
(2011) 02 P&H CK 0418
In the Punjab And Haryana At Chandigarh
Case No : C.A.P.P. No. 21 of 2010 (O and M)

Aar Kay Concast Ltd.

APPELLANT

Vs

Reliance Capital Limited

RESPONDENT

Date of Decision : 16-02-2011

Acts Referred:

Companies Act, 1956 — Section 433, 434

Citation : (2011) 164 CompCas 409 : (2011) 162 PLR 1 : (2011) 109 SCL 5

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred against order of learned Single Judge admitting the petition under Sections 433/434 of the Companies Act, 1956 for the deemed inability of the Appellant company to pay its debts.

2. Case of the Respondent-original Petitioner before the learned Company Judge is that it is an assignee of the State Bank of India who had granted various loans to the Appellant. The loans were assigned to the Respondent vide assignment agreement dated 30.3.2007. The Appellant was in arrears of more than Rs. 2.66 crores as on 1.10.1998. The Respondent issued legal notice to the Appellant on 31.12.1998 followed by another notice dated 15.3.2000. The State Bank of India filed application for recovery before the Debt Recovery Tribunal (DRT) on 5.2.2001 which was still pending. Proceedings have also been initiated under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, the Securitisation Act). The Respondent also issued notice dated 12.9.2007 u/s 434 of the Companies Act claiming that sum of more than Rs. 13.30 crores was due as on 31.8.2007. The Appellant gave reply, disputing assignment of the debt in favour of the Respondent. According to the Respondent, the Company was unable to pay its debts and was, thus, liable to be wound up.

3. The Appellant contested the company petition on the ground that since recovery proceedings were pending before the DRT, the jurisdiction of the Company Court could not be invoked. The Appellant did not deny advancement of loans by the State Bank of India. The admitted debt of the Appellant was more than Rs. 500/-.

4. Learned Company Judge after going through the pleadings and documents and considering the rival contentions held that the company petition was maintainable, as the issue therein was not of recovery but of inability of the company to pay its debts and its liability for being wound up.

5. We have heard learned Counsel for the parties.

6. Learned Counsel for the Appellant submitted that the company was not liable to pay anything to the Respondent as the Respondent had no privity of contract with the Appellant. It claimed right under an assignment deed to which the Appellant was not a party and which was not valid being not in accordance with the provisions of the Transfer of Property Act, 1882 and Registration Act, 1908. The issues raised in the company petition were complicated questions and the petition was merely a device to recover the amount. The debt sought to be recovered was barred by limitation and the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, the "RDB Act") was a special Act. Learned Counsel relies upon following judgments:

1. Allahabad Bank v. Canara Bank and Anr. AIR 2000 S.C. 1535

To submit that RDB Act. overrides the provisions of the Companies Act and leave of the Company Court was not necessary for continuing proceedings under the said Act.

2. Mediquip Systems Pvt. Ltd. Vs. Proxima Medical System GMBH,

To submit that debt recovered u/s 433 of the Companies Act must be a definite sum of money.

3. Shri Sham Lal Gupta v. Hamco Industries (Pvt.) Limited (1994)107 P.L.R. 685

To submit that the company petition cannot be filed u/s 433 of the Companies Act if the debt was barred by limitation.

7. Learned Counsel for the Respondent opposed the above submissions and supported the impugned order by submitting that the RDB Act did not debar a petition for winding up. The assignment deed could not be held to be illegal as the same was permissible as per Banking Regulations Act, 1949. Company Petition did not relate to time barred debt. Reliance has been placed on following:

1. ICICI Bank Limited Vs. Official Liquidator of APS Star Industries Ltd. and Others, .

To submit that the Banking Regulation Act, 1949 will govern the assignment of debt as per RBI guidelines.

2. Maxlux Glass Private Ltd. v. ICICI Limited Company 2001 Cal. 539 (Cal.).

To submit that proceedings for winding up under the Companies Act are not barred under the RDB Act.

3. Central Bank of India v. Sukhani Mining and Engineering Industries Pvt. Ltd. and Ors. (1977)47 Comp. Cas. 1 (Pat.) and Modern Gears Pvt. Ltd. v. IL and FS Investment Ltd. (2006)129 Comp. Case 337 (Cal.)

To submit that mere pendency of suit was not a bar to filing of a company petition.

8. Having considered the rival submissions, we are of the view that no interference is called for with the view taken by learned Company Judge. There is no bar to proceedings for winding up being initiated merely on account of pendency of proceedings before the DRT. The judgment relied upon on behalf of the Appellant in Allahabad Bank does not advance its case. Therein question was whether permission of the Company Court was required to continue a proceeding before the DRT and not whether company petition for winding up was maintainable. As regards the amount being ascertainable, admittedly, the Appellant took loan from the bank which has been assigned in favour of the Respondent and the amount due is more than Rs. 500/-. Thus, the judgment in Mediquip Systems Pvt. Ltd. is distinguishable. The bank has already filed a suit and the debt is not shown to be barred by limitation. The judgment in Shri Sham Lal Gupta is distinguishable. The judgment of the Hon'ble Supreme Court in IC1C1 Bank is to the effect that assignment of debt is an activity covered by the Banking Regulation Act.

9. Apart from the above, we asked learned Counsel for the Appellant whether the Appellant was willing to pay the admitted principal amount, to enable us to consider whether discretionary jurisdiction for winding up should be invoked or not. Learned Counsel for the Appellant states that he had no instructions to state that the Appellant is prepared to pay even the principal debt within reasonable time. In view of such unreasonable attitude, we do not find any ground whatsoever to interfere with the impugned order.

10. The appeal is dismissed. It is made clear that if the Appellant moves learned Company Judge with any reasonable proposal to pay the debt, this order will not debar the learned Single Judge from considering any such proposal in accordance with law.