(2018) 07 DEL CK 0387

In the Delhi High Court

Case No : CO.PET. 325 OF 2013

Tigers Worldwide Pvt Ltd APPELLANT

Vs

Mal Cargo Pvt Ltd RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Companies Act, 1956 — Section 433(e)
Limitation Act, 1963 — Section 19
Negotiable Instruments Act, 1881 — Section 138

Citation : (2018) 07 DEL CK 0387

Hon'ble Judges : JAYANT NATH, J

Bench : Single Bench

Final Decision : Diposed Off

Judgement

JAYANT NATH, J

1. This petition is filed under section 433(e) and 434(a) of the Companies Act, 1956 for winding up of the respondent company. The case of the

petitioner is that respondent company had business dealings with the petitioner. The petitioner company had granted credit facility of Rs.2 lacs for

facilitating its business transactions on 15 days? credit basisÂ toÂ the respondent company. The petitioners raised invoices for the trade items

supplied. It has been pointed out that total dues payable to the petitioner is Rs.31,65,721/-. These amounts are claimed based on running accounts and

invoices which have been raised on the respondent.Â

A part of the dues of the petitioner are based on cheques which were tendered by the respondent. In all 15 cheques were tendered by the respondent.

Other than two cheques all the other cheques were returned unpaid. The value of these cheques is valued at Rs.13,58,000/-.

2. I have heard the submissions of learned counsel for the parties. Learned counsel for the respondent has argued that the claims of the petitioner are

time barred as invoices pertain to the year 2008. Hence, he pleads that the entire claim is time barred.Â

3. Learned counsel for the petitioner has pointed out that on 24.8.2011 a sum of Rs.50,000/ was paid to the petitioner by the respondent. He relies

upon section 19 of the Limitation Act to submit that the present petition cannot be said to be barred by limitation. There are two different components

of the claim of the petitioner. First is a claim of Rs.31,65,721/- which is based on the invoices raised by the petitioner on the respondent for items

supplied.. This figure is downsized to Rs.13,58,000/- and is claimed based on cheques which were tendered by the respondent for which proceedings

under section 138 of the N.I. Act are also pending.

4. It is quite clear that the overall claim of the petitioner is for Rs.31,65,721/-. The particulars and details are given in Annexure â??H? to the petition.

Out of this amount the petitioner has received cheques of Rs.13,58,000/- which when presented were returned back by the bankers of the respondent.

It follows that as far as the sum of Rs.13,58,000/-Â claimed by the petitioner is concerned the same is duly supported by the cheques which were

issued by the respondent and which have been returned back unpaid. In my opinion, the respondent unequivocally remain liable to pay the said sum of

Rs.13,58,000/- keeping in view that the cheques for the said amount have been duly tendered to the petitioner.Â

5. However, as far as the defence raised by the respondents is concerned of the plea of limitation reference may be had to section 19 of the

Limitation Act. The same reads as follows:-

â??19. Effect of payment on account of debt or of interest on legacy.â?"Where payment on account of a debt or of interest on a legacy is made

before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period

of limitation shall be computed from the time when the payment was made. Provided that, save in the case of payment of interest made before the 1st

day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.â??

6. Hence, where payment on account of a debt is made before expiry of the

prescribed period of limitation a fresh period of limitation be computed. In

the present case, the admitted fact is that the respondent has paid a sum of Rs.50,000/- on account of pending dues on 24th August 2011. This is clear

from the statement of account which has been filed by the petitioner alongwith the petition and which is marked as Annexure C. This payment has not

been disputed. This payment would extend the period of limitation. The present winding up petition has been filed in 2013.Â

7. In view of the above, it becomes manifest that the sum of Rs.13,58,000/- clearly remains unpaid. The respondent has failed to raise any bona fide

defence for non-payment of the said dues of the petitioner.

8. In my opinion, this is a fit case for admitting the petition and appointing the OL as the Provisional Liquidator. Accordingly, the petition is admitted

and the Official Liquidator attached to this Court is appointed as the Provisional Liquidator. He is directed to take over all the assets, books of

accounts and records of the respondent-company forthwith. The citations be published in the Delhi editions of the newspapers â??Statesmanâ??

(English) and â??Veer Arjunâ?? (Hindi), as well as in the Delhi Gazette, at least 14 days prior to the next date of hearing. The cost of publication is

to be borne by the petitioner who shall deposit a sum Rs.75,000/- with the Official Liquidator within 2 weeks, subject to any further amounts that may

be called for by the liquidator for this purpose, if required. The Official Liquidator shall also endeavour to prepare a complete inventory of all the

assets of the respondent-company when the same are taken over; and the premises in which they are kept shall be sealed by him. At the same time,

he may also seek the assistance of a valuer to value all assets to facilitate the process of winding up. It will also be open to the Official Liquidator to

seek police help in the discharge of his duties, if he considers it appropriate to do so. The Official Liquidator to take all further steps that may be

necessary in this regard to protect the premises and assets of the respondent-company.Â Â Â

9. However, the above order appointing the OL as the Provisional Liquidator is deferred for a period of six weeks from today. In case the aforesaid

payment is made by the respondent to the petitioner the aforesaid winding up orders shall not take effect. Needless to add that in case this payment of

Rs.13,58,000/- is made by the respondent the petitioner shall withdraw the petition filed under section 138 of the N.I.Act.Â

10. List on 11.9.2018.

