitation when the debit note was issued by the respondent company or at the most when the account was settled with the respondent company. As is claimed, the petitioner company filed application before the BIFR, which was registered as case No. 348/1998. It was declared sick vide order dated 14.5.1999. Pendency of an application filed by the petitioner company before the BIFR does not mean that it could

not proceed against its debtors in the Court of law within the period of limitation to enforce any debt. To cover the period of limitation, reference is sought to be made to the order dated 25.3.2009 passed by the BIFR wherein it was mentioned that the company shall take action for recovery of ₹ 1,72,00,000/- from the respondent company. Complete copy of the order has not been placed on record.

Be that as it may, even if the same can be said to be the observation by the BIFR, but still it does not bring the debt within the period of limitation. If the petitioner company had to recover any amount from the respondent company, it was required to initiate appropriate proceedings within the period of limitation. However, the case set up by the respondent company is that debit note was issued on 31.3.1999 for ₹ 1,72,88,254/- for the raw material supplied by the respondent company. The same cannot be said to be the amount to be recovered from the respondent company as the raw material was admittedly supplied. It is not even the pleaded case of the petitioner company that either raw material was returned back or the drugs manufactured therefrom were supplied to the respondent company.

For the reasons mentioned above, the present petition is dismissed.

09.3.2015
vs

(Rajesh Bindal)
Judge

(Refer to Reporter)