

**RA-CP-3-2015 (O&M) IN
CP-182-2014**

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

**RA-CP-3-2015 (O&M) IN
CP-182-2014
Date of decision : 24.05.2017**

M/s Vinod Cotton Corporation

... Petitioner(s)

Versus

M/s Jindal Cotex Ltd. and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Aalok Jagga, Advocate
for the review applicant(s)/respondent(s)-Company.

Mr. Lalit Thakur, Advocate
for the non-applicant(s)/petitioner(s).

Mr. Manish Jain, Advocate,
for respondent No.2.

Mr. I.P. Singh, Advocate
for the Central Bank of India.

AMIT RAWAL, J. (ORAL)

CA-560-2015

For the reasons stated in the application which is duly supported by an affidavit, the application is allowed and the delay of 64 days in filing the review application is condoned.

RA-CP-3-2015

Prayer in the review application under Order 47 Rule 1 CPC read with Rules 6 & 8 of the Company Code Rules is for recalling of the order dated 06.07.2015 (Annexure A-1) passed in the aforementioned

Company Petition, whereby the petition has been admitted and the Official Liquidator attached to this Court has been appointed.

Mr. Aalok Jagga, learned counsel appearing on behalf of the review applicants/respondent(s) submits that the company petition was instituted on account of that there is admitted liability of the entire amount of ₹ 11,20,89,614/- (approximately), but had been making the payment, which fact is evident from Annexure A-4, vide which, a sum of ₹ 83,55,262/-, even beyond the receipt of the legal notice dated 27.09.2014, had been paid. There is *bona fide* dispute as the liability is not admitted, much less, certain facts have also not been explained. Even there is an admission of debit note, thus, there is no clear-cut admission bringing the case within the parameters of Sections 433, 434 & 439 of the Companies Act.

He further submits that the review applicants/respondent(s) is also in process of settling the outstanding due with M/s JM Financial Asset Reconstruction Company Ltd./respondent No.2 and Central Bank of India and the factum of negotiation has not been denied by Mr. Manish Jain, Advocate.

He further submits that in case the Company in winding up, some settlement can be done with the non-applicant(s)/petitioner(s) with regard to the admitted liability, failing which, non-applicant(s)/petitioner(s) would not be able to get anything out of it, in view of the alleged liability of the secured creditors, thus, urges this Court for recalling of the order, under challenge.

Mr. Lalit Thakur, learned counsel appearing on behalf of the

non-applicant(s)/petitioner(s) submits that Company had not been able to show *bona fide* of not appearing, despite having received the notice of winding up the petition, much less, statutory notice and therefore, had intentionally not appeared in order to avoid the liability. Non-appearance and keeping mum, itself, is a pointer of admission of liability and until and unless the Company is not called to pay substantial amount, the order sought to be reviewed, should not be recalled.

He further submits that the admission of the liability is reflected from the Emails (Annexure P-8 and P-9), which has never been denied.

In rebuttal, Mr. Aalok Jagga, submits that the review applicant(s)/respondent(s) if given chance to contest the case, shall place on record the material by filing the written statement. He, on instruction from his client, has also undertaken to pay the entire publication charges which has been incurred for the admission of the petition.

I have heard the learned counsel for the parties and appraised the paper book and as well as the rival contentions of the parties, the fact remains that the review applicant/respondent(s) had not been diligent in pursuing the matter despite having received the notice of winding up the petition and had instrumental in creating such situation, which would have prevented and avoided. Even otherwise, no copy of the reply to this notice has been placed on record.

I would refrain myself to comment upon the merits and demerits for the purpose of recalling, but in order to advance justice and to prevent miscarriage of justice, I deem it appropriate that one effective opportunity should be given to the review applicant/respondent(s) to contest

the case, particularly when it is at the stage of settling the outstanding amount with all the secured creditors and non-applicant/respondent(s) being unsecured, would also get something out of it.

Keeping in view the aforementioned facts, the order dated 06.07.2015 (Annexure A-1) is hereby recalled subject to the following condition:-

The review applicant/respondent(s) shall pay the publication and other expenses and other charges incurred for admission of the petition and over and above a sum of ₹ 50,000/- as cost, to be paid to the non-applicant/petitioner for delaying the aforementioned matter.

Accordingly, the Company Petition bearing No.182 of 2004 is restored and listed on 11.07.2017.

Reply be filed within a period of 30 days from the date of the receipt of the certified copy of this order, failing which, the defence would be struck off.

Resultantly, review application stands allowed.

24.05.2017
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**