

(2008) 02 GUJ CK 0097
In the Gujarat High Court

Case No : Misc. Civil Application No. 92 of 2007 in Company Petition No. 1 of 1998

Harikrishna Ghanshyamdas Shah

APPELLANT

Vs

Rinki Petrochemicals and Ind. Ltd.

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Citation : (2008) 02 GUJ CK 0097

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Jirga D. Jhaveri, for the Appellant; V.S. Pandya, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

K.A. Puj, J.—The applicant - original petitioning creditor has filed this Misc. Civil Application seeking restoration of main Company Petition No. 1 of 1998 and requesting this Court to pass winding up order.

2. This Court has issued rule on 10.5.2007 asking the respondent Company to show cause as to why Company Petition No. 1 of 1998 be not restored to its original number. Rule was duly served at the new address of the respondent Company and Mr. V.S.Pandya, learned advocate has filed his appearance on behalf of the respondent Company.

3. Ms.Jirga Jhaveri, learned advocate appearing for the applicant has submitted that this Court has passed an order on 12.4.2007, wherein this Court has recorded the statement made on behalf of Mr. V.S. Pandya, learned advocate appearing for the respondent Company. The Court has observed that the respondent Company has already paid Rs. 15,87,500/- to the present applicant "original petitioner and the balance amount would be paid by the respondent Company to the petitioning creditor on or before 24.10.2006. The Court has made it very clear that if the said amount is paid on or before the date so fixed,

then, the matter would come to an end. In case, the amount is not paid by the said date, the petitioning creditor would be entitled to make an application before this Court for restoration of the matter and such non-payment would be taken to be a misconduct on the part of the respondent Company.

4. Since the amount as per the statement made before the Court has not been paid to the applicant, the applicant has filed present application.

5. Ms. Jhaveri has further submitted that the applicant has approached the respondent Company many times during 24.10.2006 to 15.11.2006, but the applicant was unable to contact the person "Mr.Rinki Gandhi. Thereafter, the applicant had a talk with Mr.Rinki Gandhi on his cell phone for the reminder of payment but at that time he promised the applicant for sending final extract of account upto December, 2006, but inspite of this no payment was made. She has further submitted that after the present application is filed and notice was issued, the respondent Company has been making payment of Rs. 50,000/- every month to the present applicant. However, such payment could not be treated as due compliance of the direction issued by this Court and hence the main Company Petition is required to be revived.

6. Having heard learned advocate appearing for the applicant the Court is of the view that the respondent Company has not complied with the order passed by this Court on 12.4.2006 in Company Petition No. 1 of 1998. The balance amount was to be paid on or before 24.10.2006. However, the said amount has not been paid. Mr.Pandya, learned advocate appearing for the respondent Company has submitted that more than Rs. 5,50,000/- have already been paid after the aforesaid order, only the last installment of Rs. 50,000/- remains to be paid and that too, will be paid within couple of days. He has, therefore, submitted that there is no reason for restoration of Company Petition. He has further submitted that even the respondent Company is prepared to pay interest for the delayed payment after 24.10.2006. As against this, Ms.Jhaveri's submission is that in the main petition proposal was given to the applicant and as per the said proposal, it was made clear by the respondent Company that the respondent Company will make all necessary arrangement to repay the applicant's principal amount with interest at the rate of 18% per annum within a period of one year from the date of letter i.e. 5.10.1995. According to Ms.Jhaveri, entire payment would have been made on or before 5.10.1996. Even in February, 2008 the payment has not been made and hence the petition is required to be restored. Accordingly, this application is allowed. The Company Petition No. 1 of 1998 is restored to the file. Office is directed to place Company Petition No. 1 of 1998 for further hearing on 4.3.2008.