(2004) 12 DEL CK 0079

In the Delhi High Court

Case No : CP 411 of 2002

Preet Meters APPELLANT

Vs

Kanika Metal (P) Ltd. RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Citation : (2004) 12 DEL CK 0079

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

Bench : Single Bench

Advocate : Sarat Chandra, for the Appellant; S.S. Tomar, for the Respondent

Judgement

A.K. Sikri, J.—The petitioner states that it has been supplying goods to the respondent company- M/s. Kanika Metal (P) Ltd. and an amount of Rs. 91,743/- (Rs. 61,743/- towards principal and Rs. 30,000/- towards interest calculated at the rate of 24% per annum) is the balance amount payable against the supplies which has not been paid in spite of demand notice dated 1.10.2002 served upon the respondent. No reply was given either. Therefore, according to the petitioner, it should be presumed that respondent company is indebted to the petitioner in the sum of Rs. 91,743/- and is unable to pay these dues. Prayer, Therefore, is made that the respondent company be wound up. It may be mentioned here that the petitioner has alleged that supplies were made to the respondent company and its unit '''' Akshay Crown India'''' in which name it is trading as well. To support this submission, the petitioner has placed on record photocopy of the visiting card of the respondent company where name of the company '''' Akshay Crown India'''' is mentioned. The petitioner has also placed on record photocopy of one Bill No. 401 dated 6.6.2000 raised by the petitioner for a sum of Rs. 8,715/- in the name of '''' Akshay Crown India'''' which is duly signed by Parveen Kapur, Director-in-charge of the company. Therefore, the petitioner wants to contend that respondent company and ''''Akshay Crown India'''' are one and the same and any supplies made to the respondent company or Akshay Crown India be treated as supplies made to the respondent company. In the reply filed by the respondent company, it is pleaded that the petition is based on forged documents. It is alleged that no statutory notice was received by the respondent company and the petition is based on forged documents. It is also submitted that on the Bill No. 401 dated 6.6.2000 stamps of M/s. Kanika Metal (P) Ltd. and Akshay Crown India are imposed which are not of the respondent company. Similarly, Annexure-F filed by the petitioner is a false statement prepared by the petitioner with combined stamps of M/s. Kanika Metal (P) Ltd. and Akshay Crown India. According to it M/s.Kanika Metal (P) Ltd. i.e. respondent company is a distinct and separate entity from Akshay Crown India. It is stated that Akshay Crown India is a sole proprietor shiconcern of Mr. Parveen Kapur and the respondent company cannot be held liable to Akshay Crown India. To support this, the respondent has filed statement of account as prepared by the partner of petitioner firm and given to Mr. Parveen Kapur which shows different payment due against the company and Akshay Crown India. As per that statement the amount payable by the respondent company is Rs. 15,018/- and against Akshay Crown India amount due is shown as Rs. 50,865/-. Although respondent does not admit the authenticity of these accounts and disputes the amount payable as shown in the statement of account, this document is filed to highlight that even the petitioner knew that M/s. Kanaka Metal (P) Ltd. was different from Kasha Crown India. The Court directed that further documents be filed in support of plea that Akshay Crown India is a sole proprietorship concern. In compliance with that order the respondent has placed on record the documents relating to registration of Akshay Crown India with Sales Tax Authorities as well as assessments of the said concern by the Sales Tax Authorities. Supporting affidavit dated 17.8.2004 has also been filed. Mr. Parveen Kapur has also filed another affidavit dated 3.12.2004 stating that no income tax return is filed for the said business as the income was not within taxable limits. Learned counsel for the petitioner submitted that various sales tax assessments would show that the firm was assessed to minimum sales tax and thus this concern was only on papers. This contention of the petitioner cannot be accepted. It may be mentioned that the registration certificate of Central Sales Tax is dated 21.5.1998 i.e. much before filing of the present petition. The respondent has also filed registration certificate dated 19.4.2000 issued by Superintendent, Central Excise MOR-III MOD-I, New Delhi. Therefore, the firm was in existence much before filing of the present petition and it cannot be said that these documents are created after the filing of the petition must to deny the claim of the petitioner. It would be clear from the aforesaid record that the Kasha Crown India is a sole proprietorship firm of Parvenu Kippur, which is a distinct and separate entity from M/s. Kanaka Metal (P) Ltd., i.e. respondent company. The respondent company cannot be made liable for the supplies made to Kasha Crown India. The claim of the petitioner that M/s. Kanaka Metal (P) Ltd. and Kasha Crown India are one entity, Therefore, cannot be accepted. Insofar as liability of the respondent company is concerned, even as per the statement of account prepared by the firm and given to the respondent it was to pay Rs. 15018/-. Although respondent stated that some amounts were paid thereafter, without going into this controversy, learned counsel for the respondent offered to make this payment. It may be noted that even the petitioner has claimed total sum of Rs. 61,743/-. This is strictly in conformity with the aforesaid statement provided by the petitioner to the respondent. The only difference is that out of this amount the respondent company has to pay only Rs. 15018/- and it is Akshay Crown India against which payment of Rs. 50,865/- is stated to be due. This petition, Therefore, can be entertained only in respect of the amount allegedly payable by the respondent company. As the respondent has agreed to pay this amount of Rs. 15018/-, there is no question of entertaining this petition any further. This petition is thus disposed of with direction to respondent to pay the amount of Rs. 15018/- together with interest @ 7% p.a. to the petitioner within two weeks from today. All pending applications stand disposed of.

