

(1997) 11 AHC CK 0002

In the Allahabad High Court

Case No : C.M.W.P. No's. 22388 and 22393 of 1997

Adesh Kumar Jain and Others

APPELLANT

Vs

U.P. State Electricity Board and Others

RESPONDENT

Date of Decision : 25-11-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Succession Act, 1925 — Section 2

Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958 —
Section 3

Citation : (1997) AWC 645 Supp

Hon'ble Judges : Palok Basu, J;M.L. Singhal, J

Bench : Division Bench

Advocate : Pramod Kumar Jain, for the Appellant;

Final Decision : Allowed

Judgement

Palok Basu, J.—This couple of writ petitions practically raises only one question. When M/s. Kavita Steels Pvt. Ltd.. Meerut entered into an agreement with U.P. State Electricity Board (for short the Board) through one of its Directors as "consumer" and defaulted in making payment of the electricity bills, can realisation from the personal assets of the Directors of that Company be made?

2. The Petitioners Chandra Bhan Khanna and Madan Lal Bhatia admittedly resigned from the Directorship of the Company and, therefore, the Respondents' counsel has made a statement that the Board would not proceed against them. Their petitions, therefore, has to succeed on this ground alone.

3. Petitioners Adesh Kumar Jain and Naresh Kumar Garg admittedly continued to be the Directors of the Company and recovery proceedings have been directed by the Revenue Authorities at the behest of the Board against the personal assets of these two Directors which is under challenge in this petition. It is again admitted that recovery proceedings have already been initiated against the property/assets of the Company, namely, M/s. Kavita Steels Private Limited.

4. The learned judgment prepared by my esteemed brother Hon''ble M. L. Singhal, J. has to be respectfully concurred with but some reasons of this Court have to be specifically mentioned.

5. Under the Indian Companies Act, a Company is an independent legal entity and can enter into transactions independently of the Directors. While it is true that the decisions regulating the working of the company may be taken by the Directors but as the law stands today, the liability or responsibility of a contract entered into by the company shall have to be honoured and borne by the company itself. In this connection, it has to be mentioned that while there cannot be any doubt that the Director of a company may be an agent of the company, the Director's asset will not automatically become assets of the company unless provisions are made to exist in the Act to that effect. It is true that the word "consumer" would include its executors and successors, etc., there is no provision in the Companies Act which will make it permissible to call a Director at point of time of the company to be executor or successor of the Company. The very basis on which the Board has decided not to proceed against retired Directors will render it impossible for the Board to proceed against some of the existing Directors. It is just possible that due to passage of time and exigencies which may arise, a Director today may cease tomorrow and, therefore, on the same logic, proceedings against a Director who ceases to be so tomorrow, shall have to be abandoned.

6. Consequently, the question of applicability of the doctrine "lifting of the veil of the corporate body" shall have to be examined in detail. The Hon''ble Supreme Court has in three decisions applied those principles. The cases are:

(1) New Horizons Limited and Another Vs. Union of India (UOI) and Others, .

(2) State of U.P. and Others Vs. Renusagar Power Co. and Others, and

(3) Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, .

In all the three cases, no Director was being proceeded against in lieu of the Company making default. It was strongly canvassed by Shri Sudhir Agarwal that the two Petitioners are personally responsible for having played fraud not only on the company but on the shareholders also inasmuch as they have removed the induction furnaces and other machinery from the company premises and have in a planned manner, disseminated the company's assets. It was, therefore, said that this is a fit case where by lifting the veil of the corporate body, the Director's personal property should be permitted to be proceeded within these recovery proceedings. Shri Ravi Kiran Jain has, on the other hand, said that the Board was already proceedings with the property/assets of the Company and so long as there is no legal provision to equate the Director with the Company itself, the recovery proceedings are wholly bad. He has successfully distinguished the Hon''ble Supreme Court's decision in Natwar Textile Processor Pvt. Ltd. and another Vs. Union of India and others, and U.P. Financial Corporation Vs. Gem

Cap (India) Pvt. Ltd. and Others, . The attempt of Shri Sudhir Agarwal to find out some observations of the Hon''ble Supreme Court in Isha Marbles Vs. Bihar State Electricity Board and Another, . has been also successfully defended by Shri Jain.

7. Director''s liabilities in some of the enactments have already been dealt within provisions contained in the relevant laws such as Employees State Insurance Scheme, Provisions of Food Prevention Act, Factories Act, Provident Fund Act, Industrial Disputes Act, etc., etc. There is no provision in the U.P. Government Electricity Undertaking (Dues Recovery) Act, 1958 or Electric Supply (Consumers) Regulations, 1984 or even in the Indian Electricity Act, 1910 which may make it possible to read that a Director can be taken to be the successor of the Company which had entered into the agreement with the Board as a Consumer taking note of the definition of the word "Consumer" in any of the three laws referred to above.

8. This Court is not happy that a Director''s individual property/assets may not be proceeded with in these recovery proceedings because there are serious allegations of dissipation of the property and assets of the Company by the Directors and it is only the absence of specific provisions in that regard which was rightly highlighted by Shri Ravi Kiran Jain on behalf of the Petitioners that the recovery proceedings against the Directors have to be quashed.

9. It is for these reasons and the other reasons so effectively delineated by my esteemed brother in his judgment that the writ petition of Adesh Kumar Jain and Naresh Kumar Garg has also to succeed.

10. In the result, the Writ Petitions 22388/97 and 22393/97 are allowed. The recovery proceedings including coercive measures and process against the assets of the Directors for payment of the electricity dues, are quashed.

11. Parties will bear their own costs.

M. L. Singhal, J.:

12. Through these two writ petitions preferred under Article 226 of the Constitution of India, the Petitioners have sought a writ of mandamus directing the Respondents not to recover arrears of electricity dues of one M/s. Kavita Steels Pvt. Ltd., Meerut from the personal assets of the present and past Petitioner-directors of the said Company. The common question of law involved in these two writ petitions is whether the electric dues due from the company consumer can be recovered from the assets of the Directors of the Company? Since the question involved in the two writ petitions is the same, the two writ petitions are disposed of together.

13. We have heard the learned Counsel for the parties and have gone through the record of the two cases.

14. There is a company namely M/s. Kavita Steels Pvt. Ltd., having its registered office at village Siwaya, Tahsil Sardhana, District Meerut. The said Company was

incorporated on 29th August, 1985 with the initial object to manufacture M.S. Ingots. At the time of incorporation of the Company Shri Adesh Kumar Jain, Shri Chandra Bhan Khanna and Sri Madan Lal Bhatiya, were the Directors, of whom Shri Madan Lal Bhatiya and Shri Chandra Bhan Khanna, subsequently on 10th June, 1987 resigned from the Directorship, an information about the same was sent to the Registrar of the Company. Initially on 12th September, 1988 electric connection for load of 1410 K.V. was sanctioned in favour of the Company, one Ishwar Chandra Agarwal the then one of the Directors of the Company. By that time the two earlier Directors, namely, Shri Madan Lal Bhatiya and Shri Chand Bhan Khanna as stated above had already resigned. Subsequently in the year, 1989 an additional load of 600 K.V. was sanctioned in favour of the Company and in respect of the same a further agreement on 22nd October, 1989 was also signed by the aforesaid Shri Ishwar Chandra Agarwal. Shri Ishwar Chand Agarwal later on also resigned on 28th July, 1990 ceased to be the Director of the Company and at present is residing at Madras.

15. The further averments in the two writ petitions are that under U.P. Government Electricity Undertaking (Dues Recovery) Act, 1958, the Respondent Nos. 1 and 2 issued a recovery u/s 3 of the Act for a sum of Rs. 86,72,177.66 against the ex-director Shri Ishwar Chand Agarwal on 13th June, 1996. By that time, as shown above, Ishwar Chand Agarwal had ceased to be the Director of the Company. An objection was preferred against the said recovery stating that Shri Ishwar Chand Agarwal had no connection whatsoever with the Company and so the recovery issued against him was illegal and without jurisdiction. Nothing was heard from the Respondents on the objection preferred on behalf of Shri Ishwar Chand Agarwal and Respondents have issued a citation, for a sum of Rs. 77,50,122.80 against the company and in pursuance thereof the property with land building etc. on the spot have been attached. The proceedings for recovery of the amount against the Company are going on, the Petitioners absolutely have no objection thereto. The alleged recovery of Rs. 77,50,122.80 does not represent the correct state of affairs, a sum of Rs. 23 lacs of security amount, apart from interest payable thereon is lying with the U.P.S.E.B. authorities. The Respondents have also sent recovery certificate for realisation of the aforesaid amount from the Petitioners and also from ex directors Shri Chandra Bhan Khanna and Madan Lal Bhatia, and Respondents had threatened to recover the aforesaid amount from the personal property of the Directors. Under the law, no recovery can be made from the Directors either personally or from their assets and the liability is available to the extent of their share, consequently, the action of the Respondents is illegal and without jurisdiction. The Company was the "consumer", realisation can only be made from the assets of the Company in view of the provisions of U.P. Government Electricity Undertaking (Dues Recovery) Act, 1958, Act No. 16 of 1958.

16. The Respondents have filed counter-affidavit in both the petitions. The defence is that no recovery is being issued against Naresh Kumar Garg (Petitioner No. 2 in Writ No. 22388/87) and as such the writ petition on behalf of

Shri Naresh Kumar Garg is not maintainable. As regards Shri Chandra Bhan Khanna, Shri Madan Lal Bhatiya (Petitioners in Petition No. 22393 of 1997) the Petitioners never informed the Respondents that they had ceased to be the Directors of the Company before the execution of the agreement of the said Company. If it is so, the Respondents may withdraw the recovery certificates against the two Petitioners as the recovery certificates can be issued only against such directors who were the Directors of the Company, at the time of the execution of the agreement or became Director of the Company thereafter at any point of time. The two agreements referred to by the Petitioners were signed by Shri Ishwar Chand Agarwal designating himself as Director of M/s. Kavita Steels Pvt. Ltd. The term "Consumer" as per the agreement not only includes the Company M/s. Kavita Steels Pvt. Ltd. but also its executors, administrators, legal representatives and successor as shown by the agreements. The amount shown in the recovery certificate is correct, the said amount is not recoverable from the assets of the Company, all the Directors of the Company are also personally liable to pay the same. The recovery certificates issued against the Petitioners are correct, valid and in accordance with law. If the assets of the Company are not found sufficient to clear the outstanding dues, the Respondents are within their rights and are validly proceeding personally against the Directors of the Company for the recovery of the amount.

17. As seen above, it is conceded to the Respondents that they are proceeding against the Directors of the Company. They have no intention to proceed against the past Director out the electricity dues are recoverable from the personal assets of the Directors of the Company. A moot point for adjudication in the two instant two writ petitions is whether the amount of electricity dues, due from the consumer M/s. Kavita Steel Pvt. Ltd., Meerut can be recovered only from the Company as contended by the Petitioners or can be recovered from the personal assets of and personally from the Directors of the Company also as contended by the Respondents. Undisputedly, the two agreements on 13.12.1988 [vide Annexure-7) and another agreement on 27.10.1989 {vide Annexure-8) were executed between M/s. Kavita Steels Pvt. Ltd. Company and Respondents U.P. Electricity Board. A perusal of the two agreements as contended by the learned Counsel for the Respondents shows that these two agreements had been entered into between M/s. Kavita Steel Ltd., through its Director Shri Ishwar Chand Agarwal, on the agreement, the signatures have also been made by Shri Ishwar Chand Agarwal, the then Director, in the capacity of a Director and not in the personal capacity. The electricity dues are to be recovered from the consumer, the consumer in fact is M/s. Kavita Steel Pvt. Ltd. If the agreement has been entered into between the Company and the Respondent Electricity Board and the then Director has signed, the agreements on behalf of the Company in the capacity of a Director, the electricity dues cannot be recovered from the personal assets of the Director but can be recovered from the Company and its assets. Such view has also been taken by several Division Benches of this Court earlier in M/s. Malik Products India, Ghaziabad v. Sales Tax Officer, Ward No. 3,

Ghaziabad 1989 UPTC 458; Satish Chand Singhal, Kanpur and Ors. v. Asstt. Commissioner (Assessment) Sales Tax, Kanpur and Ors. 1987 UPTC 473; Yogendra Kumar Tyagi and Ors. v. Collector, Muzaffarnagar and Ors. in Civil Misc. Writ Petition No. 8260 of 1996 decided on 20th March, 1996; Surendra Kumar v. Collector, Muzaffarnagar and Ors. Civil Misc. Writ Petition No. 35755 of 1993 decided on 20th March, 1996; Surendar Kumar v. Collector Muzaffarnagar Civil Misc. Writ Petition No. 35755 of 1993 decided on 16.12.1993 and Jugal Kishore Paliwal v. Collector, Muzaffarnagar Civil Misc. Writ Petition No. Nil of 1994, decided by Hon"ble Ravi S. Dhavan, J. and Hon"ble Ch. Abdul Rahim, J. on 10th May, 1994.

18. The learned Counsel for the Respondent argued that by an affidavit filed by Shri Ishwar Chand Agarwal, the then Director of the Company (vide Annexure-CA-4), agreed to pay the electricity dues within the prescribed time and so the Director of the Company undertook to pay the dues personally also. A perusal of the para 3 of the affidavit shows that the then Director executed the said affidavit as Director of the Company and not in his personal capacity.

19. As regards the Respondents' contention that in the two agreements vide Annexure-7 and Annexure-8, the expression "Consumer" includes his executors, administrators, legal representatives and successors and as such the Directors of the Petitioner Company are also liable personally, in view of the said expressions used in the agreements, it may be stated that the expressions cannot be expanded to include the Director. In Section 2(c) of the Indian Succession Act, 1925, the word "executor" means a "person to whom the execution of the last will of the deceased person is, by estator's appointment confided". The expression "administrator" in Section 2(a) of the said Act means "a person appointed by the competent authority to administer the estate of the deceased person when there is no executor". The Director of a Company is an agent of the Company, he cannot also be described as legal representative or successor of the Petitioner Company. Thus, the Director of a Company cannot be equated with an administrator, executor, legal representative or a successor of the Company. The contention of the learned Counsel for the Respondents is absolutely devoid of merit.

20. Under clause 7 (a) of the two agreements (Annexure-7 and 8), the consumer shall pay for the supply of electric energy at the rates enforced by the supplier from time to time as may be applicable to the consumer. In Section 2(c) of the Indian Electricity Act, 1910, the definition of "Consumer" is as under:

(c). "Consumer" means any person who is supplied with energy by a licensee or the Government or by any other person engaged in the business of supplying energy to the public under this Act or any other law for the time being in force, and includes any person whose premises are for the time being connected for the purpose of receiving energy with the works of a licensee, the Government or such other person, as the case may be.

21. In Section 2, Clause (a) of the U.P. Government Electrical Undertaking (Dues Recovery) Act, 1958 a consumer also means:

(a) "Consumer" means any person who is supplied with energy by a Government undertaking, whether for his own consumption or in connection with his business of supplying energy or otherwise.

Likewise under clause 2 (b) of the Electric Supply (Consumers) Regulations, 1984 also a consumer means:

(b) "Consumer" means any person who is supplied with energy by the Board and includes any person whose premises are for the time being connected with the works of the Board for the purpose of receiving electrical energy, and also includes an intending consumer and a consumer who has been disconnected.

22. The definition of the term "Consumer" in the aforesaid Acts and Regulations clearly shows that a "Consumer" means any person who is supplied with energy by the Board or in whose premises electric connection has been given or any person whose premises are for the time being connected for the purpose of receiving energy with the work of a licensee. In the instant case, electricity has been given to the Petitioner M/s. Kavita Steels Pvt. Ltd. and to the Director of the Company through the Director of the Company has executed the agreement on behalf of the Company. M/s. Kavita Steels Ltd. is the consumer to which the electric connection has been given, the said Company, as a Consumer is, therefore, liable to pay the electricity dues.

23. The learned Counsel for the Respondents argued that the Petitioner-Director of the Company have misappropriated the entire property of the Company, they have removed the induction furnaces and other machinery from the Company premises and as such they are liable in the personal capacity also to pay the electricity dues. The learned Counsel urged that in such case the doctrine of "lifting of "veil" of the Corporate body" should be applied as the Directors are guilty of defrauding not only the public at large but also statutory authority causing loss to the public revenue and as such they are personally liable to pay the electricity dues. The learned Counsel relied upon the decision of the Hon"ble Supreme Court in New Horizons Limited and Another Vs. Union of India (UOI) and Others, (paras 27 to 37) and State of U.P. and Others Vs. Renusagar Power Co. and Others, , where the principle of "lifting the veil" was applied by the Hon"ble Supreme Court. The facts of those cases were different. In the instant case, there is an agreement between the parties and also the statutory provisions under which the only consumer company is liable for payment of the arrears of electricity dues and the Director of the Company cannot be made personally liable. Hence the doctrine of lifting the veil cannot be invoked in the instant case. Further the learned Counsel for the Respondent relied upon the decisions of the Hon"ble Supreme Court in Natwar Textile Processor Pvt. Ltd. and another Vs. Union of India and others, (Para 14); U.P. Financial Corporation Vs. Gem Cap (India) Pvt. Ltd. and Others, : Andhra Pradesh State Financial

Corporation Vs. M/s. GAR Re-Rolling Mills and another, ; Isha Marbles Vs. Bihar State Electricity Board and Another, and urged that the Directors of the Petitioner-Company have misappropriated the Company's fund, the present two cases are not such cases in which the equitable jurisdiction of the Court under Article 226 of the Constitution should be exercised. The learned Counsel for the Respondents further argued that even when a third party purchases the defaulting unit, the defaulting purchaser cannot be allowed to defraud public revenue if purchaser and earlier one could be said to be closely related [vide Isha Marbles Vs. Bihar State Electricity Board and Another, ; Dulari Devi v. U.P. State Electricity Board and Ors. 1979 AWC 279 and M/s. Isha Marbles v. Bihar State Electricity Board and Anr. JT 1995 (2) 626 Paras 34-40). The act of the Court should not be prejudicial to the interest of any party [vide Kanoria Chemicals and Industries Ltd. and Others Vs. U.P. State Electricity Board and Others, and Kerala State Electricity Board through its special officer (revenue) and Another Vs. M.R.F. Limited and Others, and the present cases are of the abuse of process of law [vide Sheapujan Bhagat Vs. Thakur Hembrom and Others, . We have gone through all the decisions, they are of no help to the Respondents in the present cases.

24. It may also be observed that if timely action had been taken by the Respondents, the huge amount of electricity dues would not have been allowed to be accumulated, the situation in the instant case would not have arisen.

25. In view of the discussions made above, it is clear that M/s. Kavita Steels Pvt. Ltd. is a consumer. The said company is liable for the arrears of the electricity dues sought to be realised by the Respondents, the Petitioner-Directors cannot be held liable for the payment of those dues, the Respondents cannot realise the arrears of electricity dues from the personal assets of the Directors of the Company. Both the petitions are allowed. No order as to costs.