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

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Date of Decision: 18.12.2023+ **CO.APP.6/2019**

RAHUL KULSHRESHTHA

..... Appellant

Through: Ms Neha Gupta and Mr Rishabh
Pant, Advocates.

versus

TRIVENI MEDIA LIMITED

..... Respondent

Through: Mr Nilesh Jain, Advocate.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J.**

1. The appellant has filed the present appeal impugning orders dated 12.11.2018 and 20.12.2018 (collectively referred to as '**the impugned orders**') passed by the learned Company Court disposing of the petition filed under Sections 434 and 439 read with Section 433(b), (e), (f) of the Companies Act, 1956 (hereafter '**the Companies Act**').
2. The appellant is an ex-employee of the respondent company and had sought winding up of the respondent, principally, on the ground that it had failed to pay his admitted dues.
3. The appellant had joined the respondent company on 01.06.2007 as Chief Executive Officer in terms of an appointment letter dated 30.03.2007. The appellant alleged that the respondent had stopped giving him salary from September 2008 onwards, on the ground that it was suffering losses. However, the appellant was assured that his



remuneration would be paid and he continued to work with the respondent on the basis of the said assurance. Since the appellant's salary was not paid during the following months, the appellant was constrained to resign from his employment with the respondent in December 2008.

4. Admittedly, the appellant's resignation was accepted on 18.01.2009. According to the appellant, the respondent owed the appellant a sum of ₹3.13 crores, which included the signing bonus, unpaid salary and other dues as well as interest.

5. The appellant sent a notice under Section 434 of the Companies Act on 28.12.2009 claiming an outstanding amount of ₹80,35,664/- as some partial payments, were made in the interim period.

6. The respondent resisted the petition by the appellant before the learned Company Court *inter alia* on the ground that the appellant had not furnished three months' notice before leaving employment. The respondent claimed that the appellant had stopped reporting for work immediately after furnishing his resignation on 16.12.2008. According to the respondent, the appellant was liable to pay three months' prior notice as required.

7. The learned Company Court had examined the controversy and had noted that by an email dated 09.03.2009, the respondent had confirmed that a sum of ₹15,96,164/- was payable to the appellant, which included salaries for the months of August 2008 to December 2008. Since the admitted dues were not discharged despite service of notice, the learned Company Court admitted the appellant's company



petition and directed that citations be issued in Delhi Editions of the newspaper 'Statesman' (English) and Veer Arjun (Hindi) as well as the Delhi Gazette. The Official Liquidator was appointed as the Provisional Liquidator to take further steps in accordance with law. However, the learned Company Court kept the said order dated 12.11.2018 in abeyance to enable the respondent to pay the admitted amount of ₹15,96,164/- along with 6% simple interest with effect from 09.03.2009. It was further directed that in the event, the said payment was made within a period of four weeks from the said date, the order appointing the Official Liquidator as the Provisional Liquidator of the respondent, will stand discharged.

8. Insofar as the other amounts as claimed by the appellant are concerned, the learned Company Court found that the same were not admitted. Therefore, the respondent company could not be wound up on account of non-payment of disputed claims. However, the learned company Court also observed that if the appellant instituted any proceedings for recovery of the said amounts, the observations made by the Court would not be considered binding.

9. The respondent availed of the said opportunity and paid a sum of ₹25,31,297/- to the appellant by a demand draft dated 11.12.2018. This included interest up to the said date.

10. In view of the above, the learned Company Court disposed of the petition by the impugned order dated 20.12.2018 with liberty to the appellant to take steps for recovery of further sums as claimed as per law.



11. Aggrieved by the said order, the appellant has preferred the said appeal.

12. Ms Gupta, the learned counsel appearing for the appellant assailed the impugned orders, essentially, on the ground that the finding of the learned Company Court that there were disputes in regard to the other amounts as claimed was, *ex facie*, erroneous. She submitted that the salary slips issued to the appellant clearly indicated that the respondent had deducted income tax at source (TDS) and the appellant had also filed its income tax returns on the said basis. However, the income tax authorities had raised a demand as the TDS deducted by the respondent was not deposited. Thus, no credit for the same was granted by the income tax authorities. She earnestly contended that neither the salary slips placed on record nor the amounts paid by the respondent are disputed. She also handed over an income tax demand raised, which indicates that a demand of ₹56,65,080/- has been raised by the Income tax Authorities.

13. In addition, she also submitted that the appointment letter clearly indicated that the signing bonus was to be paid at the time of the appellant joining the employment of the respondent but the said amount was also not paid.

14. Insofar as the deduction of the TDS is concerned, this Court finds merit in the appellant's contention. If the respondent had deducted TDS, it was obliged under law to deposit the same. The failure to deposit the same would not only render the respondent vulnerable to proceedings under the Income Tax Act, 1961, but renders it accountable to the



appellant for failure to discharge admitted dues.

15. Since the appellant's salary slips placed on record are not disputed, it is evident that the TDS was deducted by the respondent and that it was liable to deposit the same with the concerned authorities at the relevant time.

16. Similarly, the appellant also claimed that the respondent has failed to deposit the provident fund as reflected in the salary slips. The deposit of provident fund is also a statutory obligation and the failure to do so would invite proceedings by the concerned authorities.

17. Insofar as the other claims are concerned, this Court finds no infirmity with the impugned order dated 12.11.2018 holding that the same are subject matter of some controversy. It is settled law that proceedings under Section 433(e) of the Companies Act would lie only in respect of debts that are admittedly due. A company is not liable to be wound up under Section 433(e) of the Companies Act in respect of debts that are disputed. However, the company's defence as to the claim of an admitted debt must be *bonafide* and not a moonshine defence. In the present case, we are unable to accept that the controversy raised by the respondent is, *ex facie*, untenable or a moonshine defence. Thus, we find no infirmity with the impugned orders passed by the learned Company Court except to the limited extent that the appellant's claim regarding TDS and statutory dues has not been included in the admitted dues.

18. It is the respondent's case that, in fact, it had deposited a sum of ₹37,17,202/- in respect of Previous Year ending 31.03.2009 relevant to



the Assessment Year 2009-2010. The respondent also claims that the said amount was deposited within the prescribed period and therefore, the appellant was entitled to the benefit of the same. It is contended that any issue in this regard is a matter of reconciliation between the appellant, the respondent and the concerned authorities.

19. On 24.11.2023, the respondent had made a statement that although, it had deposited the TDS as required, the deposit was not reflected in the appellant's account because of an error in the Permanent Account Number (PAN), which would be rectified. This Court is now informed that the said error had been rectified and that the TDS deposited by the respondent is reflected against the appellant's PAN. The learned counsel appearing for the appellant does not dispute the same. She, however, contends that the credit is reflected as on 18.10.2023 and not on the date when the amount was due. She submits that the appellant would be liable to pay the interest and other charges in respect of the said amount even though the respondent has deposited the same with the concerned authorities.

20. We are unable to readily accept the same. In the event the respondent had deposited the TDS within the stipulated period as it claims, the income tax authorities are required to give the benefit of the same with effect from the said date. Clearly, the appellant cannot be called upon to pay any interest or any other charges in respect of the tax already deposited.

21. Insofar as the statutory dues regarding provident fund is concerned, it is not disputed that the respondent is liable to deposit the



same. The learned counsel for the respondent states, on instructions, that the amount of outstanding provident fund will be paid to the appellant along with interest within a period of four weeks from date, if the same is not deposited with the concerned authorities.

22. According to the appellant, a sum of ₹3,50,400/- was required to be deposited by the respondent with the PF authorities. However, the learned counsel for the respondent submits that a sum of ₹2,62,800/- was required to be deposited as PF in terms of the salary slips placed on record. The difference between the amount claimed by the appellant and the respondent pertains to the month of December 2008. According to Mr Jain, learned counsel for the respondent, the appellant has also included PF amount in respect of the month of December 2008 but there is no salary slips for the said period. He submits that this is because the appellant had resigned from the employment on 16.12.2008 and had stopped working thereafter.

23. It is clear that there is no dispute as to the payment of the amount of ₹2,62,800/-. The learned counsel for the respondent states that this amount would be paid along with the applicable interest. He states that in the event the respondent had not deposited the said amount with the PF authorities, the respondent shall do so within a period of four weeks from date along with applicable interest for the period.

24. In view of the above, we consider it apposite to dispose of the present appeal in the following terms:

- (i) The respondent shall deposit the admitted amount of ₹2,62,800/- along with full interest as applicable with the



concerned PF authorities within a period of four weeks from today and provide the evidence for the same to the appellant.

- (ii) The respondent shall also pay costs of ₹50,000/- to the appellant within the said period.
- (iii) In the event the respondent fails to comply with the aforesaid directions, the appellant's petition would be restored before the learned Company Court at the same position as obtaining on 20.12.2018.

25. It is also clarified that the appellant is not precluded from availing its remedies in respect of the other claims in accordance with law.

26. In the event the respondent has already deposited the said amount with the PF authorities, the respondent shall furnish the proof of the same along with interest till the date of deposit.

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

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 18, 2023
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