

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

**CP No.272 of 2003
Date of Decision: 24.07.2015**

M/s Bhushan Ltd.

...Petitioner

Versus

M/s Telephone Cables 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. Deepak Suri, Advocate for the petitioner.

Mr. Amit Jhanji, Advocate for the respondent-company.

AMIT RAWAL, J. (ORAL)

Affidavit of publication vis-a-vis admission of the petition has been filed.

This Court vide order dated 22.12.2014 passed the admission order, whereby the petition for winding up of the respondent-company by invoking the provision of Section 439 read with Sections 433 & 434 of the Companies Act, 1956 on the premise that respondent-company had approached petitioner company for supply of Galvanized Tape Tubes of various sizes and of different quantity and the total value of the goods supplied from 17.11.2001 to 11.02.2003 was for an amount of ₹88,16,344/-.

It has been submitted that the aforementioned details received by the respondent company and they had made the certain payments and

suddenly stopped making payment and as a result, aforementioned amount is outstanding and the respondent company had failed to pay the same. The company is also liable to pay the interest to the tune of ₹57,85,026/-. It has been pointed out that respondent company on 02.09.2003 had confirmed the balance due to the petitioner and, therefore the petitioner rather to pay a sum of ₹1,45,56,616/-.

Mr. Amit Jhanji, learned counsel appearing on behalf of the respondent company submitted that in view of settled law, as per Hon'ble Delhi High Court in *Kotak Mahindra Bank Ltd. Vs. Megnostar Telecommunications Pvt. Ltd. and anr*, 2012(193) DLT 371, once the proceedings have been initiated under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (in short as "the SARFAESI Act"), the Official Liquidator would not have any jurisdiction to take the assets of the company and it will be completely under the domain of the authorized officer of the Secured Creditor because Secured creditor has initiated proceedings under Section 13(4) of the SARFAESI Act.

I have heard learned counsel for the parties and appraised the paper book.

In view of the fact that Secured Creditor has taken the possession of the property while invoking the provisions of SARFAESI Act. Since the admission order had been passed by this Court after invocation of jurisdiction of this Court under Sections 433, 434 & 439 of the Companies Act, 1956, it is held that de hors of the fact that Secured Creditor has taken measures under Section 13(4) of the SARFAESI Act when the company petition was pending before the BIFR and the Company Court had already

passed the admission order, the Official Liquidator in such circumstances would be associated by the Secured Creditor in the process of sale.

Therefore, I hereby reject the plea raised by Mr. Amit Jhanji, learned counsel for the respondent-company vis-a-vis the fact that the Official Liquidator cannot take the assets of the company in view of the fact that company has taken the measures under the SARFAESI Act.

In view of what has been observed above, the petition is ordered to be wound up and the Official Liquidator is appointed its Liquidator. Since moveable and immoveable assets had already been taken over by Secured Creditor, in case any effort is being made to sell the property of the company in liquidation, the Secured Creditor would associate the Official Liquidator attached to this Court and the said sale of the assets shall be confirmed subject to the order of this Court.

Let the factum of the winding up order be published in the newspapers namely "The Tribune" (English) and "Dainik Bhaskar" (Hindi) as well as in Official Gazette of Chandigarh Administration, UT Chandigarh.

Accordingly, the petition is disposed of.

July 24, 2015
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(AMIT RAWAL)
JUDGE