JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.C.A.No.1039 of 2013
People Logic Pakistan (Pvt.) Ltd.
Versus
Huawei Technologies Pakistan (Pvt.) Ltd.

Date of Hearing: 15.11.2016
Appellant by: Mr. Rashid Hanif, Advocate,
Respondent by: Mr. Afnan Karim Kundi, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant Intra-Court Appeal, the appellant, People Logic Pakistan (Pvt.) Ltd., impugns the judgment dated 04.10.2013, passed by the learned Single Judge-in-Chambers, whereby C.O.No.12/2012, was dismissed.

2. The factual background of this case is that on 16.12.2011, a contract was executed between the appellant and the respondent under which the appellant was to provide certain services to the respondent. Subsequently, disputes and differences arose between the parties, which culminated in the termination of the said contract on 19.03.2012. Thereafter, a settlement agreement was entered into between the parties whereunder the respondent was to pay Rs.43,500,000/- to the appellant. Out of the said amount, the respondent paid Rs.37,582,843/- to the appellant. Since the balance amount was not paid, the appellant issued a legal notice to the respondent demanding payment of the balance amount. The respondent in his reply to the legal notice took the position that the amount claimed by the appellant was not payable, because it had already been adjusted. In these circumstances, the appellant filed a petition for the respondent's winding-up before this Court.

3. On 19.12.2012, the appellant instituted a petition under Section 305 read with Section 306 of the Companies Ordinance, 1984, for the winding up of the respondent on account of its inability to pay its debt to the appellant. These proceedings were instituted because the respondent had refused to pay the amount claimed by the appellant.

4. In the proceedings before the learned Single Bench, the respondent disputed the amount claimed by the appellant. The respondent took the position that the petition for winding-up of the respondent had been filed to pressurize and arm-twist the respondent into paying an amount which was not payable to the appellant. The respondent's plea was that the amount claimed by the appellant was mistakenly entered in the settlement agreement between the parties. The said amount had already been deducted and adjusted in the payments due to the respondent. The agreement between the appellant and the respondent was said to contain an arbitration clause in accordance with which the disputes between the parties could have been resolved.

5. In the proceedings before the learned Single Bench, the appellant was not able to establish that the respondent was unable to pay its debt. It is not disputed that the respondent, in order to show that he has enough financial strength to pay the amount claimed by the appellant, produced before the Court cheques in the amount claimed by the appellant. The appellant refused to accept these, because it was insistent on seeking the winding up of the respondent. The mere fact that the respondent had come up with cheques establishes that it was solvent and in a position to pay the amount claimed by the appellant. The respondent also produced its balance sheets and audited financial statements, which showed that the respondent was commercially solvent and had not lost its substratum. Therefore, the respondent could not be considered as unable to pay the amount claimed by the appellant. Simply because the amount claimed by the appellant is disputed by the respondent, or the respondent is unwilling to pay the amounts so claimed, does not mean that the respondent is unable to pay the amount.

6. An essential prerequisite of a petition under Section 305 of the Companies Ordinance is that the company sought to be wound up should be indebted, which debt should not be the subject of a *bonafide* dispute. Additionally, such a company should be unable to pay the debt. The inability of a company to pay its debt is to be proved with reference to the company's existing available assets in relation to its debts. It is well settled that winding-up of a company

can be ordered, where it is impossible for a company to carry on its business except at a loss; and where there is no hope for it to trade at a profit, because its assets are insufficient to meet its liabilities.

7. A company can be wound-up only when it is *inter-alia* proved that the debt claimed against it is ascertained and definite and that it had failed to pay the same, and therefore, had become commercially insolvent. A company court has no jurisdiction to pass an order directing to pay an amount claimed by a petitioner. A winding-up petition cannot be an alternative for recovery of money for which a civil suit is ordinarily the remedy, and a company court cannot be used as a forum by the creditor to establish its rights regarding a debt.

8. The learned Single Bench has correctly interpreted Section 306 of the Companies Ordinance, 1984, in the following terms:-

> *"8.... The basic requirement in this provision of law is that the company should be indebted to the creditor. It obviously means that the amount should not be disputed. If the amount due is disputed and for clarification of the same, evidence is required, then it cannot be said that the company is indebted or the amount in question is due to the company. In case of dispute in respect of the outstanding amount, the deeming clause of Section 306 was not come into operation."*

9. For the foregoing reasons, we reach the conclusion that the appellant has not brought any acceptable material on the record to hold that the respondent company had become commercially insolvent, and, therefore, was liable to be wound-up. In the result, this appeal fails and is hereby dismissed with no order as to costs.

(ATHAR MINALLAH)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2017.

(JUDGE) **(JUDGE)**

Qamar Khan*

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