

SUPREME COURT OF INDIA

Bhasha Construction & Industrial Projects Pvt. Ltd.

Vs.

Shining Vyapar Pvt. Ltd.

C.A.No. 8258 of 2013

(Anil R. Dave and Dipak Misra JJ.)

13.09.2013

ORDER

1. Leave granted.
2. Heard the learned counsel appearing for the appellant as well as the respondent.
3. We are happy to note that in the course of hearing of this appeal, the parties to the litigation have amicably resolved their dispute for the time being and therefore, the appeal is being disposed of with certain directions.
4. The respondent-Company has filed winding up Petition No.306 of 2012 in the High Court at Calcutta as, according to the respondent, the appellant Company could not pay its dues. It is an admitted fact that the appellant had borrowed Rs.15 lacs from the respondent and out of the said amount Rs.2 lacs had already been paid before filing of the winding up petition. A sum of Rs.13 lacs was due and payable, which was not paid by the appellant in spite of receiving a statutory notice from the respondent. According to the appellant, certain amount is had due and payable by the sister concern of the respondent company to the sister concern of the appellant company and as the accounts had to be adjusted, the appellant had refused to pay the aforestated amount of Rs.13 lacs.
5. After hearing the concerned counsel of the parties, the petition was admitted and an order for publication of advertisement had been passed on 22nd January, 2013.

6. Being aggrieved by the said order, the appellant had filed A.P.O. No.120 of 2013 in the Company Petition No.306 of 2012, which has been rejected on 19th April, 2013 by the Division Bench of the Calcutta High Court and therefore, this appeal has been filed against the aforestated order. When this appeal was notified for hearing on 10th July, 2013 before this Court, this Court had directed the appellant to deposit Rs.13 lacs with the Calcutta High Court and the said amount has been deposited.

7. It has been agreed among the parties and therefore, we direct that out of said amount of Rs.13 lacs deposited with the Calcutta High Court, the respondent is permitted to withdraw Rs.10 lacs and the remaining amount of Rs.3 lacs shall be returned to the appellant. The winding up proceedings shall be dropped or permitted to be withdrawn and the hearing of Civil Suit No.332 of 2012 filed by the appellant along with its sister concern against the respondent and others, before the Calcutta High Court shall be expedited.

8. The learned counsel appearing for both the parties have assured this Court that the litigants and the counsel appearing in the aforestated civil suit shall extend their cooperation to the High Court so that the aforestated suit can be disposed of at an early date.

9. In view of the above order, the order dated 19th April, 2013 passed in APO No.120 of 2013 in CP No.306 of 2012 and order passed in winding up Petition No.306 of 2012 dated 22nd January, 2013 are quashed and set aside. The appeal is disposed of accordingly without any order as to costs.