
(2004) 12 RAJ CK 0055
In the Rajasthan High Court
Case No : Company Petition No. 27 of 2004

Abhay Goyal

APPELLANT

Vs

Wizard Biotech (P.) Ltd.

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Companies Act, 1956 — Section 433, 434

Citation : (2006) 132 CompCas 881 : (2007) 80 SCL 176

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : R.P. Garg, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Keshote, J.—The petitioner filed this petition under Sections 433 and 434 of the Companies Act, 1956 (for short, "the Act, 1956") for winding up of Wizard Biotech Private Limited (hereinafter shall be referred to as "the respondent-company").

2. The facts leading to filing of this petition, briefly stated, are that the respondent-company is a private limited company registered under the 1956 Act, and having its registered office at 768, Ram Nagar, Shastri Nagar, Jaipur.

3. On 19th of September, 2001, the respondent-company obtained a loan of Rupees five lakhs from the petitioner on interest at the rate of 18% per annum. It is admitted by the petitioner that as against this loan the respondent-company paid Rupees two lakhs vide Cheque dated 30-3-2002; Rupees one lakh on 10-7-2002; Rupees fifty thousand on 19-8-2002 and Rupees fifty thousand on 5-3-2002. Thus, rupees four lakhs have been paid by the respondent-company to the petitioner and the grievance has been made in the petition for remaining loan amount of Rupees one lakh with interest at the rate of 18% per annum.

4. A notice under Sections 433 and 434 of the Act, 1956 was served upon the respondent-company on 20th of July, 2004. The respondent-company replied to

that notice and the document in support thereof is there on the record as Annexure-3 to the petition.

5. The learned counsel for the petitioner contended that the respondent-company has admitted that Rupees one lakh is due of the petitioner against it and despite of that it has not paid that amount and thus it is a clear case of inability of the respondent-company to pay its debts. He submitted that in view of this admitted fact this Court may please to order for winding up of the respondent-company.

6. I have given my thoughtful and anxious consideration to the rival contentions made by the learned counsel for the petitioner. The statutory notice sent by the petitioner to the respondent-company is dated 20th of July 2004. It is replied vide document Annexure-3 by the respondent-company which is dated 30th of August, 2004. The notice dated 20th of July, 2004 was sent by registered post to the respondent-company by the petitioner as it is evident from the document Annexure-2 to the petition.

7. From the document Annexure-4 it reveals that on 21st of July, 2004 a settlement was arrived at between the parties and the amount was fixed at Rs. 85,000 subject to handing over of all properties belonging to the respondent-company lying with the petitioner. The letter dated 21st of July, 2004 Annexure-4 sent to the petitioner by the respondent-company has not been refuted by the petitioner. In the petition it is nowhere stated that the contents of Annexure-4 have been denied by the petitioner by sending any letter. In para No. 11 of the petition the only averment has been made that by the letter the respondent-company is trying to raise false and concocted plea with a view to defeat the claim of the petitioner but it is difficult to accept for the reason that admittedly Rs. 4,00,000 (Rupees four lakhs) have been paid by the respondent company to the petitioner. From the facts which have come on the record I am satisfied that in the matter the respondent-company has raised a bona fide dispute in the claim made by the petitioner.

8. In the result, the petition fails and same is dismissed.