



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORIGINAL JURISDICTION)

Friday, the 3rd day of September 2021

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

Comp.Petn.No.183 of 2013

In the matter of the
Companies Act, 1956
and

In the matter of winding of
Koushic Pressure Vessels Pvt Ltd.,

1.A.S.Sandeep, S/o. A.Sudhakar Rao,
Old No.33, New No.97, Vannier Street,
Choolaimedu, Chennai – 600094.

2. K.B.Raju, S/o.K.V.Balaraman
Old No.33, New No.97, Vannier Street,
Choolaimedu, Chennai – 600094.

... Petitioners

Vs.

Koushic Pressure Vessels (P) Ltd.,
a Company incorporated under the
Companies Act having its Regd Office
at No.1/150, SLRS Hospital Road
Kandipedu Village, Vellore 632106

... Respondent

PRAYER: This Company petition praying that this Hon'ble Court be
pleased to,

a)wind up the respondent Company Koushic Pressure
Vessels (P) Ltd having its Registered Office at No.1/150
SLRS Hospital Road, Kandipedu Village, Vellore 632106.



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b) Appoint the Official Liquidator as Liquidator of the respondent Company viz., Koushic Pressure Vessels (P) Ltd having its Registered Office at No.1/150 SLRS Hospital Road, Kandipedu Village, Vellore 632106 with all powers under the Companies Act to take charge of the Company and to conduct its affairs in the course of its winding up.

c) Order costs of this Petition.

This Company Petition coming on this day before this Court for hearing in the presence of Mr.T.M.Hariharan for M/s. Aruna Ganesh, advocate for the Petitioner herein, Mr.Kumarpal R.Chopra, advocate for Respondent and upon reading the Order dated 22.01.2018 and the **Court made the following order:**

This Company Petition has been filed under Section 433 (e) and (f) read with 434 (1) (a) and 439 (1) (b) of the Companies Act, 1956, seeking winding up of the respondent-Company on the ground of inability to pay the debts.

2. It is the case of the petitioners that they had lent a sum of Rs.14,00,000/- to the respondent-Company in cash during the year 2009 and the said lending was secured by execution of six Promissory Notes by the Managing Director of the respondent-Company. It is also claimed that certain properties belonging to the Company were given as a security for the repayment of the loan. It is the further claim of the petitioners that



the respondent-Company had issued 13 cheques on 20.10.2011, 22.10.2011, 25.10.2011 and 28.10.2011 for re-payment of the monies advanced on 02.09.2009. Claiming that the cheques bounced on presentation, the petitioners would claim that the respondent-Company is unable to repay the debts and therefore is liable to be wound up.

3. The petition is resisted by the respondent-Company contending that there was no borrowing in the year 2009. It is claimed that there were some borrowings in the year 2007, which were repaid in the year 2008. The petitioners have used the unfilled promissory notes and cheques that were left with them by the Company at the time when the money was borrowed in the year 2007. It is also seen from the records that the petitioners have filed a suit seeking recovery of money based on those promissory notes dated 02.09.2009 and the said suit in OS No.33 of 2012 is stated to be pending on the file of the District Court, at Kanchipuram. While Mr.T.M.Hariharan, learned counsel appearing for the petitioners would contend that the defence being moon-shine, the Company Court can order winding up.

4. Contending contra, Mr.Kumarpal R. Chopra, learned counsel appearing for the respondent-Company would submit that the borrowing itself is in doubt. He would also point out that the lending is claimed to

be a cash transaction that too to a Company, which makes the very



lending itself doubtful. He would also point out several anomalies in the transactions.

5. I have considered the rival submissions.

6. In order to direct winding up of a Company, there must be an undisputed debt or the opposition or denial of liability should be so feeble that there is no chance of success in the recovery proceedings for the Company. Upon going through the materials that are placed before me in the form of the Promissory Notes, dis-honoured cheques, account statements, etc., I am of the considered opinion that it cannot be said that the defence is a moon-shine or that there is no possibility of success for the defendant in the civil suit. This opinion of mine is only *prima facie* based on the materials produced. I have not conducted a trial to come a definite conclusion, as to whether the borrowing is true or as to whether the respondent-Company is liable for the debt. I am only on the question of inability to pay the debt within the meaning of Section 433 (e) (f) of the Companies Act. I do not find the case of the petitioners so fool-proof so as to be favoured with an order of winding up, particularly on the ground of inability to pay the debt. The fact that the suit is pending is also taken into account in disposing of this petition.



7. Hence the Company Petition is dismissed. It is made clear that any observation made herein above is only a prima facie opinion and the same shall not be binding on the Trial Court before which the suit is pending. No costs.

*WITNESS, THE HON'BLE MR.JUSTICE SANJIB BANERJEE,
THE CHIEF JUSTICE OF MADRAS HIGH COURT, AS AFORESAID
THIS THE 03rd DAY OF SEPTEMBER, 2021.*

Sd/-

JOINT REGISTRAR(O.S)(I/C).

//CERTIFIED TO BE A TRUE COPY//

DATED THIS THE DAY OF 2022

COURT OFFICER.

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KJV – 30/12/2021

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ORDER DATED: 03.09.2021

THE HON'BLE MR.JUSTICE
R.SUBRAMANIAN

FOR APPROVAL ON:03/01/2022

APPROVED ON : 04/01/2022

COPY TO:

1. ++CC.SR.No.6837 /2021