HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION Nos.170 of 2012; 135 of 2013 & 181 of 2014

COMMON ORDER:

These Company Petitions are filed under Sections 433(e), 434(1)(a) and 439 of the Companies Act, 1956 (for short, "the Act"), seeking winding up of the respondent company-M/s. BRG Energy Limited.

COMPANY PETITION No.170 of 2012

The petitioner company-Shera Energy Private Limited was incorporated on 08.12.2009 with its Registered Office at F-269(B), Road No.13, VKIA, Jaipur-302013 and engaged in manufacturing aluminium and copper winding wires. The respondent company approached the petitioner company for supply of specific material and placed three purchase orders viz., P.O.No.526, dated 27.07.2010, P.O.No.596, dated 16.08.2010 and P.O.No.925/10-11, dated 27.10.2010 and accordingly, the petitioner company supplied the same and raised invoices to that effect viz., Invoice Nos.SEPL/2010-11/2095, dated 10.11.2010 for Rs.6,70,179/-; SEPL/2010-11/3000, dated 18.11.2010 for Rs.3,49,833/- and SEPL/2010-11/3001, dated 18.11.2010 for Rs.5,04,891/-. However, the respondent company failed to adhere to the payment terms and thereby committed default in paying the total principal outstanding amount of Rs.15,24,903/- and interest thereon, at the rate of 18% i.e., Rs.4,01,208/-, and further an amount of Rs.2,12,504/- towards interest for late payment of various bills viz., 1719, 1838, 2038, 2140, 2266 dated 17.08.2018, 25.08.2010, 08.09.2010, 16.09.2010, 27.09.2010 respectively. In all the respondent company fell due a total outstanding amount of Rs.21,38,615/- as on 31.05.2012. It is further submitted that in response to their letter dated 01.04.2011 the respondent company, without disputing the facts and figures, expressed its financial difficulties prevailing and requested time till the end of March, 2012. However, in spite of availing numerous chances, the respondent company failed to clear the outstanding dues and thereby the petitioner company issued statutory notice dated 27.06.2012, under Section 434 of the Act. However, the respondent company neither gave any reply nor discharged its liability. Hence, the Company Petition.

COMPANY PETITION No.135 of 2013

The petitioner company-M/s. Sah Petroleums Limited was incorporated on 10.03.2004 with its Registered Office at 406/407, Embassy Centre, Nariman Point, Mumbai-400021 and engaged in the business of manufacturing and supplying various types of oils, greases, lubricants and other petroleum produces in India. The respondent company approached the petitioner company for supply of Transformer Oil and as per the agreed terms, the supplies are to be made by giving 45 days credit and accordingly, the business transactions were going on between the petitioner and the respondent companies. While so, the respondent company failed to pay an amount of Rs.8,53,614/- vide Invoice No.936, dated 30.01.2011; Rs.11,59,149/- vide Invoice No.947, dated 31.01.2011 and Rs.11,55,697/- vide Invoice No.948, dated 31.01.2011 and as per the agreed terms, the respondent was to clear the said amounts by 16.03.2011 and 17.03.2011 respectively, but in spite of repeated reminders, it failed to pay the same. Therefore, the respondent is liable to pay Rs.44,65,326/- (Principal is Rs.31,58,460/- and interest @ 24% is Rs.13,06,866/- as on 05.12.2012). Therefore, the petitioner company got issued a statutory notice dated 13.12.2012, under Section 434 of the Act. In spite of receipt of the same, the respondent company neither gave any reply nor discharged its liability. Hence, the Company Petition.

COMPANY PETITION No.181 of 2014

The petitioner company-M/s. CTR Manufacturing Industries Limited was incorporated on 18.12.1964 with its Registered Office at Nagar Road, Pune-411014 and engaged in the business of manufacturing and marketing Engineering and Electronic products. As per the agreed terms and upon receipt of the respective work orders from the respondent, the petitioner company used to carry out the work orders within the stipulated time to the satisfaction of the respondent company and accordingly, raised various invoices. However, the respondent committed default in making payments. After giving due credit to the respondent, the total outstanding amount worked out to Rs.87,45,871/- as on 15.01.2013. Therefore, the petitioner company got issued a statutory notice, under Section 434 of the Act. In spite of receipt of the same, the respondent company neither gave any reply nor discharged its liability. Hence, the Company Petition.

In all the above company petitions the respondent company is one and the same. The respondent company was incorporated under the Act on 25.07.2006, having its registered office at Plot No.838, Vivekananda Nagar Colony, Kukatpally, Hyderabad. The respondent company is engaged in the business of generating electrical power by conventional, non-conventional methods, including coal, gas lignite oil, bio-mass waste thermal, solar, hydel, geohydel, wind and tidal waves etc., In pursuit of establishing its business, the respondent company has placed purchase orders to the above petitioner companies, but defaulted in paying the amounts raised by the petitioner companies under different invoices.

The parties as arrayed in Company Petition No.170 of 2012 are referred to hereinafter as such for the sake of convenience.

When the matter came up for admission, Notice was ordered on 28.09.2012. In spite of service of notice, as there was no appearance on behalf of the respondent company, on 21.11.2012 the petitioner was directed to file affidavit in chief. Even on 03.12.2012, there was no appearance on behalf of the respondent company, as such, the respondent company was set *ex parte* and on 04.12.2012, the Company Petition was admitted and publication was also ordered. As ordered, initially, publication was not made, on 31.01.2013, time was enlarged for causing publication. Accordingly, the proof of publication was filed on 23.09.2013. Thereafter, the matter underwent several adjournments. The record discloses that a memo was filed on 12.12.2013 by Sri. S. Nageswara Reddy, learned counsel appearing for the respondent company, along with the proceedings of Board for Industrial and Financial Reconstruction, New Delhi (in short "BIFR"), dated 10.12.2013, to the effect that a reference filed by the respondent company was registered under Section 15 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (in short "SICA Act") in the BIFR on 31.10.2013. In view of the bar contained in Section 22 of the SICA Act, the matter was being adjourned from time to time.

On 26.12.2013 the deponent of the affidavit-in-chief was present and as there was no representation on behalf of the respondent, the right to cross-examination was forfeited. From thereafter, the matter was coming up for hearing. On noticing that yet another Company Petition was filed, this Company Petition was directed to be tag along with C.P.No.223 of 2011. On 02.07.2018, it was reported that BIFR proceedings were concluded. Learned counsel for the respondent submits, on instructions, that the respondent company, as on date, has not approached the NCLT as mandated under the relevant rules. However, acceding to the request made on behalf of the respondent company, the matter was adjourned to 09.07.2018, on which date learned counsel for the respondent company submitted that in spite of his best efforts, he was unable to contact somebody connected with the respondent company for getting instructions. This Court has noticed that there are other company petitions against the respondent company seeking winding up on the ground of its inability to pay the debts.

The facts, as set out in the company petition, to the effect that the petitioners had supplied goods but the respondent company failed to clear the invoices raised by them, stand unrebutted. Further, the documents filed along with the company petition support the case of the petitioner to the effect that it has supplied DPC Aluminum strip bare of two different sizes and EC Grade Aluminum Bare wire under invoice Nos.SEPL/2010-11/2905; SEPL/2010-11/3000 and SEPL/2010-11/3001, which are marked in the affidavit-in-chief examination as Exs.A8 to A10, purchase order dated 27.10.2010 placed by the respondent company was marked as Ex.A7 and the confirmation of accounts made by the respondent company vide letter dated 01.04.2011 was marked as Ex.A11.

The above material on record clearly discloses that respondent company, having received the goods, failed and neglected to pay the amounts due. Likewise, in Company Petition Nos.135 of 2013 and 181 of 2014, though the goods supplied and legal notices were issued demanding payment, no payment was made and the bills remained unpaid.

In the light of the above, practically, there is no dispute with respect to the petitioners having supplied and rendered services to the respondent company, under which the respondent company having become indebted the amounts claimed by the respective parties in their company petitions. In the light of the above, there being no dispute with respect the amounts due and the respondent having not paid the dues, the respondent company is liable to be wound up. Accordingly, the respondent company be wound up and the Official Liquidator to take necessary steps to take the assets of the company in to their custody and further take necessary steps to complete the formalities relating to liquidation.

Accordingly, the above Company Petitions are allowed. No costs.

CHALLA KODANDA RAM, J

Date: 21.08.2018.

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