THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION Nos.269 and 270 of 2014

COMPANY PETITION No.269 of 2014

Mr. Rajesh Himathlal Ajmera and others

...Petitioners

Vs.

M/s. Chadalavada Infratech Limited

.... Respondent

DATE OF JUDGMENT PRONOUNCED: 20.04.2018

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether Their Ladyship/Lordship wishes to see the fair copy of the Judgment? Yes/No

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CHALLA KODANDA RAM, J

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!Counsel for the Petitioners : Sri Ch. Ramesh Babu

Counsel for the respondent : Sri Y. Raveendra Kumar

<Gist :

>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION Nos.269 and 270 of 2014

COMMON ORDER:

Since, on same set of facts, except a change in the amount due to the respondent, similar relief has been claimed, both these Company Petitions have been heard together and disposed of by this common order.

For convenience sake, the facts narrated in Company Petition No.269 of 2014 are referred to.

Petitioners are partners of unregistered partnership firm, namely, M/s. Devang Electricals. Respondent is a Company registered under the Companies Act, 1956 (for short 'the Act'), engaged in the business of execution of engineering contracts and construction works. The petitioners' firm claims to have supplied various goods to the respondent under different purchase orders. As the respondent failed to pay the amount due with respect to the said supplies, the petitioners' firm got issued a statutory notice, dated 30.12.2013 under Section 434 of the Act calling upon it to pay the amount due and further cautioning that in the event of non-payment of due amount, it would be constrained to invoke the jurisdiction of this Court under Section 434 of the Act. In spite of the same, the respondent neither gave reply nor denied

the legal demand, as such, the petitioners filed this Company Petition seeking to wind up the respondent on the ground of its inability to pay the amount due.

The respondent filed its counter-affidavit denying the liability and raising a legal objection that the alleged debt is barred by limitation. Since there is no enforceable debt, this Petition seeking winding-up of the respondent is not maintainable.

The petitioners filed a reply affidavit dealing with the specific objection taken by the respondent as to limitation, asserting that initially, Company Petition (SR) No.3392 to 3394 of 2014 came to be filed on 04.06.2014, but raising certain objections, the Registry returned the same, and instead of re-presenting the same, they filed the present Company Petition on 18.12.2014.

In the Company Petition, the petitioners filed an application seeking condonation of delay of 186 days in re-presenting Company Petition (SR) No.3392 to 3394 of 2014 and in the affidavit filed in support thereof, they explained, in detail, the reasons necessitated for filing the Company Petition afresh on 18.12.2014 instead of re-presenting the Company Petition (SR) No.3392 to 3394 of 2014 returned by the Registry.

Sri Ch. Ramesh Babu, learned counsel for the petitioners, asserts that ledger account of the respondent in the books of the petitioners' firm discloses that with respect to various supplies, payments were made on 25.04.2011 leaving a total balance of Rs.30,58,152/- as due. He further asserts that in the letters, dated 27.07.2011 and 25.08.2011, the respondent stated that it would release the payments shortly which disclosed admission of debt; that it is only on account of various objections raised by the Registry, instead of re-presenting Company Petition (SR) No.3392 to 3394 of 2014, the petitioners chose to file the present Company Petition on 18.12.2014; that the petitioners filed Company Petition (SR) No.3392 to 3394 of 2014 on 04.06.2014 and that the respondent admitted in letter, dated 27.07.2011 and E-Mail, dated 25.08.2011 with respect to the amount due to the petitioners and therefore, there is an enforceable debt and the Company Petition is maintainable. He further asserts that in the counter-affidavit, particularly, in paragraph 11, the respondent admitted that there is some amount due to the petitioners' firm. He further asserts that as a matter of abundant caution, the petitioners filed an application in the present Company Petition and in the affidavit filed in support thereof, they explained the circumstances, under which the present Company Petition was

filed on 18.12.2014. To buttress the same, he places reliance on the judgment of Orissa High Court reported in **State Bank of India v. Dilip Chandra Singh Deo**[1]. He also places reliance on the judgment of the Allahabad High Court reported in **Harish Chandra v. Rahul Kumar**[2] and submits that this Court, in the interests of justice, has ample and inherent power under Section 151 CPC to treat the Company Petition filed on 18.12.2014 as an extension of the Company Petition filed on 04.06.2014. He further asserts that the judgment in **Harish Chandra** (2 supra) indicates the method and manner in which the inherent power can be exercised and there is no bar for such exercise in the interests of justice. He further asserts that the petitioners filed the Company Petition within time so as to protect their right *ex debito justitiae.* He further asserts that the respondent filed balance sheets along with the counter-affidavit and in the balance sheet as on 31st March, 2015, Rs.20,98,21,925/- and Rs.31,09,75,194/- were shown under the head 'Trade Payables' as at 31st March, 2015 and 31st March, 2014, respectively, as such, it is clear that there is a debt payable to the petitioners. He also asserts that the petitioners' firm is falling within the definition of 'micro, small and medium enterprises'.

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[1] AIR 1998 ORISSA 129
[2] AIR 2018 ALLAHABAD 1

On the other hand, learned counsel for the respondent submits that the petitioners abandoned the petition filed on 04.06.2014 and chose to file the instant Company Petition afresh on 18.12.2014 for the purpose of limitation, alleging that there is admission of debt by the respondent in E-Mail, dated 25.08.2011. He further submits that the amount shown under the head 'Trade Payables' is with respect to various debts and it is not clear whether the due amount of the petitioners includes therein or not. He further submits that as per Section 3 of the Limitation Act, 1963, the Company Petition ought to be dismissed, as, it is nothing but abuse of process of the Court. He further submits that the respondent has passed through a phase of financial crisis and as on date, it is a profit-making Company and has been executing a number of important works in various States, namely, Maharashtra, Karnataka, Jammu and Kashmir and Assam, and its turnover reached to Rs.15.24 Crores and as on 01.04.2016, there were works of Rs.393.88 Crores. He also submits that the respondent received the support of the State Bank of India under the rehabilitation scheme and it is running and viable and that winding up proceedings should not be entertained any further.

Having considered the respective submissions and perused the record, the primary question which falls for consideration is

"whether the petitioners have any right to file the Company Petition and whether there is any enforceable debt due to the petitioners' firm".

It is to be noted that only an enforceable debt gives right to a creditor to invoke the jurisdiction of the Company Court seeking winding-up of a Company on the ground of its inability to pay the debts. In the present case, there is no dispute that last payment made was on 25.08.2011. In normal circumstances, if the petitioners had to file a suit for recovery of the amount due, they ought to have filed the same on or before 25.08.2014, or at best, on or before 25.11.2014. There is no dispute that initially, on 04.06.2014, the petitioners filed Company Petition (SR) No.3392 to 3394 of 2014 and the Registry returned the same by raising certain objections. If the petitioners had pursued the same, it would have been numbered. In such an event, the claim of the petitioners would have been within the limitation period. As the petitioners filed the present Company Petition on 18.12.2014, the same is barred by limitation as it is obvious that there is no enforceable debt by that date. Whatever may be the reason, the petitioners did not choose to re-present Company Petition (SR) No.3392 to 3394 of 2014 returned by the Registry, but however,

filed the present Company Petition on 18.12.2014 which is an independent proceedings initiated afresh.

From the very averments of the petitioners in the affidavit filed in support of the application filed for condonation of delay in re-presenting Company Petition (SR) No.3392 to 3394 of 2014, it is clear that the petitioners are residing in Mumbai and since there are many corrections in the returned bundle, there was a considerable delay occurred in securing the original papers. Admittedly, in the affidavit filed in support of the application filed for re-presenting Company Petition (SR) No.3392 to 3394 of 2014, the petitioners stated the reasons for their not choosing to re-present the Company Petition and filing the present Company Petition on 18.12.2014. At the outset, it is to be seen that the said Application is filed invoking Section 148 of the Code of Civil Procedure which has no application insofar as Company Petitions (SR) No.3392 and 3394 of 2014 are concerned, as they do not relate to Company Petition No.269 of 2014, and the averments in the affidavit disclose that they relate to the Company Petition initially filed which was returned unnumbered under Company Petitions (SR) No.3392 to 3394 of 2014. The delay condonation petition filed in the present Company Petition invoking Section 148 CPC bringing CPSR

Nos.3392 and 3394 of 2014 as the petitions in the present Company Petitions is totally impermissible. Even assuming that Section 148 CPC has any application, enlargement of time could not be granted for more than 30 days, in view of the time-limit fixed in Section 148 itself. At any rate, it is impermissible to condone the delay of 186 days in representing the returned Company Petition, as the petitions in the present Company Petitions, as the same would be contrary to the procedure prescribed. That apart, adopting such course is contrary to the procedure and limitation prescribed as it would have the consequence of enlarging limitation. Such course would be also contrary to Section 3 of the Limitation Act as it is well-settled that there is no question of equity and the Court does not have power to enlarge the limitation in the cases governed by the provisions of the Limitation Act. The contention of the learned counsel for the petitioner that the delay of 186 days occurred in representing 3392 to 3394 of 2014 in the present Company Petitions as extension of the petitions filed in the earlier Company Petition which was returned and not represented, is to be rejected outright as the same would be contrary to the procedure and impermissible in law.

It may be noted that the petitioners paid Court fee of Rs.285/- with respect to the Company Petition filed on 04.06.2014 and once again, they paid a sum of Rs.240/- towards Court fee for the Company Petition filed on 18.12.2014. It is the general practice of this Court that for the purpose of identification, independent serial number would be given with respect to each category of the cases.

It is the claim of the petitioners that Company Petition (SR) No.3392 to 3394 of 2014 filed on 04.06.2014 would continue to have effect and the present Company Petition filed on 18.12.2014 should be taken into consideration as if it was filed on 04.06.2014. In such an event, the claim of the petitioners with respect to enforceability of the alleged debt is clearly time-barred. The contention of the learned counsel for the petitioners that in the counter-affidavit, there is an admission with respect to the amount payable to the petitioners is liable to be rejected, as the respondent in the counter-affidavit had denied the liability and asserted that the petitioners did not produce proper evidence in support of their claim. Even for arguments sake, if it is assumed that there is an admission with regard to some amount due, as the same not being specified, this Court need not exercise its jurisdiction under Section 434 of the Act as essentially, the

jurisdiction exercised under Section 434 of the Act is not for enforcement of a debt which is unascertained. The question as to whether the petitioners' claim is included in the amount specified under the head 'Trade Payables' or not need not be enquired into in this Company Petition. Probably, if the petitioners had filed a suit, there would have been a possibility of discovering the same by means of interrogatories.

The judgments relied upon by the learned counsel for the petitioners have no application to the facts of the present case, as such, no discussion requires on the same.

For the aforesaid reasons, both these Company Petitions do not deserve any consideration and are accordingly, dismissed.

CHALLA KODANDA RAM, J

20th APRIL, 2018.

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