IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-5441-2017
Date of Decision:- 04.10.2017

BBF Industries Limited, Ludhiana and others

.....Petitioners

Versus

Avigo Venture Investment Ltd. Mauritius and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Akshay Bhan, Senior Advocate
with Mr. Gurinder Singh, Advocate
for the petitioners.

Mr. Rohit Khanna, Advocate
for the caveator-respondent.

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RITU BAHRI, J. (Oral)

Petitioners-judgment debtors have come up in revision against order dated 24.07.2017, passed by learned Additional District Judge, Ludhiana, whereby the application, filed by the present petitioners for dismissal of the execution application, has been dismissed.

The facts not in dispute between the parties are that respondent Nos.1 and 2-decree holders have filed an execution application to recover total amount of ₹61,92,75,000/- from the petitioners/judgments debtors along with interest @ 18% per annum. The Consent Award dated 26.05.2012 corrected on 05.11.2012 was passed by

Arbitral Tribunal presided by Justice V.S. Aggarwal (Retired) in favour of the decree holders-Avigo Venture Investment Ltd. Company and another. It was further stated that the decree holders had not disclosed in their application that Company Petition No.80/2014 had been filed before the Hon'ble Company Law Board, New Delhi Bench against the present petitioners/respondents, which was still pending. Further they had gone into liquidation in Mauritius and a liquidator has been appointed. There was nothing on record to show that the liquidator had authorized any person to proceed with this execution application or to represent the DH Company.

On notice of the application, the decree holders took the stand that the execution application had been filed by the decree holders through Mr. P.M. Srivastva, Vice President L&F of decree holder No.2-Avigo Trustees Company. He had been authorized in this regard by the decree holder No.2, vide its resolution dated 05.03.2012. In the Company Petition No.88 of 2014, pending before the Hon'ble Company Law Board, Delhi, the same was concerning the oppression and mismanagement of the affairs of judgment debtor No.1 Company. The said petition did not concern the subject matter of the present execution application i.e. Consent Award dated 26.05.2012. They admitted that voluntary winding up proceedings had been initiated by passing special resolution of share holders on 20.08.2015, liquidator of the company was appointed, who has got powers to commence, continue, discontinue and defend legal proceedings. Liquidator Kneyalall Hawabhai of BDO De Chazal Du Mee & Company Limited, vide power of attorney dated

05.11.2015, appointed Mr. Pratul Gupta to institute, represent and prosecute decree holder No.1 in any proceedings before any Court of India. This information had already been sent to judgment debtor No.4 being Promoter/Director of judgment debtor No.1 Company as well as Company Secretary of JD No.1 Company, vide emails dated 20.01.2016 and 25.01.2016. Further the stand was taken that once a company had initiated voluntary winding up in Mauritius its stood dissolved from the date of order of resolution for initiating voluntary winding up. The voluntary winding up proceedings have been initiated under the Insolvency Law, prevailing in Mauritius, which is regulated by the Insolvency Act, 2009, which provides modes of winding up of a company under Section 100 and after the company voluntary winding up, the liquidator has authorized Mr. Pratul Gupta, vide Power of Attorney dated 5.11.2015 to institute, represent and prosecute decree holder no.1 Company in any proceedings before any Court in India.

Consequently, the application filed by the judgment debtors was dismissed by observing that once the winding up proceedings had been initiated in Mauritius under the Mauritius Insolvency Act, 2009, this cause of action was beyond the jurisdiction of India and hence the provisions of CPC will not be applicable and as per Section 279 of The Companies Act, the permission from National Company Law Tribunal was not required by decree holders in case the decree holders instituted any proceedings in India as they were foreign Companies incorporated under the laws of Mauritius. The provisions of Section 279 were applicable only in cases where winding up petition is filed before the

National Company Law Tribunal as per provisions of Section 271 of the Indian Companies Act, 2013.

Mr. Akshay Bhan, learned senior counsel, has vehemently argued that as per Section 279 of the Companies Act, 2013 (hereinafter to be referred as 'the Companies Act') when a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose. Hence, once the decree holders had admitted that they have voluntary wound up their companies in Mauritius by resolution dated 20.08.2015, the present execution proceedings, which were instituted in 2012 and were pending on that day, could not proceed except with the leave of the Tribunal as per Section 279 of the Companies Act.

Mr. Rohit Khanna, learned counsel for the caveator-respondent, has referred to the provisions of the Companies Act and states that there are specific provisions with respect to the foreign companies in the Companies Act and the present execution application is not to be considered under Section 279 of the Companies Act. The present company, being a foreign company, is to be treated as an unregistered company and Section 375(2) of the Companies Act, 2013, consists to the provisions with respect to winding up of foreign companies. If a foreign company ceases to carry on business in India, it can be wound up as an unregistered company as per Sections 375 to 378 of the Companies Act. If a company proceeds to voluntary wind up, it will not be wound up under the provisions of the Companies Act.

Heard learned counsel for the parties.

Parties are not in dispute that the respondents Company-decree holders, vide its resolution dated 20.08.2015, has initiated voluntary winding up. As per Section 375(2) of the Companies Act, no unregistered company shall be wound up under this Act voluntarily. Hence, the provisions of this Act will not be applicable to a case of foreign company, which is wound up voluntarily. Section 375(3) of the Companies Act deals with the winding up proceedings of an unregistered company on the following grounds: -

> "(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
> (b) if the company is unable to pay its debts;
> (c) if the Tribunal is of opinion that it is just and equitable that the company should be wound up."

The above-said provisions of Section 375(3) of the Companies Act do not apply to the present case as its a case of voluntary winding up and as per Section 375(2) of the Companies Act, no winding up proceedings can be taken up by the Tribunal. As per Section 376 of the Companies Act, if a Company ceases to carry on work in India it can be wound up as an unregistered company. Moreover, for the application under Section 376 of the Companies Act there are three conditions prescribed in Section 375(3) of the Companies Act for winding up of unregistered companies as stated above.

In the facts of the present case, a Consent Award was passed between the parties on 26.05.2012 and unregistered foreign company had proceeded to voluntary wind up on 20.08.2015. The company was not to be covered under the provisions of Section 376 of the Companies Act. The only question for consideration before the Civil Court was whether the consent award could be executed in India or by the Company Tribunal. Since as per Section 375(2) of the Companies Act no winding up proceedings with respect to voluntary winding up of an unregistered companies was permissible, the civil Court had the jurisdiction to execute the award passed in favour of the decree holders of ₹61,92,75,000/- Moreover, as per Section 375(3) of the Companies Act, with respect to a foreign company, which is to be treated as unregistered company, if winding up proceedings are initiated in Mauritius, a separate winding up proceedings could be initiated in India before the Company Tribunal as well as per Section 376(3) provided the company had been dissolved and had ceased to carry on business for the purpose of winding up and was unable to pay the debt. The above-said conditions are missing in the present case as its a case of voluntary winding up for which the jurisdiction of Tribunal is ousted as per Section 375(2) of the Companies Act.

For clarification it is further observed that provisions of 279 of the Companies Act would be applicable to a case where winding up proceedings are pending before the Tribunal, then no suit or other legal proceeding shall be proceeded, by or against the company, except with the leave of the Tribunal.

Since in the present case the respondents Company had initiated voluntary winding up as per its resolution dated 20.08.2015, the provisions of Section 279 of the Companies Act will not be applicable and as per Section 375(2) of the Companies Act there is no jurisdiction of Company Tribunal.

In the light of aforesaid reasons, order dated 24.07.2017 (Annexure P-1), passed by the learned Additional District Judge, Ludhiana, does not require any interference and the instant revision petition is hereby dismissed.

(RITU BAHRI)
JUDGE

October 04, 2017
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Whether speaking/reasoned	Yes
Whether reportable	Yes