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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

Company Petition Nos.506 to 508 of 2015

Amit Kumar Jain HUF
rep. by its Karta Amit Kumar Jain .. Petitioner in
C.P.No.506 of 2015

Geetu Jain .. Petitioner in
C.P.No.507 of 2015

Rashmi Jain .. Petitioner in
C.P.No.508 of 2015

Vs.

M/s.N.V.Paper Products Private Limited
a company incorporated under the
provisions of the Companies Act, 1956
and having its Registered Office at
No.2-B, SIDCO Industrial Estate,
Ambattur, Chennai - 98. .. Respondent in
all the C.Ps

Petitions filed under Sections 433 and 434 r/w 439 of
the Companies Act, 1956.

For Petitioner : Mr.G.Kumud Jhabakh
in all the C.Ps

For Respondent : Mr.Om Prakash,
Sr. Counsel for Mr.Om Sai Ram
in all the C.Ps

COMMON ORDER



These company petitions are filed by the petitioners under Sections 433, 434 r/w 439 of the Companies Act, 1956, against the respondent company on the ground that a sum of Rs.12,12,895/- in each petition is due.

2.Learned counsel appearing for the petitioners would submit that as per the confirmation of auctions, there is no dispute on the liability. Any payment stated to have been made either prior or subsequent by the respondent company in favour of the company of the petitioners cannot be taken note of. Thus these petitions will have to be admitted.

3.Learned senior counsel appearing for the respondent company would submit that the documents filed would show that the company is solvent making a profit of Rs.3 crores and there were numerous transactions between the parties. In fact, the payments due have already been paid subsequently but the petitioners went back on the understanding and still demanding the amount. This has occasioned in filing two suits in C.S.Nos.780 and 781 of 2017 in which both the father of the petitioner in C.P.No.506 of 2015 and the petitioners who are the son, daughter and daughter-in-law of Mr.Ashok Kumar Jain, who has been arrayed as first defendant in the suit and in



whose favour, the amount is stated to have been paid by the respondent company are the parties. Learned counsel has also made reliance upon the documents evidencing the transaction between the parties. Further averment has been made that the company petitions are not maintainable as there is dispute on the liability and there is no material to hold that there is a loan transaction except the transfer of money from the account of the petitioners to the respondent. According to the learned senior counsel, these petitions cannot be filed for mere recovery of amount against the solvent company, whose account would show a profit of Rs.3 crores. To buttress the said submission, reliance has been made on the following decisions:

*(i) Amalgamated Commercial Traders (P) Ltd.,
Vs. A.C.K. Krishnaswami and Another (1956
Vol. XXXV Company Cases 456)*

*(ii) M/s. Madhusudan Gordhaandas and Co., Vs.
Madhu Woolen Industries Private Limited (AIR 1971
SC 2600)*

*(iii) Rishi Enterprises In re (1992 Vol. 73
Company Cases 271)*

(iv) Pradeshiya Industrial and Investment



*Corporation of Uttar Pradesh Vs. North India
Petrochemicals Ltd., (1994 SCC (3) 348)*

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4.Considering the averments made, this Court is of the view that these petitions will have to be dismissed as there are serious disputed questions of facts involved. From the counter affidavit filed by the respondent, it could be seen that there are numerous transactions between the parties. In fact, para 5 of the counter affidavit would enlist 17 of such transactions and these transactions are not denied. In para 9, it has been stated that the amount of Rs.59,81,499/- has been paid by the respondent in favour of Mr.Ashok Kumar Jain, pursuant to the mediation of the auditor. These averments were not denied or disputed. Apart from this, other documents are also relied upon by the respondent company. Now, there is a comprehensive suit, in which the respondent company has sought for adjusting the deposit amount, considering the fact that Mr.Ashok Kumar Jain and the petitioners herein are the parties to the suit.

5.Considering the above, particularly, in view of the undisputed fact that the company is solvent earning substantial profit, this Court is of the view that these



petitions will have to be dismissed. However, this Court is of the view, when it is the specific case of the petitioners that the payment made by them is independent of the transaction between the first defendant in the suit and the respondent, it is well open to the petitioners to file counter claims. These counter claims will have to be entertained by the Court and decided on merit without going into the issue of limitation as the petitioners have been agitating their rights before this Court. Certainly Section 14 of the Indian Limitation Act would come into play. Thus while dismissing these company petitions, all the issues are left open and the jurisdiction civil Court is directed to dispose of the suits without reference to any of the observations made in this order. Liberty is also given to the petitioners to file counter claims.

6. With the aforesaid observation, these company petitions stand dismissed.

sd./-M.M.S.J
16.04.2018

//Certified to be true copy//
Dated at Madras this the day of 2018
R.s/22.06.2018

COURT OFFICER(O.S.)
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