

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Company Appeal No. 48 of 2015
Date of Decision: 11.02.2016

M/s Ceigall India Ltd.

..Appellant

Versus

M/s Sanghi Distributors

..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE ARUN PALLI.

Present : Mr. D.S.Sobti, Advocate, for the appellant.
Mr. D.K.Singal, Advocate, for the respondent.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

This is an appeal against the order of the learned Company Judge winding up the appellant company on the ground that it is unable to pay its debts. Prior to the order the petition had been admitted by an order and judgment dated 16.02.2015. The learned Company Judge, however, had granted the appellant four months' time to settle its dues by staying the publication of the order of admission. The appellant failed to avail the opportunity, as a result whereof the petition was advertised.

2. As the position remained the same and the learned Judge hearing the petition finally apparently agreed with the reasoning in the order of admission, the appellant company was ordered to be wound up by the impugned order.

3. The respondent agreed to sell to the appellant certain goods on the terms and conditions contained in and evidenced by six purchase orders placed in or about February, 2011. The goods were to be delivered by

30.04.2011. The payment was to be made within seven days of the material being supplied to site against each consignment.

4. The respondent's case and the appellant's defence in short is this. The respondent contends that the appellant has not made the full payment in respect of the goods supplied by it. The appellant on the other hand while admitting the same contends that it refused to make the payment of the full amount on account of the respondent's not having delivered the entire quantities of the purchase orders. The respondent while admitting that it did not supply the entire quantities of goods as per the purchase orders states that this was on account of the appellant having failed to make the payment of the goods within stipulated period of seven days.

5. We are in agreement with the learned Judges who accepted the respondent's contentions.

6. The order and judgment dated 16.02.2015 admitting the winding up petition sets out the details of the purchase orders, the payments made and the balance quantities in considerable detail. As we are in agreement with the findings and the reasoning of the learned Judge, it is not necessary to set out the facts in detail. It is sufficient to note that on 01.02.2012 the respondent forwarded a statement of the appellant's accounts in its books. The closing balance states that a sum of ₹ 32,04,336/- was due and payable by the appellant to the respondent. The respondent endorsed its confirmation at the foot thereof. Thus, admittedly an amount of ₹ 32,04,336/- was payable by the appellant to the respondent as on 01.01.2012. The appellant made four part payments in the month of March, 2012 of ₹ 5 lacs each aggregating to ₹ 20 lacs. There remained, therefore, at the end of March, 2012 an amount of ₹ 12,04,336/- due and payable by the

appellant to the respondent. As we noted earlier, the appellant does not deny the same.

7. The appellant contends that it did not pay the balance amount as the respondent had refused to deliver further quantities under the purchase orders. We are, however, inclined to accept the respondent's contention that it refused to deliver the balance quantities on account of the appellant having failed to make the payment within the stipulated period of seven days and on account of the balance outstanding. This to our mind is clear for more than one reason.

Firstly, the appellant never informed the respondent that it would not make the payment until and unless the respondent delivered the balance goods as per the purchase orders. Secondly, there is nothing on record which indicates any plausible reason as to why the respondent would have refused to deliver the balance quantities. It is not stated that it failed to do so on account of rise in prices of the said goods. Nor is there anything on record to indicate that the respondent was unable to deliver the balance quantities for any reason. Had the respondent refused to deliver the goods for any perceptible reason, the appellant would in the normal course have recorded the same in some manner or the other. It did not. This is yet another reason to accept the respondent's case. The appellant set up its defence only in response to the statutory notice under section 434 of the Companies Act served by the respondent.

8. As we mentioned earlier, by the order of admission dated 16.02.2015 the learned Company Judge granted the appellant a period of four months to settle its dues. It did not avail the opportunity. The petition was, therefore, advertised.

9. The debt is established. The company petition having been admitted and the order of admission having been advertised, the only option available now to the appellant is to pay the amount and/or settle the same to the satisfaction of the respondent and to thereafter make an application to the Company Court for modification or setting aside the order or to adopt appropriate proceedings for taking the company out of liquidation.

10. The appeal is, therefore, dismissed. The interim order shall, however, continue upto and including 30.04.2016. In the meantime, however, the appellant shall not dispose of, alienate, encumber, part with possession or create any third party rights in respect of its properties moveable or immovable. The moveable properties may be dealt with only in the normal and usual course of business. It is clarified that the appellant shall be entitled to pay the statutory dues and the salaries and wages of its employees.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

11.02.2016
'ravinder'

(ARUN PALLI)
JUDGE

To be referred to the reporter	Yes	No.
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