Karan Agarwal Vs. M/S Prl Projects and Infrastructure Ltd.

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Court : Delhi

Decided On : Feb-10-2014

Judge : Vibhu Bakhru

Appellant : Karan Agarwal

Respondent : M/S Prl Projects and Infrastructure Ltd.

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

10. 02.2014 CO.PET.363/2012 & CA14462012 KARAN AGARWAL ..... Petitioner versus M/S PRL PROJECTS & INFRASTRUCTURE LTD. .... Respondent Advocates who appeared in this case: For the Petitioner : Mr Anil Goel. For the Respondent : Mr Jaspreet S. Rai. Mr Rajiv Bahl for Official Liquidator. CORAM:HONBLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL) 1. This is a petition for winding up of the respondent company under section 433(e) of the Companies Act, 1956 (hereinafter referred to as the Act). It is alleged by the petitioner that a sum of `22,73,236/- was due and payable by the respondent to the petitioner for supply of goods (scaffolding and shuttering materials). The respondent disputes that any amount is due and payable to the petitioner and alleges that all payments have been made to the petitioner except for the material which was found to be defective.

2. The controversy to be considered in the present case is whether the defence raised by the respondent is bonafide or a sham defence.

3. The learned counsel has contended that the goods in question were supplied by the petitioner to the respondent during the period 07.12.2010 to 14.06.2011. The learned counsel has also drawn the attention of this Court to the invoices raised by the petitioner for the said goods supplied by the petitioner to the respondent. It is further pointed out that the respondent also issued C-forms for the supplies made by the petitioner. The said C-Forms were issued on 26.08.

2011. It is submitted that there is no dispute that material had been supplied to the respondent and there is also no dispute regarding the value of the said goods. It is submitted that since the amounts due to the petitioner were not being discharged completely, the petitioner caused a notice dated 25.11.2011 under section 434(1)(a) of the Companies Act, 1956, to be issued to the respondent company, however, the same also elicited no response.

4. The respondent has filed his reply and has sought to dispute the claim of the petitioner. However, it is not disputed that the goods supplied by the petitioner were received by the respondent. It is also not in dispute that the invoices raised by the petitioner were at the agreed value of the goods so supplied. The C-Forms issued by the respondent are also admitted. The respondent in its reply has annexed a copy of the ledger account of the petitioner in its books for the period 01.04.2010 to 03.07.2012. This ledger account indicates that a sum of `17,23,236/- was due and payable to the petitioner, as per the books of the respondent, as on 03.07.2012.

5. It is contended by the learned counsel for the respondent that the goods supplied by the petitioner were defective and, accordingly, a debit note dated 13.09.2011 for a sum of `17,23,180/- was issued to the petitioner. The attention of this court has also been drawn to the said debit note which is annexed at page 13 of the reply filed by the respondent. It is alleged that the said debit note was issued on account of defective material in various consignments. A statement is also enclosed with the said debit note which indicates the amounts in respect of the rejected material which is to be deducted various bills.

6. The learned counsel for the respondent has also raised a dispute regarding receipt of the statutory notice sent by the petitioner under Section 434 (1) (a) of the Companies Act, 1956 and has contended that the said notice was not received by the respondent. The address, as indicated on the postal receipt issued by the Postal Department, is contended to be inaccurate.

7. I have heard the learned counsel for the parties at some length.

8. There is no dispute that the goods were supplied by the petitioner to the respondent during the period 07.12.2010 to 14.06.2011. The form C furnished by the respondent to the petitioner also indicates that there is no dispute with respect to the value of the invoices. There is no communication which has been placed on record which contains even a whisper of a complaint with regard to the goods supplied by the petitioner.

9. The statement of account of the petitioner as appearing in the books of the respondent, i.e. the ledger account filed by the respondent, also does not indicate any debit on account of defective material. On the contrary, the books of accounts of the respondent clearly indicate that a sum of `17,23,236/- was, admittedly, due and payable by the respondent to the petitioner as on 03.07.2012. The debit note which is annexed to the reply is dated 13.09.2011. This debit note does not find any mention in the ledger account as provided by the respondent and is obviously a self-serving document which has been created subsequently, for the purposes of the present petition. It is common accounting knowledge that debit notes are primary documents on the basis of which entries are posted in the ledger. The fact that no entry for the alleged debit note appears in the ledger account furnished by the respondent itself indicates that no such debit note was issued at the material time. Neither the debit note nor the statement of defective material is accepted by the petitioner. There is also no evidence to indicate that the said debit note or any communication as to defective material was ever issued by the respondent to the petitioner. According to the learned counsel for the respondent, there was no written communication issued to the petitioner in respect of defective goods but oral communications are stated to have been made. The reply filed by the respondent also does not indicate that any written communications had been sent

to the petitioner.

10. It is thus obvious that the contention that is now raised that the goods supplied by the petitioner were defective has been raised for the first time after the petition has been filed and is, apparently, a sham defence which is liable to be rejected at the threshold.

11. The contention that the respondent had not received the statutory notice is also without any merit as the receipts provided by the petitioner duly reflect that the notice had been despatched by courier as well as by speed post. The fact that the speed post receipt does not mention the complete address of the registered office of the respondent but only mentions East Punjabi Bagh, New Delhi-110026 cannot in any manner lead to the conclusion that the notice was not addressed at the correct address. It is common knowledge that the postal receipts do not carry the complete address at which the articles are dispatched. It is also relevant to mention that the notice was also served on the other office of the company situated at Pitam Pura, Delhi. In addition, the notices were also sent by courier.

12. In view of the facts stated above, I am in no doubt that the respondent has been unable to discharge the liability despite receipt of a notice under Section 434 (1) (a) of the Companies Act, 1956.

13. The notice in the present petition was issued by an order dated 07.08.2012 and the respondent entered appearance on 04.12.2012 and sought time to file a reply. Accordingly, four weeks time was granted to the respondent to file its reply and the matter was posted on 27.02.2013. On 27.02.2013 the parties submitted that the matter could be referred to the Delhi High Court Mediation & Conciliation Centre (DHCMCC) and, accordingly, they were directed to appear before the DHCMCC on 07.03.2013 and the matter was directed to be listed on 24.05.2013. However, this Court also directed that in the event the mediation was unsuccessful, the respondent should file its reply at least 10 days prior to the next date of hearing. The Mediation was unsuccessful and the matter was again taken up by this Court on 24.05.2013. Although, this Court while referring the matter to mediation had directed the respondent to file its reply at least 10 days prior to the date, the same was not on record when the matter was taken up by the court on

24.05.2013. Accordingly, the matter was adjourned to enable the respondent to ensure that the said reply is placed on record. Despite sufficient time the respondent did not take any steps to place the reply on record till January, 2014. When the matter was taken up on 13.01.2014 one final opportunity was given to the respondent to place the reply on record and the matter was notified for today. It is apparent from the above that the respondent has sought to delay the proceedings by not taking expeditious steps. This court had by an order dated 24.05.2013 imposed a cost of ` 3000/- on the respondent which has also not been paid.

14. In the aforesaid circumstances and in view of the fact that the respondent has been unable to discharge its debt due to the petitioner, I deem it appropriate that the Official Liquidator be appointed as a Provisional Liquidator to take charge of the assets and books of account of the respondent company.

15. The directors of the respondent are directed to file the Statement of Affairs relating to the respondent company within 21 days from today. The directors shall also file an affidavit indicating as to where the records of the company are kept, the names and addresses of directors and the addresses of all offices including the current registered office of the respondent company. The said affidavit be filed before this Court within a period of two weeks from today.

16. In order to enable the respondent to discharge its admitted dues, the order appointing the Official Liquidator is kept in abeyance for a period of two weeks. In the event, the respondent is able to discharge its dues or settle its liability with the petitioner within this period, the counsel for the petitioner shall communicate the same to the Official Liquidator and on receipt of such communication the Official Liquidator shall refrain from taking any steps as directed.

17. In view of the aforesaid directions CA14462012 stands disposed of.

18. Relist on 04.03.2014. VIBHU BAKHRU, J FEBRUARY10 2014 pkv/RK