IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP-93-2013 (O&M)
Date of decision:05.05.2022

M/s Venus Petro Chemicals (Bombay) Pvt. Ltd.
....Petitioner

Versus

M/s Vaanix Industries Pvt. Ltd.
..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anand Chhibber, Sr. Advocate with
Mr. Tarurag Gaur, Advocate for the petitioner

Mr. Binat Sharma, Advocate for
Mr. Pardeep Sharma, Advocate for the respondent

ANIL KSHETARPAL, J

Heard the learned counsel representing the parties at length. Learned Senior counsel representing the petitioner has also filed written submissions.

The admission order passed on 18.05.2015 is elaborate. Hence, it would not be appropriate to reiterate the facts noticed therein. The respondent-Company filed an appeal against the order passed on 18.5.2015. CAPP-37-2015 was permitted to be withdrawn on 18.11.2015 by the Division Bench of this Court while permitting the respondent-Company to file further affidavit and to raise all the contentions at the final hearing of the winding up petition.

In view of the aforesaid facts, an additional affidavit has been filed by Sh.Naveen Chandra on 02.04.2016. On a careful perusal of the affidavit, it is evident that the respondent-Company has tried to project that the Company in question is a profit making Company. The profit before tax in the year 2013-14 is stated to be approximately Rs.24,00,000/-. It has also been projected that the respondent-Company has entered into a business partnership/agreement with Japanese Giant Kansai Nerolac Paints Ltd. and Technova Imaging Solution with a projection of Rs.100 crores business during the next financial year. It has further been stated that there was a fire in the factory of the respondent-Company wherein it incurred losses resulting in registration of FIR No.778, however, the Company has tried to project that it has come out of the situation and is a healthy running concern.

Reply to the additional affidavit has been filed by the petitioner on 21.07.2016.

No substantive order was passed for sufficiently long time. On 22.05.2019 the Company Court passed the following order:-

> "In appeal before the Division Bench, the following order was passed on 18.11.2015:
>
> *"1.This is an appeal against an order admitting the petition for winding up, inter alia, on the ground that the appellant is unable to pay its debts.*
>
> *2. The appeal is sought to be withdrawn on the ground that the admission of the petition has already been advertised. It is necessary only to clarify that the appellant-company has in the appeal also sought to rely upon further documents which were not before the learned Single Judge.*
>
> *3. The appellant is always entitled to file further affidavits and to raise all contentions at the final hearing of the winding up petition including those that were raised at the time of admission. The order at admission stage is not binding at the final hearing of the winding up petition.*
>
> *4. The appeal is accordingly disposed of."*
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> Mr. Chhibbar points out to the order dated 16.03.2016 taking cognizance of the order

> passed in appeal after recording that publication was duly affected as per the orders of the Company Court dated 18.05.2015. The respondent had been given opportunity to file an affidavit, being the last opportunity.
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> M/s Vannix availed the opportunity on 02.04.2016 and have filed affidavit. Office of learned senior counsel has filed counter on 21.07.2016.
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> Learned senior counsel submits that he has nothing further to add to what has been recorded and observed in the admission order dated 18.05.2015.
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> Subsequent to the order, several e-mails have been exchanged between the parties and these are required to be filed in chronological order with reference to paper-book where they lie. To make it clear e-mails sent and received after the date of the last e-mail noticed in the admission order is required to be filed and any other email or material relied upon as additional evidence be appended in the affidavit for bringing on record such material. Brief reasons may be assigned of their relevance in the face of pre and post correspondence till the date notice was served under Sections 433/434 of the Companies Act, 1956.
>
> M/s Venus would file an affidavit explaining the documents/e-mails at page 309 of the paper-book dated 28.06.2012 and what is meant by this. This would be necessary to help understand the charge of mis-representation alleged by the respondent.
>
> Reply be filed on the next date of hearing.
>
> List on 29.05.2019."

Affidavit of the Advocate together with the compendium of e-mails was filed.

On 31.03.2022, learned counsel representing the respondent-Company informed the Bench that industrial activities of the plant have been stopped and the factory premises are in possession of the State Bank of India. In order to ascertain the current financial position of the Company, the respondent-Company was directed to file its latest balance sheet. However, no balance sheet has been filed.

Learned counsel representing the respondent-Company although made sincere attempts, however, failed to put across any substantive argument to counter the prima facie opinion recorded by the Court while passing the order of admission. Even in the counter affidavit, the respondent-Company has failed to produce any evidence to prove that the defence put forth by the Company is substantial and the Company is financially in good health. In these circumstances, it is safe to conclude that the defence put forth by the respondent-Company is a moonshine having no substance. The petition has been filed in a bonafide manner and the respondent-Company has failed to put forth any bonafide defence.

Keeping in view the aforesaid facts, this Court is of the considered view that in view of the subsequent developments including the fact that the plant of the respondent-Company has already been taken over by the financial institutions, this Court is convinced that the respondent-Company is unable to pay its debts. Consequently, this Court is left with no other choice but to draw an adverse inference against the respondent-Company as it has failed to file its latest balance sheet. In view of the aforesaid facts, the Company is ordered to be wound up. Let the official liquidator take steps in accordance with law.

All the pending miscellaneous applications, if any, are also disposed of.

05.05.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No