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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.PET. 284/2014**

MOTHERSONSUIIMI INFOTECH & DESIGNS LTD..... Petitioner
Through: Mr. Manoj Garg, Adv.

versus

CMK ENGINEERING PVT. LTD. Respondent
Through: Mr. Pankaj Rehani, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **10.02.2016**

CA 323/2015

1. This is an application whereby the petitioner seeks withdrawal of the accompanying petition. The reason why this court did not pass an order on the captioned application, i.e. CA 323/2015, is articulated in this court's order dated 6.2.2015.

2. Briefly, at the behest of the petitioner, this court on 29.1.2015 had admitted the winding up petition qua the respondent company and, consequent directions were issued including a direction for appointment of a Provisional Liquidator.

3. On service being effected, respondent company approached this court with application (being: CA 288/2015) detailing out therein that in the mediation proceedings carried out between the parties, a settlement had been reached, on 17.7.2014. It was further averred by the respondent company that pursuant to the settlement on 30.7.2014, the entire settled amount

CO.PET. 284/2014

page 1 of 3

equivalent to Rs.4.25 lakhs stood paid to the petitioner.

4. Quite strangely, the petitioner continued to press its company petition before this court.

5. It is in these circumstances that the court on 6.2.2015, recalled its earlier order dated 29.1.2015. Counsel for the petitioner on 6.2.2015 portrayed before this court that there was some misunderstanding between the members of his own staff. The counsel had, thus, offered to pay a compensation in the sum of Rs.50,000/- to the respondent company and undertook to defray expenses which the Official Liquidator (OL) may have incurred at the petitioner's behest.

6. Accordingly, Counsel for the petitioner has brought to court a cheque bearing No.000142, dated 9.2.2016, in the sum of Rs. 50,000/-, which is, drawn on HDFC Bank, Chitaranjan Park, New Delhi, towards compensation to be paid to the respondent company. Counsel for the petitioner reiterates that he is also willing to pay the costs to the OL as may be quantified by this court.

7. Mr. Rajpal Singh, Deputy OL says that since the time between the passing of the order dated 29.01.2015 and its recall order was short, security was not deployed, as would have been done, in the normal course post such an order being issued by this court.

8. In these circumstances, though I am allowing the application for withdrawing the company petition, the counsel for the petitioner Mr. Manoj Garg, is put to notice that in future, if such, professional negligence is displayed in prosecuting cases, then, the facts of this matter will also be placed before the Bar Council of India.

9. Since, counsel for the petitioner has said that he continued to prosecute the

petition on account of miscommunication amongst members of his own staff, I have decided not to take any precipitative action against Mr. Manoj Garg, albeit, with caveat adverted to above.

10. Furthermore, Mr. Manoj Garg, Advocate, undertakes to the court that the aforementioned cheque bearing No.000142 dated 9.2.2016 will be honoured on presentation. The said undertaking is taken on record. Since, the cheque has been issued by Mr. Manoj Garg, he is put to notice that if the cheque is dishonoured, this court will proceed against him under the provisions of the Contempt of Courts Act, 1971 in view of the undertaking given by him in court, today.

11. Mr. Manoj Garg also offers to pay a sum of Rs.10,000/- towards cost to the OL.

11.1 The said cost will be deposited with the common pool fund of the OL within two days from today.

12. The application is, accordingly, allowed. Consequently, the accompanying petition will stand withdrawn.

13. The application is disposed of.

CO.PET. 284/2014

14. The petition is dismissed as withdrawn, as indicated above.

15. No further orders are called for in the company petition.

RAJIV SHAKDHER, J

FEBRUARY 10, 2016

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CO.PET. 284/2014

page 3 of 3