

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CAPP-34-2016 (O&M)

Date of decision:- 20.09.2017

M/s Komal Metal (P) Ltd.

...Appellant

Versus

Cheap Silk Store (P) Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present:- Mr. Rakesh Bhatia, Advocate,
for the appellant.

Mr. Gaurav Tangri, Advocate,
for the respondent.

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S.J. VAZIFDAR, C.J. (ORAL)

This is an appeal against the order of the learned Company Judge dated 02.12.2016 dismissing the petition filed by the appellant-original petitioner for winding up the respondent-company, inter alia, on the ground that it is unable to pay its debt in the sum of about ₹ 1,67,600/-.

2. According to the appellant, the amount is due towards the balance payment in respect of a transformer supplied by it to the respondent on the terms and conditions contained in and evidenced by an invoice dated 30.11.2011. The total cost was ₹ 3,37,600/-. Only part payment of ₹ 2,20,000/- was made. The appellant's case is that it delivered the transformer on 04.08.2012. It relies upon an acknowledgement endorsed on the invoice on 04.08.2012.

3. The learned Company Judge dismissed the petition on the ground that there is a bonafide dispute. The appellant relies upon the fact that there was no reply to the statutory notice dated 11.03.2013 and that over five months later on

26.08.2013 the respondent-company filed a consumer complaint alleging that the first transformer that was supplied was defective and a new transformer was never delivered. The respondent on the other hand relies upon a delivery note indicating the delivery of a transformer to the respondent which is not for sale in support of its contention that the transformer supplied was defective and was, therefore, returned to the appellant and that the other transformer was supplied only till the original was repaired. The respondent contends that the original was never repaired and returned to the respondent. The delivery was by a partnership firm which is the sister concern of the appellant. There is no explanation from the appellant as to why that transformer was delivered.

4. The learned counsel appearing on behalf of the respondent-company to show the respondent's bonafide is willing to deposit an amount of ₹ 1,17,000/-. In the facts and circumstances of the case, that would meet the ends of justice in a winding up petition.

5. Hence, in view of the facts and circumstances of the case and in view of the statement made on behalf of the respondent, the appeal is disposed of by the following order:-

(i) In the event of the respondent depositing an amount of ₹ 1,17,000/- by 31.10.2017, the company petition shall stand dismissed.

(ii) In the event of the appellant-original petitioner filing a suit for recovery of the said amount by 31.12.2017, the amount shall stand credited to the suit and shall abide by the result of the suit. In the event of the suit not being filed by 31.12.2017, the amount shall be returned to the respondent.

- (iii) In the event of the amount not being deposited, the company petition shall stand admitted and shall be advertised in two local daily newspapers, namely, Dainik Jagran (Hindi) and Daily Suraj (Punjabi).
- (iv) Needless to add that the respondent is always at liberty to adopt appropriate proceedings for the recovery of its claims including for damages and/or refund.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

20.09.2017
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No