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

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Decision delivered on: 25.08.2022+ **CO.APP. 12/2019****CHHAYA PACKERS & PRINTERS PVT. LTD. Appellant**

Through: Mr Saroj K. Jha, Advocate.

versus

KAUL POLYMERS (INDIA) PVT LTD RespondentThrough: Mr Yugansh Mittal with Mr Keshav
Pratap Singh, Advocates.**CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MS JUSTICE TARA VITASTA GANJU****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):****CM APPL. 27341/2022**

1. This is an application seeking restoration of the appeal. The appeal was dismissed on 02.05.2022.

1.1. The aforesaid order was passed, in view of the fact that the appellant was not represented on the said date and even on the previous date i.e., 17.11.2021.

2. For the reasons given in the application, the order dated 02.05.2022 is recalled.

2.1. The appeal is restored to its original position and number.

3. The application is disposed of in the aforesaid terms.

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4. With the consent of the counsel for the parties, the appeal is taken up for hearing and final disposal, at this stage itself.



5. This appeal is directed against the order dated 08.01.2019, passed in Company Petition No. 205/2016.

5.1. The learned Company Judge *via* the order dated 08.01.2019 has admitted the aforementioned company petition and appointed the official liquidator attached with this Court as the provisional liquidator. Certain other consequential directions have also been issued *via* the very same order.

6. It is not disputed by the learned counsel for the respondent that the appellant had filed a reply to the petition preferred by the respondent under Sections 439(1)(b), read with Section 433(e), 433(f) and 434 of the Companies Act, 1956.

6.1. It appears that, somehow, the learned Company Judge missed this aspect of the matter.

6.2. Consequently, even according to the respondent, the averments made by the appellant in the reply to the company petition were not considered.

7. We may observe that the company petition seems to have been founded on a purported debt said to have been created on account of amount invested by the respondent in the appellant-company for the purpose of acquiring an equity stake in the same.

7.1. A perusal of the impugned order shows that the respondent appears to have invested Rs. 1,25,00,000/- for acquiring shares in the appellant-company. It also appears that Rs.1,22,25,000/- stood reflected in the balance sheet of the appellant in the form of share application pending allotment. Apparently, this aspect is disclosed in the balance sheet of the appellant as on 31.03.2013.

7.2. The learned Company Judge, in paragraph 4 of the impugned order, has referred to the fact that *via* order dated 16.04.2018, the appellant was



directed to file the balance sheet for the year ending 31.03.2013, and also to comply with the order dated 18.05.2016.

7.3. It appears that the Managing Director of the appellant was also directed to remain present in Court on the next date of hearing and since the Managing Director did not appear, cost of Rs. 20,000/- was imposed.

7.4. Counsel for the respondent submits us that none of these directions passed by the learned Single Judge have been complied with by the appellant.

8. We may note that Mr Saroj K. Jha, who appears on behalf of the appellant, concedes that the cost of Rs. 20,000/- as directed by the Court, was not paid.

8.1. Furthermore, Mr Jha says that in the reply filed on behalf of the appellant-company, *inter alia*, the defence taken was that out of the amount invested, Rs. 1,11,17,900/- had been repaid to the respondent.

8.2. This aspect, obviously, does not find mention in the impugned judgment passed by the learned Company Judge as the reply was not taken into consideration.

9. Thus, for the foregoing reasons, the impugned judgment is set aside.

10. Mr Jha says that since the appellant-company did not pay the costs as directed by the learned Company Judge, the same will be paid within the next two weeks.

10.1. The undertaking given by Mr Jha on behalf of the appellant-company is taken on record.

11. We are told that the matter is fixed before the learned Company Judge on 23.11.2022.

11.1. The learned Company Judge is requested to take up the company



petition for a fresh hearing, in view of what is noted hereinabove.

12. The appeal is disposed of in the aforesaid terms.

13. Needless to state, if there are any other directions which have not been complied with, the learned Company Judge will be free to enforce the same, *albeit*, as per law.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

AUGUST 25, 2022/tr