

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CAPP No.49 of 2015(O & M)
Date of Decision:20.01.2016**

Milestones Switchgears Pvt.Ltd.

....appellant

Versus

Rana Sugars Limited

.....respondent

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI**

- 1.Whether Reporters of local papers may be allowed to see the judgement?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr.Sachin Jain, Advocate
for the appellant

Mr.Rahul Sharma, Advocate
for the respondent

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):

(1) The appeal is against the order of the learned Company Judge, refusing to wind up the company, on the appellant's contention that the company is unable to pay its debts in the sum of about ₹14.11 lakhs. The learned Judge directed the company to pay the amount to the appellant and ordered the payment subject to the result of the civil suit filed by the appellant for the recovery thereof. The appellant not having accepted the payment, the learned Judge directed the amount to be deposited in the trial Court and has ordered the same to abide by the result of the suit.

(2) The exercise of discretion by the learned Judge was in favour of the appellant and cannot be faulted. There are disputes between the parties, which must be decided in the suit. The

respondent is a running concern with about 2000 employees and the appellant's claim is fully protected. There is, therefore, no warrant whatsoever for entertaining winding up proceedings.

(3) The appellant had supplied material to the respondent-company of an aggregate value of about ₹1.70 crores. A sum of about ₹1.56 crores was paid. The dispute pertains only to a relatively small amount of ₹14.11 lakhs. The respondent-company has withheld this amount, inter alia, on the ground that there were some defects in respect of the material supplied.

(4) We see no reason to interfere with the discretion exercised by the learned Company Judge. The respondent-company offered to pay the amount of ₹14.11 lakhs to the appellant/petitioner without prejudice to its rights and subject to the final decision in a civil suit filed by the appellant for recovery of the said amount. The respondent-Company also stated that this offer on its behalf ought not to be taken against it in the civil suit. The learned Company Judge accepted its stand. It is important to note that the learned Company Judge albeit with the respondent's consent, had not even required the respondent-company to deposit the amount in Court with a direction that the same shall abide by the result in the civil suit which is what is normally done. The learned Judge went a step further and directed the respondent-company to pay the amount of ₹14,11,040/- to the appellant. The order was substituted by a further order dated 06.05.2015 directing the Company to deposit the amount to the credit of the civil suit in respect of the same, only in view of the appellant having refused to accept the amount and having

challenged the earlier order by way of a review petition. The respondent-Company has already deposited the amount to the credit of the civil suit. The appellant is aggrieved by the said order to the extent that it provides that the same shall not prejudice the case of the respondent-company on merits in the civil suit which shall be decided on merits considering the evidence led by the parties.

(5) We do not see how the petitioner could possibly be aggrieved by this order. There were undoubtedly disputes, at least, at one stage regarding the material. This is evidenced, for instance, by the minutes of the meeting, which refer to the defects and the appellant having acknowledged the need to rectify the same. It is true that these minutes were in respect of a meeting held in the year 2007 and that, thereafter, the respondent-Company allowed the bank guarantee to lapse and returned the same. These are important factors in favour of the appellant on merits. They are however not conclusive of the case. Moreover, the appellant's rights have been totally safeguarded by the learned Company Judge.

(6) In this view of the matter, it would have been surprising if the Company Court had ordered the winding up of a running company which has more than 2000 employees.

(7) The appeal is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

January 20, 2016
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(ARUN PALLI)
JUDGE