

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WINDING UP

CA(M) NO.166/2002 in Co.P.No.191/1997

Date of decision: 17th September, 2008.

In the matter of

M/s.CRB Capital Markets Ltd.
Through : Mr.Bhuvan Gugnani,
Advocate.

... Applicant

Versus

M/s.BRL Industrial Corporation
Through : Mr.S.K.Luthra, Advocate for OL.

...Respondent

GITA MITTAL, J (Oral)

1. By this application, the CRB Capital Markets Ltd. has prayed for a decree in the sum of Rs.17,14,964/- with interest @ 18% per annum from the date of maturity till the date of payment as well as administrative expenses @ 1 per cent.

2. Notice of this application was issued to the respondent. On account of inability to serve the respondents by ordinary process and registered covers, despite repeated efforts, the petitioner had filed CA no.1497/2005 under order 5 rule 20 CPC seeking leave to effect substituted service of notice upon the respondent by way of publication of a citation in a daily newspaper. This application was allowed vide an order passed on 18th January, 2007. The respondent was ordered to be served by subsequent mode i.e. by way of publication in the 'Statesman' as well as by affixation on the notice board of this court. Subsequently, the newspaper was changed to 'Hindustan Times' (Kolkata edition) vide an order passed on 24th October, 2007. Publication as directed has taken place and a copy of the citation

which was published in the Hindustan Times of 4th January, 2008 (Kolkata edition) has been placed on record, which is marked as Exh.P-14.

3. None appeared on behalf of the respondent despite service. Consequently, vide an order passed on 18th January, 2008, the respondent was proceeded ex-parte and the applicant was directed to file its affidavit by way of evidence along with original documents.

4. The applicant has filed an affidavit of Shri C.R.Bhansali, ex-chairman of the CRB Capital Markets Ltd.. The documents filed by way of evidence have been duly exhibited before the Registrar. The case set up by the applicant is that it had entered into a lease agreement with the respondent bearing no.DC-004 dated 20th March, 1996 (Exhibit P-1) for the purchase of seven power presses. In terms of the lease, the respondent had agreed to pay an amount of Rs.1,79,826.69p per quarter amounting to Rs.21,57,920.28p for a period of three years. The respondent had also agreed to pay a sum of Rs.25,045.50p towards one time lease management fee @ 1.5 per cent of costs of equipment being Rs.16,67,700/-. The applicant has exhibited as Ex.P-2 a copy of the lease summary schedule which sets out the complete details of the type of equipment; the name of the manufacturer/supplier, the fees payable, the costs of equipments, the lease value etc. The lease was for a period of three years, as per the evidence brought on record, the lease transaction was refinanced by the applicant-company from the Bank of Rajasthan, Chowringhee Road Branch, Kolkata.

5. It is an admitted fact that the respondent had deposited a sum of Rs.4,18,000/- as security deposit with the applicant company against receipt dated 29th March, 1996, which is marked as P-3. The respondent has duly certified the receipt of the seven power presses supplied by M/s.Chandan Engineering Works vide a challan dated 12th April, 1996 and confirmed vide letter dated 22nd August, 1996 that they were installed at its premises at Howrah, Calcutta. A certificate in this behalf, which has been placed on record, was forwarded to the applicant vide letter dated 22nd August, 1996 marked Exh.P-4. In addition, the respondent had undertaken to pay lease rental directly in the name of the Bank of Rajasthan Ltd. A/c CRB Capital Markets Ltd. by letter dated 20th March, 1996 (Exh.P-5). Vide letter dated 26th August, 1996 (Exh.P-6), the applicant company sought a copy of the purchase order placed before the respondent for the purposes of its internal audit and reference. The contention of the applicant is that the respondent-company paid only two instalments against the amounts due and payable,

the first on 29th March, 1996 and the second on 29th June, 1996 amounting to Rs.3,59,653.38p and has not paid any instalment due and payable after 20th September, 1996. As such, it has been submitted by the applicant in its evidence that an amount of Rs.17,98,266.90p is due and payable to the applicants. The respondent further deposited an "on-account" payment by way of cheque no.513529 dated 3rd December, 1996 in the sum of Rs.1 lakh. As such the balance due and payable by the respondent-company as on 31st March, 1997 is an amount of Rs.2,59,653/-.

6. It has been stated in evidence that the applicant company was maintaining a statement of account in due course of business and an extract of the ledger account for the period 1st April, 1996 to 31st March, 1997 has been brought on record as Exh.P-7 and P-8.

7. As per the statement which has been exhibited on record, it appears that the respondent owes an amount of Rs.16,98,266.90p in addition to one per cent residual value of asset which has been calculated to be @ Rs.16,697/- in terms of the lease deed exh.P-1. On this basis, a total sum of Rs.17,14,963.90 is claimed by the applicant against the respondent.

8. Before the action against the respondent for the recovery of the amount could be taken, a winding up petition was filed by the Reserve Bank of India on 21st May, 1997 which was registered as Co.P.No.191/97 and vide an order dated 22nd May, 1997, this court had appointed the provisional liquidator of the company attached to this court Co.P.No.191/1997. The present application was consequently filed by the official liquidator seeking recovery of the debt owed by the respondent to the company which was under liquidation.

9. Before filing the application, the official liquidator had issued demand notice bearing no.Co.LIQN(476)-6CRB/DB-724/466/467 dated 24th March, 1999 to the respondent calling upon it to remit a sum of Rs.2,83,307/- which was outstanding as on 31st March, 1997 towards the lease rental due. These demand notices were returned unserved. The official liquidator thereafter made inquiries in writing, vide letters dated 19th December, 2000 and 26th February, 2001, marked as exh.P-11 Colly, to the Bank of Rajasthan Ltd. and the Bank of Madurai Ltd. (later the ICICI Bank) seeking correct addresses of the respondent. The fresh address of the respondent received from the ICICI Bank vide letter dated 15th June, 2002 (Exh.P-12) is the same address to which the demand notices had been despatched.

10. None has put in appearance in this matter despite service. The matter having been adjourned repeatedly. There is no dispute to the claim of the applicant. In admission of its liability, the respondent has made payment of the lease amount till 29th June, 1996. Since the claims made by the applicant have been duly acknowledged by the respondent, which acknowledgment has been placed on record, in this background, this application deserves to be allowed.

11. It has been submitted by learned counsel representing the company that interest is inbuilt in the amount of the instalment which was stipulated in the lease summary. It has been further submitted that as per Exh.P-1 till the last instalment became due and payable as on 3rd January, 1999. The applicant has prayed interest @ 10% w.e.f. from that date till realisation.

12. In view of the above, the application is allowed. it is held that the respondent is liable to pay a sum of Rs.17,14,963.90p to the applicant company. So far as the amount of interest pendente lite and future as prayed for, the applicant is entitled to the same @ 10 per cent per annum from 3rd January, 1999 till realisation. The respondent is also liable to pay costs of the present proceedings. Costs of the present proceedings are assessed at Rs.25,000/- which shall be deposited in the Common Pool Fund maintained by the office of the Official Liquidator. The Registry shall draw up a decree in terms of the order passed today.

Sd/-
GITA MITTAL, J