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

+ **CO.APP. 16/2014 and C.M.No.5662/2014 (Stay)**

VIKAS SACHDEVA

..... Appellant

Through: Mr.Mukul Talwar, Senior Advocate
with Mr. Shekhar Kumar and Ms.
Pallavi Saigala, Advocates.

versus

ALKA EXIM PVT LTD. & ANR

..... Respondents

Through: Ms.Megha Bharara, Advocate for
Ms.Ruchi Sindhwani, for Official
Liquidator.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

29.07.2019

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1. This appeal is filed by a former Director of Crest Exports Pvt. Limited (CEPL) which had been ordered to be wound up by impugned order dated 11th December, 2013 of the learned Company Judge in a petition filed by Respondent No.1 Alka Exim Pvt. Ltd. (AEPL) under Section 433(e) and (f) of Companies Act, 1956. The plea of AEPL was regarding non payment by CEPL of Rs.2,55,11,173/- which included the principal amount of Rs.2,18,43,881/- and interest of Rs.36,67,292/-.

2. At the outset it is required to be noticed that the present Appellant is a former Director of the company which was ordered to be wound up. He derives his locus standi to file this appeal on the basis that as a result of such winding up he would be unable to form any new company. The Appellant has also relied upon *Anil Kumar Sachdeva v. Four A Asbestos (P) Ltd. [1980]50 CompCas 122 (Del)* to state that there are such residuary rights

that are vested in a former Director of a company that has been ordered to be wound up.

3. Interestingly although AEPL was earlier being represented in the hearings of this appeal up to 22nd August, 2017 none has been representing it since then.

4. One of the main grounds of challenge is about the discrepancies in the statement of accounts produced by AEPL to show that the aforementioned amount was owed to it by CEPL. It has been submitted by Mr. Mukul Talwar, learned senior counsel appearing for the Appellant that AEPL had not accounted for RTGS payments of Rs.76,25,000/- made to it by CEPL which would reduce the principal amount to Rs.14,21,881/- and correspondingly also bring down the interest amount. Further the Appellant claims that the company wound up had issued debit notes of Rs.70,52,864/- on return of goods and these too were not accounted for in the accounts. The submission is that with so many discrepancies in the statement of account, unless evidence is led to reconcile these differences, which again can happen only in a civil suit and not in a winding up proceedings, there was no case made out for winding up the company.

5. In the order dated 7th February, 2017, this Court noted that counsel for AEPL was asked to obtain instructions from his clients 'regarding discrepancies in the ledger account maintained by the Respondent which was filed along with the petition seeking winding up and the one which is filed along with the rejoinder'. Thereafter counsel for AEPL has not reverted to this Court with instructions. As already noted, for several hearings now,

AEPL has gone unrepresented for reasons which perhaps are not surprising.

6. The Court is informed by the Official Liquidator, who has filed a report on 9th February, 2018 stating that no assets or records pertaining to the company in liquidation could be found at the registered office of the company. Even the factory premises is now owned by some other company pursuant to the auction conducted under the SARFESI Act, 2003. The net result is that AEPL could not succeed in recovering any amount even pursuant to the winding up order.

7. Be that as it may, with AEPL not choosing to contest the stand of the Appellant regarding the discrepancy in the statement of account as submitted by AEPL before the Company Court, this Court sets aside the impugned order dated 11th December, 2013 and restores Company Petition No. 206/2010 and C.A.No.532/2012 back to the file of the Company Judge for a fresh disposal in accordance with law. Considering that AEPL has not been represented in this appeal, the learned Company Judge will proceed in the matter after notice to AEPL. CP 206 of 2010 shall be listed before the learned Company Judge on 2nd September, 2019 for directions. Pending application also stands disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 29, 2019/*mr*