**(2017) 09 DEL CK 0313**

**In the Delhi High Court**

**Case No :** Company Petition No. 741 Of 2014, Company Application No. 2747 Of 2014, 2724 Of 2016

N. C. Jain APPELLANT

Vs

M/S S. N. G. Developers Ltd. RESPONDENT

**Date of Decision :** 19-09-2017

**Acts Referred:**

**Citation :** (2017) 09 DEL CK 0313

**Hon'ble Judges :** Yogesh Khanna, J

**Bench :** Single Bench

**Advocate :** Preetjeet Singh, Anis Ur Rehman, S.K.Tiwary

# Judgement

Yogesh Khanna, J

1. The respondent company is primarily engaged in the business of developers, colonizers, real estate developers and construction. It has its projects in

Greater Noida, Dharuhera and Firozabad, Uttar Pradesh.

2. The petitioner was appointed as Deputy General Manager (Finance) by the respondent company vide appointment letter dated 01.09.2006 with a

salary of Rs. 40,000/- per month. Since the overall performance of the petitioner was good as he worked with devotion, sincerity and patience, he was

given increment in his salary with effect from 01.09.2007 and it was increased to Rs. 50,000/- per month. Additionally, he was granted car

driver/petrol reimbursement upto Rs. 10,000/- per month.

3. Since the petitioner continued to work sincerely he was granted further increase of 10% increment over the previous salary with effect from

01.01.2010 and his monthly salary was increased to Rs. 60,500/- per month. However, despite the services rendered by the plaintiff, he was not paid the monthly salary regularly and it resulted in accumulation of large over dues on account of arrears of salary payable to the petitioner. The

respondent has never been a good pay master to its employees. The respondent gave a proposal to adjust the outstanding salary of Rs. 2,83,380/-

payable then to the petitioner to be adjusted as part of the sale consideration for company flat being 23-201, Second Floor, Utsah Niwas, Anandlok

Dabrai, District Firozabad, Uttar Pradesh. In fact the allotment was made in the name of three officers including the petitioner whose salaries were

outstanding and adjusted.

4. Still the respondent was unable to pay regularly and punctually which led to accumulation of huge arrears of salary after September, 2011. Hence, it

was not possible for the petitioner to carry on with the respondent company and he resigned on 20.05.2013. On the said date a sum of Rs. 8,42,327/-

was payable to the petitioner as accumulated /outstanding arrears of salary (including gratuity). The petitioner is also entitle to receive the TDS

certificates amount of Rs. 1,96,587/- i.e. Rs. 1,26,257/- for the financial year 2011-12 and Rs. 70,330/- for the financial year 2012-13. The petitioner

also did not issue the requisite form No.16 for the respective financial years for the purpose of filing of the Income Tax Returns despite various

reminders and emails sent - annexed as annexure P-10 collectively. It led to the harassment and tension to the petitioner as he could not submit his

ITRs for the financial years 2011-12 and 2012-13. Even the letters written to the respondent were also of no avail and ultimately, the petitioner filed

his ITRs belatedly on actual receipt basis for the said financial years.

5. Hence, the petitioner claims an amount of Rs. 8,42,387/-payable as on 20.05.2013 besides TDS of Rs. 1,96,587/- along with interest @ 12% per

annum to which the respondent company is indebted to the petitioner. A statutory notice dated 06.06.2014 was sent and the respondent company paid

an amount of Rs. 40,000/-vide cheque dated 07.07.2014 No.138777 as a part payment, without sending reply. The said cheque was adjusted towards

the accrued interest amount by the petitioner and he informed the respondent. However, the respondent failed/neglected to pay the balance arrears of

salary and other dues, being in financial crisis and hence it is just expedient to appoint a provisional liquidator for the respondent company.

6. Even the affidavit filed on behalf of its managing director, respondent company

 

do speak about its financial crisis. In para No.2 of the affidavit

dated 06.01.2015, the managing director has stated that the company is facing severe financial problem due to tremendous slow down in the real

estate sector. It is also stated in the affidavit that the respondent company has no company secretary and hence the details as were required by the

Court to be given in the affidavit are not given. Even the balance sheet for the financial year 2014-15 could not be filed.

7. Finding no other alternative, the petitioner filed this petition. The respondent was served and offered to settle the disputes before the Delhi High

Court Mediation and Conciliation Centre. The parties approached the said Centre and arrived at a settlement agreement dated 15.05.2017 wherein the

respondent company agreed to pay a sum of Rs. 6.20 Lac in full and final settlement of all claims of the petitioner. Though the petitioner received Rs.

3.00 Lac as part payment but yet again the cheque of Rs. 3.20 Lac viz. the balance of the settled amount was again dishonoured. The learned counsel

for respondent has no explanation for the same. Thus, the conduct of the respondent company as also its admission in the affidavit dated 06.01.2015

through its managing director have proved the company being in financial crisis, is unable to pay even the salary of its employees despite getting rebate

in settlement/compromise. The respondent company had gone to the extent of adjusting its arrears against sale consideration for sale of its flats to its

employees, which they forcefully sold to them.

8. Hence, considering the financial position of the company and also that it had neglected to pay the salary of petitioner without any reasonable or just

cause, the petition needs to be admitted.

9. In view of the above, this petition is admitted.

10. Citation be published in the ""Statesman"" (English edition) and ""Jansatta"" (Hindi edition) in accordance with Company (Court) Rules, 1959.

11. However, publication of the citation and appointment of the provisional liquidator is deferred and one opportunity is given to the respondent

company to pay the amount of Rs. 3.20 Lac payable to the petitioner as per settlement agreement dated 15.05.2017 with interest at the rate of 12%

per annum with effect from 21.05.2013 when the statutory notice was served on the respondent company. The amount be paid within one month

failing which the petitioner shall be entitled to publish the citation and apply for appointment of the Provisional Liquidator.

12. Ordered accordingly.