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

\+ CO.APP. 31/2015 & CM No. 20541/2015

FORTUNE METALS LTD. ..... Appellant

Through: Mr. Aman Leekh, Advocate.

versus

KANWAR ENTERPRISES PVT. LTD. ..... Respondent

Through: Mr. Rajiv Bakshi, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **13.01.2016**

The appellant is aggrieved by the dismissal of its petition seeking winding up of the respondent-company (hereinafter referred to as 'company') under Section 433(e) of the Companies Act, 1956. The appellant had alleged that it has supplied the company materials of different rates and specifications in various invoices, value of the material being Rs.1,86,90,660.00/-. According to the appellant, there was a shortfall of payment of Rs. 26,45,064.75/- and notice for winding up was issued on 01.05.2015 upon the company. In the course of the proceedings before the Company Court, the appellant relied upon the extract of its ledger account for the relevant period i.e. from 11.04.2012 08.06.2012 to show outstanding amounts due and payable. After receiving notice in the proceedings, the company disputed the legality of the claim. The learned Single Judge accepted the company's statement that in the overall circumstances of the case, winding up proceedings were not an appropriate procedure whereby the dues of the appellant could be recovered.

It is contended by the appellant that in light of the decision of this Court in ***Mayar Traders Ltd vs. Akhil Services Ltd.,*** *(1993) 52 DLT 577*-the view of the Single Judge that the legal notice was bereft of particulars was inacceptable. It was also urged that having regard to all the materials which were placed on the record and the fact that the company had never disputed them or administered full payment of its outstanding dues, the dismissal of the winding up proceedings/ petition was unwarranted.

This Court is of the opinion that whilst the decision in *Maya Traders (supra)* (i.e. the mere denial of liability is not a defence in winding up a proceeding) is the correct proposition of law, nevertheless in the circumstances of this case, the failure to precisely spell out the transactions in essential particulars in the notice of demand– a statutory requirement- justified the dismissal of a petition for winding up. The Court notices that the jurisdiction conferred upon it under Sections 433/434 i.e. in the event of the company being "unable to pay its debts" is discretionary and not compulsory. It is well settled that a Company Court can justifiably refuse to entertain the proceeding, if it is to be used merely as a forum to recover amounts. In the present case, the respondent's company did dispute its liability. Having regard to the totality of the circumstances, the Single Judge refused to exercise discretion. We consequently find no reason to interfere with such exercise of discretion.

This Court is also of the opinion that having regard to the circumstances, the direction to pay cost in the present case may not be appropriate. The said direction is accordingly set aside.

The appeal is partly allowed to the above extent.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 13, 2016
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