IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.S.A.No.180 of 2011
and M.P.No.1 of 2011

M/s.Shanthi Fortune India Private Limited
represented by its Managing Director
Mr.R.Krishnamurthy,
having registered office at
No.38, Trichy Road,
Palladam-641 664, Tirupur District,
Tamil Nadu .. Appellant

Vs.

Chokhani Pharma Vet
represented by Mr.Anil Chokhani,
6W, Merchant Chamber,
6th Floor, Opp Patakar Hall,
41, New Marine Lines,
Mumbai-400 020. .. Respondent

* * *

Prayer : Appeal filed under Order 36, Rule 11 of the Original Side Rules read with Clause 15 of the Letters Patent, praying to set aside the fiar and decretal order dated 06.06.2011, passed in C.P.No.242 of 2009.

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For Appellant : Mr.P.M.Duraiswamy

For Respondent : Mr.Cibi Vishnu

J U D G E M E N T

[Judgement of the Court was delivered by RAJIV SHAKDHER, J.]

1. This is an appeal directed against the judgement and decree dated 06.06.2011.

1.1. The respondent herein had filed a company petition under Section 433(3) read with Sections 434(1)(a) and 439(1)(b) of the Companies Act, 1956, (in short, "the Act").

2. The learned Single Judge, via the impugned judgement, admitted the company petition and thereafter, issued consequential directions, including the direction for appointment of the Official Liquidator attached to this Court, as the Provisional Liquidator.

2.1. Aggrieved by the said impugned judgement, the instant appeal was filed by the appellant company.

2.2. The record shows that during the pendency of the appeal, a sum of Rs.32,74,960/- (Rupees thirty two lakhs seventy four thousand nine hundred and sixty only) was received by the respondent, i.e., petitioning creditor.

2.3. This aspect of the matter stands recorded in our proceedings dated 03.08.2017. In the same proceedings, we had also recorded that as per the Statement of Confirmation of Accounts dated 01.04.2009, issued by the appellant company, it owed a sum of Rs.44,61,960/- (Rupees fourty four lakhs sixty one thousand nine hundred and sixty only) to the respondent.

2.4. The appellant company, however, had taken a stand that payments were made, thereafter, to the respondent and for this purpose, placed reliance on paragraph 8 of the counter affidavit filed in the company petition. In response to this stand, the respondent's counsel had drawn our attention to paragraph 10 of the rejoinder filed in the company petition.

2.5. Based on the assertions made in the pleadings filed before the learned Company Judge, the stand taken before us, was that, the amount claimed in the company petition, which was a sum of Rs.62,15,015/- (Rupees sixty two lakhs fifteen thousand and fifteen only) as on 06.07.2009, was arrived at after taking into account payments referred to in paragraph 8 of the counter affidavit filed on behalf of the appellant company.

2.6. It is in these circumstances that the respondent filed an affidavit dated 09.08.2017. Along with the said affidavit, the respondent also appended a letter dated 02.04.2012. Cognizance of the said affidavit was taken by us in our proceedings dated 11.08.2017.

2.7. A perusal of the aforementioned affidavit filed by the respondent would show that there were three entries, which, according to the respondent, could not be adjusted. Given the stand, we had, in our proceedings dated 11.08.2017, recorded the following :

> "1. Pursuant to the last order dated, 03.08.2017, the respondent has filed an affidavit, which includes a letter dated 02.04.2012 submitted by the appellant. There are three (3) entries, which the respondent

says cannot be adjusted. These three (3) entries are as follows:

(i) Debit note raised by the appellant with respect to Bill No.87, dated 01.05.2008, amounting to Rs.35,700/- (Rupees Thirty Five Thousand and Seven Hundred only)

(ii) SIDBI - RTGS payments remitted on 08.01.2009, amounting to Rs.6,25,950/- (Rupees six lakhs twenty five thousand nine hundred and fifty only)

(iii) payment made, via, State Bank of India Cheque No.288918, dated 09.07.2009 amounting to Rs.3,62,000/- (Rupees three lakhs and sixty two thousand only).

2. Counsel for the appellant says that, he will revert with the instructions with regard to the aforementioned entries.

3.1.Furthermore, the appellant will file its latest balance sheet. An affidavit will also be filed detailing out the amounts owed, if any, to the secured and unsecured creditors, workmen and Statutory Authorities.

4. A copy of the same will also be furnished to the counsel for the respondent.

5. Re-notify the matter on 30.08.2017."

2.9. Thereafter, the other substantive proceeding, which was held before us, was the proceeding held on 20.11.2017. After hearing the arguments of the learned counsel for the parties for quite sometime, we had passed an order, the relevant part of which is set out hereafter :

"…. 2. To be noted, in our order dated 11.08.2017, we had referred to three (3) entries qua which the appellant has filed an affidavit dated 06.10.2017, explaining his stand with regard to the said three (3) entries.

2.1. In paragraph No.4 of the affidavit, in so far as the sum of Rs.6,25,950/- is concerned, even according to the appellant, he has paid the money to an entity known as Messrs Ajanta Enterprise. Clearly this amount has not been paid to the respondent.

2.2. In so far as the amount in the sum of Rs.3,62,000/- is concerned, as per the statement made in paragraph 6 of the very same affidavit, the said amount was received by the respondent from an entity known as Messrs Modern Animal Feeds Pvt. Ltd.,.

2.3. Counsel for the respondent says that this amount was received from Messrs Modern Animal Feeds Pvt. Ltd against the materials supplied to the said entity and therefore, this is not the amount which can be squared off against the monies claimed by the respondent from the appellant.

2.4. In so far as the debit note in the sum of Rs.35,700/- is concerned, the appellant takes the stand that the said debit note was prepared as there was short supply of material.

2.5. To be noted, there is no proof appended to the affidavit showing that such debit note was sent to the respondent. This amount, thus, cannot be adjusted against the claim of the respondent.

3. The learned counsel for the appellant says that in so far as payment in the sum of Rs.3,62,000/- is concerned, they would have to be relegated to the suit as the appellant is likely to demonstrate that Messrs Modern Animal Feeds Pvt. Ltd. had paid the monies on behalf of the appellant.

3.1. Further, in so far as the payment in a sum of Rs.6,25,950/- is concerned, the counsel for the appellant concedes that since there is not even prima facie material placed on record to demonstrate that the said payment was made over to the respondent, the appellant will pay the said money to the respondent.

4. Mr.R.Krishnamurthy, the Managing Director of the appellant company who is present in Court says that he will pay the said amount, that is, Rs.6,25,900/- to the respondent within four (4) weeks from today.

4.1. Accordingly, the said statement is taken on record.

5. Re-notify the matter on 20.12.2017."

3. It is in these circumstances, that the matter has come up for hearing today.

3.1. In line with, what was observed by us on 20.11.2017, the appellant company's counsel has brought to Court a Demand Draft favouring the respondent, bearing No.007717, dated 18.12.2017, drawn on Axis Bank, in the sum of Rs.6,25,950/- (Rupees six lakhs twenty five thousand nine hundred and fifty only).

3.2. According to the learned counsel, with payment of this sum, there is no other amount, that is, due and payable by the appellant company. As a matter of fact, it is the appellant company's case that a further sum of Rs.3,62,000/- was paid on its behalf by an entity going by the name Modern Animal Feeds Private Limited. This aspect of the matter was noticed by us in our proceedings dated 20.11.2017. In so far as the issuance of debit note is concerned, which is also indicated in our proceedings dated 20.11.2017, according to the appellant company, it was issued for a sum of Rs.35,700/-. The appellant company, as noted by us in those proceedings, has not been able to produce any proof thereof.

4. Therefore, having regard to the aforesaid circumstance, which is that, during the pendency of the proceedings, the respondent received, in the first instance, a sum of Rs.32,74,960/-, and thereafter, as of today, received a further sum of Rs.6,25,950/-, we are of the view that the appellant company has satisfied, at least, prima facie, the admitted debt owed to the respondent.

4.1. There is a dispute with regard to the balance amount claimed by the respondent. As indicated in our discussion above, the company petition was filed to claim a sum of Rs.62,15,015/-, which included the principal amount of Rs.42,98,610 plus an interest component amounting to Rs.19,16,405/-.

4.2. Besides this, as indicated hereinabove, the appellant company also claims that a sum of Rs.3,62,000/- was paid on its behalf to the respondent.

5. Therefore, in our view, the appeal needs to be allowed. It is ordered accordingly. Consequently, the impugned order is set aside. Resultantly, pending application shall stand closed.

6. We are told that the Official Liquidator attached to this Court has not yet taken possession of the assets of the appellant company, since, there was a stay operating during the pendency of the appeal. This stay was granted on 17.06.2011.

7. Needless to say parties will be free to agitate their respective claims, which, according to us, are contested claims, by taking recourse to an appropriate remedy as known to law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Sub Assistant Registrar (O.S.),
Madras High Court.
+1 CC TO Mr.P.M. Duraisamy, Advocate (SR.No.91573)
+1 CC TO Mr.Cibi Vishnu, Advocate (SR.No.92366)

skv (CO)
ksa (03.02.2018)

O.S.A.No.180 of 2011

20.12.2017