
(2012) 01 DEL CK 0239

In the Delhi High Court

Case No : Co. Petition 296 of 2007 and Co. Application 1290 of 2007

M/s Praja Mechanicals Pvt. Ltd.

APPELLANT

Vs

M/s. Vardaan Agrotech Pvt. Ltd.

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Citation : (2012) 169 CompCas 175 : (2012) 3 CompLJ 449 : (2012) 186 DLT 415 : (2012) 128 DRJ 69

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Jeevesh Nagrath, for the Appellant; Rajiv Bahl, for the Respondent

Judgement

Manmohan

1. Present winding up petition has been filed u/s 433(e) read with Sections 434 and 439 of the Companies Act, 1956 (for short "Act") for winding up of the respondent company. The application being CA 1290/2007 has been filed seeking appointment of a Provisional Liquidator.

2. The facts as borne out from the petition are that the respondent company on 31st December, 2003 had placed a purchase order on the petitioner for conveyor system 4x4x6 along with accessories, source raising mechanism, pressure plate for its irradiation plant at Sonapat for a consideration of Rs. 1,26,00,000/-. Thereafter, a number of revisions were made in the purchase order from time to time and finally the respondent company was to pay to the petitioner a sum of Rs. 1,90,83,443/-inclusive of statutory charges. According to petitioner, it had fulfilled all its obligations under the purchase order but the respondent company paid only a sum of Rs. 1,67,19,053/-to the petitioner leaving a balance of Rs. 23,64,390/-as outstanding.

3. Thereafter, on 27th July, 2006 an agreement was executed between the parties whereby it was agreed that the respondent company would pay the balance amount to petitioner and the petitioner as a goodwill gesture would help

the respondent company in identifying and solving the problems in running the conveyor system.

4. In pursuance to the said agreement, respondent company issued two posted dated cheques dated 10th August, 2006 and 20th August, 2006 for a sum of Rs. 3 lacs and Rs. 4 lacs respectively to the petitioner. On presentation the cheque dated 10th August, 2006 got dishonoured for the reason "insufficient funds". The respondent company requested the petitioner not to take action against it and replaced it by Demand Draft for a sum of Rs. 3 lacs, which was honoured. Thereafter, the cheque dated 20th August, 2006 was also dishonoured on presentation for the reason "payment stopped by drawer". Once again the respondent company requested the petitioner not to take any action and informed the petitioner that it had already got a demand draft made in favour of the petitioner for a sum of Rs. 2 lacs and that the balance payment would be made shortly. The respondent company also faxed to the petitioner a copy of a demand draft bearing no. 000230 dated 21st August, 2006. However, this draft was also got cancelled by it and the payment was never made to the petitioner. Hence this petition was filed.

5. Mr. Rajiv Bahl, learned counsel for the respondent company raised a preliminary objection that resolution passed by the Board of Directors of the petitioner company on 8th December, 2007 was for recovery of outstanding dues of respondent company and not for filing the winding up petition against the respondent company. He pointed out that the petitioner company had filed a civil suit for recovery which is pending before Original Side of this Court. He submitted that the petition was liable to be dismissed on this ground alone.

6. Mr. Bahl next submitted that there was no privity of contract between respondent company and petitioner company and the transactions in question were between respondent company and another company, i.e., Praja Technologies Ltd.

7. Mr. Bahl stated that, in fact, the respondent company had made payment to the tune of Rs. 1,74,99,460/- as against due amount of Rs. 1,71,75,100/-, thus making an excess payment of Rs. 3,24,360/-. He further submitted that the original contract was on turnkey basis and the petitioner was responsible for completion and normal running of the complete system and that time was the essence of the contract. He submitted that there was a considerable delay in installation of the system and there were defects in the working of the conveyor system from the very beginning. He further submitted that respondent company wrote a number of letters requesting the petitioner to rectify the said defects and to finish the installation in a time bound manner. In this context, he referred to numerous letters written by respondent company during the period 2004 to 2006.

8. Mr. Bahl lastly submitted that the payments that were to be made as per agreement dated 27th July, 2006, were contingent on the petitioner identifying and solving the problems affecting the conveyor system. Mr. Bahl submitted that

since no work was done at all, therefore, the petitioner company was not entitled to receive or recover any amount.

9. In rejoinder, Mr. Jeevesh Nagrath, learned counsel for the petitioner submitted that the petition has been filed by duly authorised person and the Board Resolution dated 8th November, 2007 had been filed with the petition. He further submitted that on account of the objection raised by the respondent company in this regard, the petitioner had filed another Board Resolution dated 12th November, 2010 ratifying and admitting that the petition was filed by a duly authorised person. He further submitted that in any event, the petition had been filed by a Director of the petitioner company who is fully authorised to represent and act on its behalf.

10. Having heard the learned counsel for the parties and on a perusal of the paper book, this Court is of the view that the preliminary objections raised by the respondent company are untenable in law. The objection with regard to the defective Board Resolution dated 8th November, 2007 is not maintainable as the said Board Resolution was later ratified by a new Board Resolution 12th November, 2010. In the opinion of this Court, it is within this Court's power to take the ratified Board Resolution on record. This view is supported by a judgment of Supreme Court in United Bank of India Vs. Naresh Kumar and others, wherein it has been held as under:-

10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the CPC a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by or against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the CPC it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and dehors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with

regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer.

11. Further, in view of the order dated 30th August, 2007 passed by this Court in Co. Pet. 125/2007 approving the Scheme of Amalgamation whereby Praja Technologies Ltd. was merged with Praja Mechanicals Private Limited, the second preliminary objection raised by respondent company is also untenable in law.

12. Coming to the merits of the case, this Court is of the considered view that the respondent's reliance on the correspondence prior to Agreement dated 27th July, 2006 is misplaced. The agreement dated 27th July, 2006 supersedes all the correspondence prior to it and the respondent "cannot just wish away" the said agreement. This Court also finds that till date no action has been taken by the respondent company to have the said agreement set aside. The respondent company is bound by the said Agreement and mere allegation by the respondent company that the same is not binding cannot be sustained.

13. The Supreme Court in Subodh Kumar Gupta Vs. Shrikant Gupta and Others, has held as under:-

3....Now this agreement was executed outside the territorial jurisdiction of the Chandigarh Court. Unless this agreement is set aside there is no question of the Chandigarh Court entertaining a suit for dissolution of the partnership and rendition of accounts. The plaintiff cannot wish away the agreement by merely stating that it is a void document. He cannot rest content by alleging that the document has no efficacy in law and must, therefore, be ignored. If it is the case of the plaintiff that this document was obtained by fraud or misrepresentation by suppression of material facts or for any other like reason he must have the agreement set aside through court and unless he does that he cannot go behind the agreement, ignore it as a void document and proceed to sue for dissolution of the partnership and rendition of accounts. It is not a matter of the volition of the plaintiff to disregard the document as void and proceed to ignore it altogether without having it declared void by a competent court.....

(Emphasis supplied)

13. Further, the contention of the respondent company that the payment of the amount as mentioned in the agreement dated 27th July, 2006 was contingent on the petitioner fulfilling its promise to support the respondent in making the conveyor system run smoothly belies the contents of the Agreement. In fact, this Court finds that nowhere in the said agreement it is mentioned the payments were to be made only when the petitioner would complete the work and make the conveyor system functional. The agreement dated 27th July, 2006 is reproduced hereinbelow for ready reference:

AGREEMENT

This constitutes an agreement between Praja Technologies Limited (hereinafter called Praja) having their Registered Office at A-80, New Friends Colony, New

Delhi-110 065 represented by their Director - Shri J.N. Rungta and Vardaan Agro Tech Pvt. Ltd. (hereinafter called Vardaan) having their working site at Dwarka Vihar, 43.2 Km. Stone, N.H.-1, G.T. Road, Bahalgarh - 131 021, Distt. Sonapat, Haryana represented by their Chairman & Managing Director - Shri Dwarkanath.

The following points have been discussed and agreed between the two parties named above on 27th July, 2006:

1) The conveyor as supplied and commissioned by Praja is presently being used for commercial production by Vardaan Agro Tech Pvt. Ltd. (Vardaan) and as reported is not functioning smoothly at rotators and guiding rails and at times reported stuck.

2) It was reported by Vardaan that due to some mishap the conveyor has got struck resulting in malfunctioning in the System.

3) Vardaan requested Praja to attend to the system to rectify the problem which could be due to any reason not determined as yet and could be unrelated to Praja.

4) Praja as a a good-will gesture investigated the system in order to help Vardaan to identify and solve the problem provided Vardaan honour following past commitments not met so far:

a) Total amount due to Praja Technologies Limited from Vardaan Agro Tech Pvt. Ltd. stands at Rs.23,64,390/-(Rupees twenty three lacs sixty four thousand three hundred ninety only) as on date.

b) Vardaan agrees to clear this amount notwithstanding any previous terms and conditions or agreement or minutes of meeting or understanding in the following manner:

Rs. 7,00,000/-(Rupees seven lacs only) to be paid immediately

Rs.5,00,000/-(Rupees five lacs only) payable on 30.10.2006 Rs.6,64,390/-(Rupees six lacs sixty four thousand three hundred ninety only) payable on 30.12.2006

c) Vardaan to issue necessary Form "D1" for Sales Tax purpose against the contract immediately.

5) A clear condition is stipulated that Praja is not responsible for the current functioning or non-functioning of the system which has been attended to by outside agencies in the past on Vardaan instruction.

6) Vardaan will release the above payments as mentioned under 4(a) & (b) above. Praja will have the right to cash the cheque and Vardaan cannot hold back the due payment by retorting to stop payment or by cheque bouncing or any other recourse to any action - legal or otherwise.

7) Praja agrees that if all above conditions are met satisfactorily then Praja will

continue supporting the system for a period of one year and thereafter in the normal course of business.

8) It is clearly understood that any further action from Praja is dependent on Vardaan fulfilling condition 4(a), 4(b) & 4(c) immediately.

(Emphasis supplied)

14. In the opinion of this Court, there is a clear admission that an amount of Rs. 23,64,390/- was due and payable as on that date and respondent was to make payment without demur.

15. Further, to show the unreliable conduct of the Director of the respondent company, learned counsel for the petitioner has drawn this Court's attention to the order dated 17th August, 2010 passed by High Court of Punjab and Haryana in a contempt petition bearing COCP 1802/2009 titled as Jugal Kishore Arora Vs. Ajit Balaji Joshi & Anr. wherein strictures have been passed against the said Director of the respondent company.

16. It is an admitted position that the plant and machinery of the respondent company has been dismantled and taken over/attached by the receiver under the orders of High Court of Punjab and Haryana and the respondent company is not a running company and not carrying out any business with no chances of being revived.

17. In view of the aforesaid, the defence set out by respondent company is a sham and moonshine. Accordingly, the present petition is admitted and the Official Liquidator attached to this Court is appointed as Provisional Liquidator with regard to respondent-company. The Official Liquidator is directed to forthwith take over the assets and records of the respondent company. For this purpose, Official Liquidator would be entitled to obtain police aid and the local police is directed to render all assistance to the Official Liquidator. In the meantime, respondent company, its directors, officers, employers, authorised representatives are restrained from selling, transferring, alienating, encumbering and parting with the possession of any movable and immovable assets and funds of the respondent company. They are also restrained from withdrawing any money from the accounts of the respondent company. The directors of the respondent company are directed to forthwith hand over all the records of the respondent company to the Official Liquidator including its books of account. The directors of the respondent company are also directed to provide the statement of affairs and file their statements under Rule 130 within a period of twenty one days as provided for in the Act. The Official Liquidator is directed to publish citations in the newspapers, namely, "Statesman" (English edition) and "Veer Arjun" (Hindi edition) as well as in "Delhi Gazette" for the next date of hearing. To meet the aforesaid expenses, petitioner is directed to deposit a sum of Rs. 50,000/- with the Official Liquidator within two weeks. With the aforesaid observations, application being CA 1290/2007 stands disposed of.

18. List the petition on 8th May, 2012. Let a status report be filed by the Official Liquidator before the next date of hearing.