$~CP-9 to 15 & 19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CO. PET. 508/2015 and CA Nos. 2104/2015, 1314/2016

SHRI ANAND KUMAR JAIN ..... Petitioner

\+ CO. PET.512 /2015 and CA Nos. 2112/2015, 1315/2016

SMT. SUMITRA JAIN ..... Petitioner

\+ CO. PET. 513/2015 and CA Nos. 2114/2015, 1330/2016

SMT. SARITA JAIN ..... Petitioner

\+ CO. PET. 516/2015 and CA Nos. 2129/2015, 1312/2016

SMT. AARTI JAIN ..... Petitioner

\+ CO. PET. 517/2015 and CA Nos. 2131/2015, 1327/2016

SHRI RISHABH JAIN ..... Petitioner

\+ CO. PET. 521/2015 and CA Nos. 2133/2015, 1319/2016

SMT. MALTI JAIN ..... Petitioner

\+ CO. PET. 522/2015 and CA Nos. 2135/2015, 1331/2016

SHRI SIDDHARTHA JAIN ..... Petitioner

\+ CO. PET. 574/2015 and CA Nos. 2299/2015, 1322/2016

SMT. MALTI JAIN ..... Petitioner

Through Mr.Siddhartha Jain, Adv.

Versus

M/S ADEL LANDMARKS LTD. ..... Respondent

Through Mr.Manoj K.Singh, Mr. Nilava Bandyopdhyay and Ms.Bornali Roy, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% **03.01.2018**

It is an admitted fact in these cases that the respondent has paid to the petitioners the entire principal amount.

Learned counsel for the petitioners however submits that the petitioners are also entitled to interest. He relies upon the judgment of the Division Bench of this court in Co. Appl. 22/2014 titled as ***M/s M-Tech Developers Ltd. vs. Swapna Bhattacharya*** dated 21.04.2014 to contend that interest is necessary payment for the purpose of restitution. He further submits that in winding up petition, the creditors need not be forced to initiate separate litigation for recovery of the interest amount and the interest amount can be determined by the Company Judge in the winding up proceedings. He further states that earlier, sometimes in 2015 the respondent had tendered an amount including some amount of interest when the matter was settled but the cheques were returned unpaid.

Learned counsel for the respondent however denies that there is any liability to pay interest as the agreement provides that no compensation will be paid if the money is refunded.

In the case of ***Vijay Industries vs. Natl Technologies Limited, (2009) 3 SCC 527***, the Supreme Court in a case where there was no agreement between the parties to pay interest after noting that interest was inter alia payable by way of restitution, observed as follows:-

> "For invoking the relevant provisions i.e. Section 433(e) read with Section 434(1)(a) of the Companies Act, 1956 in relation to winding up of a company on the ground of its inability to pay its debt, what is necessary is that despite service of notice by the creditor, the company which was indebted in a sum exceeding one lakh rupees then due, failed and/or neglected to pay the same within three weeks thereafter or to secure or compound for it to the reasonable satisfaction of the creditor. Failure of the company to pay the agreed interest or the statutory interest would come within the purview of the word "debt". Further, Section 433(e) of the Companies Act does not state that the debt must be precisely

> a definite sum. It is not a requirement of the law that the entire debt must be definite and certain. The Division Bench dismissed the company petition proceeding on the basis that the entire sum covering both the principal and the interest must be undisputed. It is one thing to say that the amount of debt is not definite or ascertainable because of the bona fide dispute raised thereabout or there exists a dispute as regards quantity or quality of supply or such other defences which are available to the purchaser; but it is another thing to say that although the dues as regards the principal amount resulting from the quantity or quality of supply of the goods stands admitted but a question is raised as to whether any agreement had been entered into for payment of interest or whether the rate of interest would be applicable or not. In the latter case, the application for winding up cannot be dismissed."

Keeping in view the above legal position, the respondent shall pay simple interest @ 6% per annum w.e.f. the date of the earlier agreement between the parties of 2015 till date of payment. The payment shall be made within two months from today. In case there is any default on the part of the respondent, liberty is granted to the petitioners to take steps as per law including revival of the present winding up petition.

In view of the above, the present petitions stand disposed of.

All pending applications also stand disposed of.

JAYANT NATH, J

JANUARY 03, 2018
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