

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WINDING UP

Co.Pet./No. 348/1996

Date of decision: 30th September, 2008

M/s Kotak Mahindra Finance ... Petitioner
Through: None

VERSUS

M/s Vemoha Exports P.Ltd. Respondents
Through: Mr. S.K.Luthra, Adv. for the Official
Liquidator with Ms.Richa Kukreja, Dy.O.L. in
person

GITA MITTAL, J(Oral)

1. This petition was filed under section 433 and 434 of the Companies Act seeking a winding up of the respondent company on the ground that it had failed to pay Rs.1,11,795.28 payable by it to the petitioner under a loan agreement dated 21st April, 1995. Notice in the petition was issued on 11th December, 1996.

2. Though the respondent had initially entered appearance through counsel however the counsel had sought discharge of vakalatnama after service of a notice. The same was granted and thereafter there was no appearance for the petitioner.

3. In this background, by an order passed on 7th January, 2000 the court had directed citation to be published in the Statesman (English edition) and Jansatta (Hindi edition) and the Delhi Gazette for 31st March, 2000. The official liquidator attached to this court was appointed as the provisional liquidator with a direction to take charge of assets/records of the respondent company. It was also stated in the order that in case the respondents make payment of the aforementioned amount on or before 7th February, 2000, the citation would not be published.

4. The petitioner took no steps to comply with the order. The citation was also not published as no steps were taken by the petitioner. In view of the non-appearance on behalf of the petitioner and failure to take steps in the case, this court had issued court notice to the petitioner and to its counsel by an order passed on 23rd January, 2001. The notices issued pursuant thereto were duly served. Still no steps were taken. No appearance was put in on behalf of the petitioner on the various dates when the matter was listed. The record shows that the petitioner has taken no steps to effect the

publication in terms of the orders passed on 7th January, 2000 despite repeated opportunity.

5. None appears for the petitioner even though the matter has been passed over once. There has not been any appearance on behalf of the petitioner on the several dates prior hitherto as well when the matter was listed, either on the application of the respondent seeking recall by an order dated 5th May, 1997 or for discharge of appearance of the ex-director before the official liquidator. In the given facts it is evident that the petitioner is not interested in prosecution of the present petition. Yet the official liquidator has been constrained to take action pursuant to his appointment as the provisional liquidator of the respondent company.

6. It is noteworthy that steps in terms of the orders passed by this court which would have enabled the court to proceed to a final winding up order, have also not been taken. In this background, the order appointing provisional liquidator is recalled and the petition is dismissed.

Sd./-
GITA MITTAL, J

September 30, 2008