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In Re: J.D. Polymers Ltd.

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Court : Allahabad

Decided On : Jan-28-2002

Reported in : [2002]38SCL79(All)

Judge : Sunil Ambwani, J.

Acts : Companies Act, 1956 - Sections 433 and 434

Appeal No. : Company Petition No. 19 of 1999

Appellant : In Re: J.D. Polymers Ltd.

Advocate for Pet/Ap. : Tarun Agarwala, Adv.

Judgement :
ORDER

Sunil Ambwani, J.

1. Heard Sri Tarun Agarwala, Advocate, the learned counsel for the applicant-company. List has been revised but no one appears for the J.D. Polymers Ltd.

2. This winding up petition was presented on 3-2-1999 under Sections 433(e) and (f), 434 and 439 of the Companies Act, 1956 to wind up J.D. Polymers Ltd., having its registered office at Flat No. 1, Priya Apartment, Tilak Nagar, Kanpur. It is stated in the petition that the company has authorised share capital of the respondent-company to the tune of Rs. 350 lakhs divided into 35,00,000 equity shares of Rs.

10 each and the issued and subscribed equity share is Rs. 50,00,000 divided into 5,00 000 equity shares of Rs. 10 each. The company is engaged in to design, manufacture, develop, improve, etc., leather, rubber, plytyeruathine, eva, polypropelin, HDP & LDP sheets, boot and shoe or other footwear products. The respondent-company approached the petitioner-company for Inter Corporate Deposit for their business purposes and assured the petitioner for timely payment of interest and repayment of the Inter Corporate Deposit within the time bound programme. Accordingly, the respondent-company received Inter Corporate Deposit from the petitioner a sum of Rs. 3 lakhs vide account payee cheque. It was agreed that the Inter Corporate Deposit for Rs. 3 lakhs was for a period of 4 months and would carry an interest at the rate of 21.5 per cent per annum. A receipt was executed on 3-6-1997. The respondent-company paid interest up to 31-3-1998 and thereafter the respondent-company defaulted in making the payment and that inspite of statutory notice, it failed to make the payment within 30 days.

3. Notices were directed to be issued. Publication of notice of the petition has also been made in newspaper Dainik Jagran on 21-7-1999.

4. A counter affidavit of Prem Kumar Agarwal, the managing director in the respondent-company. J.D. Polymers Ltd., has been filed. It is stated that the respondent-company approached the petitioner-company for intercorporate deposit but it was not bound by time limit to repay theintercorporate deposit. It is stated that the respondent-company has been paying the interest regularly and that the respondent-company is ready to pay the entire principal amount with interest. In para 14 of the counter affidavit, it has been stated that the respondent-company is a big unit and running very well with full production with the manufacturing of 'Cherry' Hawai Chapals. In paragraphs 16, 17 and 19 of the counter affidavit, it reiterated that the company is ready to repay the amount.

5. During the pendency of this winding up petition, the respondent-company has paid a sum of Rs. 3,97,059 towards principal and interest. However, the entire interest amount payable up to 24-7-2000 has not been paid and a sum of Rs. 37,225 remains payable as interest accrued till 24-7-2000. Apart from the

aforesaid amount, the respondent-company is liable to pay sum of Rs. 65,400 towards the cost of legal proceedings, including advertisement in the newspapers, etc., for filing the winding up petition. It is also submitted that the respondent-company while paying a sum of Rs. 3,97,059 had deducted a sum of Rs. 35,626 towards tax for which TDS certificate has not been forwarded.

6. The Court finds that the liability was admitted in the counter affidavit. The rate of interest is also admitted by the respondent-company and an undertaking was given to make the payment. The respondent-company has, however, failed and neglected to pay the amount of Rs. 35,626 (sic) as balance of interest accrued up to 24-7-2000 and has not paid the amount of Rs. 35,626 sought to be deducted towards TDS. The TDS certificate is required to be issued in proof of deduction and in case it is not submitted to the debted company, the amount is still taken to be due against the respondent-company.

7. In the aforesaid circumstances, the Court finds that in spite of admitted liability and the admitted rate of interest, the respondent-company has failed and neglected to pay the aforesaid amount for which no explanation has been putforth. The respondent-company, is as such directed to be wound up under Section 433(e). The official liquidator is appointed as liquidator under Section 449 of the Act who shall proceed to take the possession of the assets in accordance with the provisions of the Companies (Court) Rules, 1959.

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