IN THE HIGH COURT OF PUNJAB & HARYANA, AT CHANDIGARH

CP No. 170 of 2001(O&M)
Date of decision: March 3, 2016

Mrs. Swaran Bansal(deceased) through her L.Rs and others

.... Petitioners

K. C. Ply Board Pvt. Ltd.

.... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. A. K. Jaiswal, Advocate
for the petitioners.

Mr. Anil K. Aggarwal, Advocate
for the respondent.

****

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

<u>Amit Rawal, J.</u>

This Court vide order dated 8.5.2009 after hearing the parties at length as well as noticing the averments and the stand taken in the written statement admitted the petition.

I find that as per the statement of accounts for the financial year 1999-2000 the liability had been admitted whereas the petition had been filed in the year 2001. For the sake of brevity the finding rendered by this Court in order dated 8.5.2009 reads thus:-

"*Here is a case where the Company has been able to drag its feet for more than seven years from the date of the filing of the petition. The admission of liability itself has been through accounts drawn up and statements issued for the financial year 1999-2000 and the petitions have been filed for the year 2001 i.e.even within two years. It is not seen how* *such claim could be barred by such limitation. Even if no time is specified for repayment of the amount held as deposits by the respondent-Company, the time begins to run from the date of demand and refusal which in this case has been done through a statutory notice and before that a letter written by the power of attorney of the petitioners. A clear unwillingness to repay the amount by a Company which is bound to pay when demanded will inevitably only mean the consequences that such inability visits a Company under the provisions of the Companies Act. The petition is well founded and it is ordered to be admitted. Advertisements shall be issued in the manner provided under Form 48 under rule 24 of the Companies Rules, in the "Tribune" (Chandigarh Edition), Dainik Bhaskar and the official gazette of Union Territory of Chandigarh.*

Post on 6.8.2009."

An affidavit regarding publication of the admission in the newspapers and gazette notification has already been submitted. It appears that the respondent-company had been taking perpetual adjournments and also moved miscellaneous applications CA No.74-75 of 2011 and CA No. 206 of 2011 for recalling the order vide order dated 31.5.2011 but the same were dismissed. For the sake of brevity, operative part of the order reads thus:-

I have brought out at the opening of this order that the substantial objection has been only that this Court has taken the view of the prima facie nature of debts as due by the Companies as obtaining through the certification by the Chartered Accountant of the Company when P13

> *to P21 are not at the instance of the Chartered Accountant of the company. I see, this is surely an error but I do not think that error is so fundamental to undermine the fabric of the judgment itself to bring asunder the ultimate decision. I have referred to the fact that some of the documents in P11, P16, P17, P18 and P19 have gone unrefuted and there was sufficient to prove the indebtedness. Referring to the objection regarding want of proof of the debt instruments, I have held that Annexures P3 to P8 which are extract of amounts themselves are proof of the existence of debts. If it were to be conceded that the persons that has vouched for the correctness of the particulars in P13 to P21 was not at the instance of the official of the Company, there is sufficient proof for the genuineness of the debts by the Company to which, I have made elaborate references in the order. I do not find any scope for recalling the order. Consequently, the applications are dismissed.*

Even thereafter, the matter lingered on for almost four and half years and rather filed objections to the calculation chart filed in the Court. The petition has been filed seeking winding up owing to admitted liability as it had made certain deposits and in lieu thereof, the Company agreed to pay the interest @ of 15% per annum. The factum of receipt of deposits as noticed above, has been reflected in the statement of accounts submitted before the Registrar of Companies, which shows the admitted liability viz-a-viz outstanding amount due to the petitioners and despite requests and reminders, and service of statutory notice, the respondent company failed to discharge its obligation, thus, in my view, the respondent-

Company is apparently unable to discharge the admitted debt and liable to be wound up.

Let the factum of winding up of the petition be published in the newspapers namely 'The Tribune' (English) and 'Dainik Bhaskar' (Hindi) and in the Official Gazette of Union Territory of Chandigarh.

The Official Liquidator attached to this Court is appointed as Liquidator of the respondent-Company and he is directed to take charge of the assets (movable and immovable) and records of the respondent-Company forthwith and would take further steps in accordance with law.

The Company Petition is disposed of accordingly.

(AMIT RAWAL)
JUDGE

March 3, 2016
archana