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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25493 of 2012
Date of decision:06.05.2016

M/s Bakshi Chemicals (P) Ltd. ...Petitioner

Versus

Punjab National Bank and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Rakesh Bhatia, Advocate,
for the petitioner.

Mr. Hemant Sarin, Advocate,
for respondent No.3.

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Rakesh Kumar Jain, J.

This petition is filed by the petitioner-company through its Director to challenge the validity of order dated 09.06.2011 passed by the Central Information Commissioner, New Delhi, by which application filed by the petitioner seeking information has been declined on the ground that the relevant record, relating back to the year 1999, had since been destroyed in terms of the retention policy of the Bank, therefore, the CPIO cannot be compelled to produce the same.

At the outset, counsel for the respondents has submitted that the present petition is not maintainable at the instance of the petitioner-company, that too by its Director because the petitioner-company has already been wound up vide order dated 05.08.2014 passed by this Court in CP No.118 of 2012 and the Official Liquidator attached to the Court has taken over the charge of both the movable and immovable assets of the

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petitioner-company. It is also submitted that once the petitioner-company has been wound up, no proceedings can be initiated by it through its Directors as all the actions thereafter can be maintained only by the Official Liquidator. In support of his submission, he has relied upon a judgment of the Supreme Court of India rendered in the case of **Sirmur Chemical and General Industries Ltd. vs. Union of India and another,** 1962 Company Cases 826 and a Division Bench judgment of the Kerala High Court in the case of **M/s. JTL Projectos Pvt. Ltd. vs. The Tahsildar and others,** WA No.1349 of 2014 in WP(C) No.20577 of 2014, decided on 01.10.2014.

Counsel for the petitioner has failed to contest the arguments raised by counsel for the respondents and has not referred to any law to the contrary.

I have heard learned counsel for the parties and examined the available record.

There is no dispute that the petitioner-company has been wound up and its assets are under the control and charge of Official Liquidator appointed by this Court vide order dated 05.08.2014.

It has been held in **Sirmur Chemical and General Industries Ltd.'s case (supra)** that *"one such power is to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company, with the sanction of the court. The corresponding provision in the 1913 Act is contained in section 179. It is obvious from the provisions referred to above that on the order of winding up which was made in the present case on December 31, 1957, Harcharan Dass as managing agent ceased to be a managing agent as from the date of the*

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commencement of the winding up and the liquidator who was appointed in the winding up was entitled to institute any legal proceeding in the name and on behalf of the company with the sanction of the court. The learned advocate for the appellant contended before us that though Harcharan Dass had ceased to be the managing agent under section 334, clause (e), of the Companies Act, 1956, he still continued to be an agent and as long as the liquidator did not revoke that agency, Harcharan Dass was competent to prefer an appeal and continue it on behalf of the company. We are unable to agree. We do not think that section 457 of the Companies Act, 1956, or the corresponding provision in the 1913 Act contemplates that on an order of winding up by the court any person other than the liquidator shall have the power to institute or defend any suit, prosecution or other legal proceeding, etc. Harcharan Dass having ceased to be the managing director or managing agent was not competent to file the appeal or continue it on behalf of the company. The argument that there is no automatic cesser of the power of Harcharan Dass as agent or that the appeal is a continuation of the suit is not available to Harcharan Dass in view of the clear provisions in section 334(e) and section 457 of the Companies Act, 1956. "

In **JTL Projects Pvt. Ltd.'s case (supra),** the Kerala High Court also made the following observations:-

> "4. When the appeal was heard, it was brought to our notice that by order dated 03/04/13 passed by this Court in CP No.44/11;, the Company has been ordered to be wound up and Official Liquidator has been appointed. Now that the company is under winding up and the liquidator has taken charge of the assets of the Company, any proceedings subsequent thereto can be initiated only by the Liquidator on behalf of the Company in view of the

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provisions contained in Section 457 of the Companies Act and as clarified by the Apex Court in **Sirmur Chemical and General Industries Limited v. Union of India & another** (1962 (32) CC 826).

5. In view of the above legal position, the writ petition filed by the Managing Director representing the Company was not maintainable and for that reason itself, the learned single Judge could not have entertained the writ petition."

In view of the aforesaid settled law, there is no reason to proceed further with this case and hence, the present petition is hereby dismissed being not maintainable at the instance of the petitioner.

May 02, 2016 **(Rakesh Kumar Jain)**
vinod* **Judge**