

(2013) 09 DEL CK 0367

In the Delhi High Court

Case No : Company Petition No. 542 of 2012 and Company Application No. 2234 of 2012

Tata Capital Financial Services Ltd.

APPELLANT

Vs

Clutch Auto Ltd. (No. 1)

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Citation : (2014) 183 CompCas 161

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

R.V. Easwar, J.—This is a petition filed u/s 433(e) of the Companies Act, 1956, seeking winding up of the respondent-company for non-payment of dues of Rs. 2.97 crores as on date. The petitioner had financed the respondent-company which was supplying automobile clutches to various automobile manufacturers including Tata Motors. The contention of learned counsel for the petitioner is that the debt is admitted and the respondent-company has neglected to pay the same; in fact it is unable to clear the debt within the meaning of section 434(1) (a) of the Act. It is also contended that no concrete proposals for settlement of the dues have been initiated by the respondent-company. On the other hand, learned counsel for the respondent-company submits that there have been difficulties in the working of the company on account of labour strike forcing the operations to be shifted from Faridabad to Biwadi. It is submitted that the company is in the process of being revived and therefore, though it is not immediately able to make any concrete proposal, is only a matter of time before the prospects improve and the debt is cleared. It is however not denied that the respondent-company owes Rs. 2.97 crores as on date to the petitioner. I have considered the matter and I have also examined the audited balance-sheet as on March 31, 2012 and the unaudited financial results for the quarter ended June 30, 2013. The sales have fallen drastically. However, considering the fact that the

operations are being shifted from Faridabad to Biwadi there seems to be a possibility that the revival attempt may succeed and the company in due course may be able to pay back or meet its liabilities. This is a company which has been supplying automobile clutches to Tata Motors from 1974. Today it appears to be in some difficulty due to labour strikes. Operations have been, no doubt, closed but there is an attempt to revive the same by shifting the factory to another place. The audited and unaudited financial statements, in my opinion, do not present such a dismal picture as on date but this is not to downplay the claim of learned counsel for the petitioner that it cannot wait for the payment of the dues. Having regard to the aforesaid circumstances, I admit the company petition. However, the further proceedings such as citation in the newspapers and the appointment of provisional liquidator are deferred for a period of 8 weeks from today. This is only to enable the talks or settlement proposals, if any, for which the initiative should be taken by the respondent company. In case nothing happens at the end of 8 weeks period, the law has to take its own course.

2. Mr. V.K. Mehta, the managing director of the respondent-company is present in the court today.

3. Renotify on November 12, 2013.

Company Application No. 1517 of 2013

4. This is an impleadment petition filed by B.M. Industries. It is stated that an amount of Rs. 20.81 lakhs is due to the petitioner and it is an admitted liability which has not been paid.

5. Issue notice. Notice is accepted by Mr. Amit Kumar, advocate, on behalf of the respondent-company. Let reply be filed within 4 weeks from today. Renotify on November 12, 2013.