

**Sanjay Aggarwal Vs. Gitanshi Polychem Pvt Ltd**

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**SooperKanoon Citation :** [sooperkanoon.com/1156594](http://sooperkanoon.com/1156594)

**Court :** Delhi

**Decided On :** Jul-15-2014

**Judge :** Sanjeev Sachdeva

**Appellant :** Sanjay Aggarwal

**Respondent :** Gitanshi Polychem Pvt Ltd

**Judgement :**

§~16 \*IN THE HIGH COURT OF DELHI AT NEW DELHI + CO.PET. 554/2013  
SANJAY AGGARWAL Through ..... Petitioner Mr. Sandeep Jindal, Advocate.  
versus GITANSHI POLYCHEM PVT LTD Through ..... Respondent Mr. Kunal  
Madan and Meenu Bakshi, Advocates. Ms. CORA M: HON'BLE MR. JUSTICE  
SANJEEV SACHDEVA %

ORDER

1507.2014 SANJEEV SACHDEVA, J (ORAL) 1. The petitioner has filed the present winding up petition against the respondent company.

2. The case of the petitioner is that the petitioner had over a period of time given Rs.97,50,000/- as loan to the respondent company. It is contended that respondent company failed to pay interest of sum of Rs.5,75,164/ to the petitioner as was mentioned in the TDS Certificate issued to the petitioner.

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554/2013 1 3. It is stated that for the year ending 31 st March, 2011, there was a

credit balance of Rs. 1,03,25,164/ - in the Books of Accounts of the respondent company.

4. It is contended that the petitioner was thus admitted as a creditor of the respondent company and the respondent failed to pay the amount alongwith interest thereon. In the above premise, the present petition seeking winding up of the respondent company has been filed.

5. Learned counsel appearing for the respondent has contended that there is no debt due and payable to the petitioner. It is contended that the petitioner had invested money in the respondent company and the amount paid was towards share application money. It is contended that the Petitioner was to be allotted shares in the ratio of 1/3rd of the equity capital of the respondent company.

6. Reliance is placed on the letter issued by the Petitioner dated 09.11.

2011. It is contended that the Petitioner had issued the said letter requesting for the issuance of shares.

7. The respondent has placed on record various other  
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554/2013 2 documents comprising of profit and loss account, balance sheet, Resolution of the board of directors , ROC records, notices issued to the Petitioner etc. to contend that shares were allotted to the petitioner at a premium.

8. The balance sheet for the period ending 31 st March, 2012 has been placed on record to show that shares were allotted to the petitioner at a premium during the financial year 2011 - 2012. It is contended on behalf of respondent that even requisite forms were filed with the Registrar of Companies showing allotment of shares in favour of the petitioner. Copy of Form No.2 stated to have been filed with the Registrar of Companies has been placed on record. Resolution of the Board of Directors dated 15.12.2011 authorizing the allotment of shares in favour of the petitioner at a premium has also been placed on record.

9. It is further contended that notice s were issued to the Petitioner calling for payment of the call money in respect of the said shares , however, the call money

was not paid by the Petitioner.

10. Though the letter dated 09.11.2011 is denied by the  
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554/2013 3 petitioner during the submissions made in court , however, there is no  
specific denial to the letter in the rejoinder affidavit filed by the petitioner. Be that  
as it may, the dispute with regard to genuineness or otherwise of the letter is not to  
be gone into the present proceedings which are summary in nature. The present  
proceedings being of a summary nature, this court would not go into the issue of  
disputed documents unless the documents per se appear to be forged and  
fabricated.

11. In a petition seeking winding up of a company for its inability to pay its debt, w  
hat is to be seen is whether there is a debt and whether a plausible defence is  
raised by the respon dent for the non payment of the debt and to the winding up  
petition. In case a plausible defence is raised which is neither sham nor  
moonshine, the company is not to be wound up in exercise of powers under  
section 433 and 434 of the Companies Act, 1956. If there are disputed questions  
of facts requiring deeper examination and scrutiny by the court, then the parties  
have to be relegated to a civil court for adjudication of their respective contentions  
and pleas.

12. Learned counsel for the petitioner has submitted that  
===== CO. PET.  
554/2013 4 there is a dispute with regard to the application and the allotment of  
shares and further with regard to the manner of allotment of shares which is stated  
to be not in accordance with the Companies Act and the Rules framed there  
under. It is contended that applicable Accounting Standards have not been  
followed for the allotment of the said shares.

13. Learned counsel for the petitioner submits that a suit for recovery of the  
amount involved in the present petition has already been filed by the petitioner and  
the same is pending before the Senior Civil Judge at Faridabad.

14. The disputes whether the petitioner ever applied for issuance of shares or whether the shares were allotted or not and if so whether the allotment is in accordance with the statutory provisions are disputes which would require a deeper examination that would be possible only after a detailed trial. The disputes raised in the present petition and by way of defence would be required to be settled before a civil court. Since the petitioner has already filed a suit of recovery of the same amount and the disputes and the rival contentions raised by the parties are being adjudicated upon in the  
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554/2013 5 civil court, the present petition would not be maintainable. In my view the disputes raised by the respondent are not moonshine and would require a deeper examination.

15. I am of the view that summary procedure for winding up cannot be used in the present facts and circumstances. This Court is not a Court of recovery. The present petition is thus not maintainable as the plausible defence has been raised by the respondent.

16. The petition is accordingly dismissed with no orders as to costs.

17. It is clarified that there is no expression of opinion on the merits of the claim of petitioner or the defence raised by the respondent. exercise summary This Court is refraining to jurisdiction in the facts and circumstances of the case. The civil court before whom the disputes are pending would adjudicate them without being influenced by anything stated in the above order. SANJEEV SACHDEVA, J  
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