

(1976) 11 CAL CK 0028

In the Calcutta High Court

Case No : Company Application No. 12 of 1976

Agra Electric Supply Co. Ltd. (In Voluntary Liquidation) and
Others

APPELLANT

Vs

Nagar Mahapalika and Others

RESPONDENT

Date of Decision : 12-11-1976

Acts Referred:

Companies Act, 1956 — Section 446, 446(3), 512, 518, 518(1)

Citation : (1981) 51 CompCas 337

Hon'ble Judges : Salil K. Roy Chowdhury, J

Bench : Single Bench

Judgement

Salil K. Roy Chowdhury, J.—This is an application u/s 446 read with Section 518 of the Companies Act, 1956, for transfer of a suit from the Civil Judge, Agra, to this court being Miscellaneous Case No. 136 of 1975, filed by the petitioner against the respondent and also for injunction and other orders.

2. The admitted facts of this case are that the petitioner filed a suit against the respondent being Miscellaneous Case No. 136 of 1976 (Agra Electric Supply Co. Ltd. (in voluntary liquidation) v. Nagar Mahapalika, Agra) in the Civil Judges Court, Agra, inter alia, for the recovery of charge, for supplying electric energy in bulk being the amount of Rs. 5.43,386.56 together with interest thereon at the rate of 6 per cent. per annum and other costs.

3. The plaintiff-company after its undertaking was taken over by the U.P. State Electricity Board by purchase after the same was requisitioned by a letter dated the 4th of December, 1972, the company was paid a sum of Rs. 25,00,000 " as and on account" payment towards the purchase price. Thereafter, the company went into members' voluntary liquidation and the plaintiffs Nos. 2, 3 and 4, Saradindu Gupta, Mr. Alfray Geofray Matlay Twining and Anil Bandhu Bhattacharya, were appointed joint liquidators of the company for the purpose of winding up of the affairs and distributing the assets of the company with joint and several powers by a resolution dated the 16th of December, 1974, and

thereafter, the suit was filed against the Nagar Mahapalika, Agra & Ors., for the recovery of the said amount due to the company. It is stated that the suit was filed hurriedly to save limitation, otherwise the claim would have been barred and now the present application is made for transferring the said suit from the Civil Judge's Court, Agra, to this court having regard to the fact that the company being voluntarily wound up and is in liquidation and, therefore, u/s 446 read with Section 518 of the Companies Act, 1956, the present application is made for transferring the said suit to this court to be tried and also on the ground of balance of convenience set out in the petition.

4. Dr. Tapas Banerjee, appearing with Mr. Sibaji Sen, for the plaintiff-petitioner, drew my attention to Sections 446 and 518 of the Companies Act, 1956, and cited several decisions in *Indo-Allied Industries Ltd. Vs. Punjab National Bank Ltd.*, *Bharat Traders Ltd. v. 5. Sadhu Singh* [1968] 38 Comp Cas 537, 541, 542 (P & H), 22 BomLR 219, 221, *Re Campbell Coverings Ltd.* [1954] 1 All ER 222 : 24 Comp Cas 191 (Ch D), AIR 1936 322 (Privy Council) and submitted that there is no difference between voluntary winding up and winding up by court as in both cases the company is in liquidation and the company court has the jurisdiction in the matter of a company which has its registered office within the territorial jurisdiction of the court and if necessary, the court could pass appropriate orders to enable the liquidator to collect the assets of the company and authorise such proceeding and also bring the proceedings from other courts to the company court under whose jurisdiction the company is situated and try the same if it is satisfied that such proceeding is not vexatious and oppressive and there is a probability of success in such proceeding. Dr. Banerjee also placed the facts of this case before me, wherefrom it appears *prima facie* that the plaintiff-petitioner has a claim against the defendant-respondent for electricity charges and the suit has been duly filed in the Civil Judge's Court, Agra, for saving limitation from its claim being barred. Dr. Banerjee submitted that the court should also look into the balance of convenience as all the documents and papers relating to the company's claim are lying within the jurisdiction of this, court and for the ends of justice the order should be made as prayed for.

5. Mrs. U. B. Mukherjee, appearing for the respondent, submitted that Section 446 has no application to a members' voluntary winding up and in support of her proposition she cited a Single Bench decision of this court in *Eastern Coal Co. Ltd. Vs. Sunil Kumar Roy*, , where the question, whether a suit instituted by a company through the voluntary liquidator can be continued with leave u/s 446 of the Companies Act, 1956, or not, came up for consideration. Bijayesh Mukherji J., observed in the said paragraph that by the mere incorporation of Section 457 read with Section 512 of the Companies Act, 1956, it does not follow that leave for continuing a suit instituted before the operation of the winding-up is covered by Section 457, and Section 512 of the Companies Act, 1956, does not incorporate's. 446." Relying on the said decision, Mrs. Mukherjee submitted that the present application is not maintainable as Section 446 has no application to a voluntary winding-up. Mrs. Mukherjee, therefore, submitted that the application

should be dismissed and she also contended that the balance of convenience is in favour of the suit being tried at Agra as the respondent admittedly being the defendant in the suit has all its material evidence, both documentary and witnesses, in Agra and the balance of convenience is overwhelmingly in favour of the suit being tried at Agra.

6. Considering the matter very carefully I am of the view that the decision in *Eastern Coal Co. Ltd. Vs. Sunil Kumar Roy*, is not applicable to the present case; firstly, the facts are entirely different as in that case the suit was filed by the company before it went into voluntary liquidation and leave was asked for continuation of the suit under s, 446 read with Section 512 of the Companies Act, 1956. Secondly, Section 518 of the Companies Act, 1956, was not considered by the court as the same was not brought to the notice of the court and was not necessary to be considered. It is quite clear from Section 518(1)(b) that in a voluntary winding up the court having, jurisdiction over a company having its registered office within its jurisdiction, being the court defined under the Companies Act, has all the powers which the court might exercise as if the company were wound up by the court. Therefore, Section 446 read with Section 518(1)(b) of the Companies Act, 1956, empowers this court, being admittedly the court within the meaning of the Companies Act, to transfer the said suit from the Agra court to this court and dispose of u/s 446(3) of the Companies Act, 1956. The decision cited by Dr. Banerjee also supports such a view. Above all, after considering the facts of this case it is just and convenient that the suit should be transferred to this court and be disposed of expeditiously so that the liquidation proceeding may come to an end as early as possible and it will be highly inconvenient to get the suit heard at Agra expeditiously and it will be detrimental to the interest of the company, its shareholders and creditors. The suit relates to realisation of the dues of a company, prima facie an asset, and quite a substantial one.

7. Therefore, under these circumstances, in my view, the balance of convenience is entirely in favour of the suit being tried by this court apart from the statutory provisions u/s 446(3) read with Section 518(1)(b) of the Companies Act, 1956, containing a non obstante clause and an exclusive power to this court being conferred by the statute for getting the suit transferred and disposed of.

8. In the result, I am making the following order :

The suit being Miscellaneous Case No. 136 of 1975 (Agra Electric Supply Co. Ltd. (In voluntary liquidation) v. Nagar Mahapalika, Agra) pending before the Civil Court, Agra, be transferred to this court u/s 446(3) of the Companies Act, 1956, read with Section 518(1)(b) thereof. The Registrar of this court be directed to intimate this order to the Registrar of the Civil Court, Agra, for sending the records of the said suit to this court forthwith. The Registrar of this court to act on a signed copy of the minute on the plaintiff's undertaking to complete and file this order. The suit to appear in the list after the records are sent to this court by the Civil Court, Agra, for direction, four weeks hence.

9. Costs of this application will be costs in the suit.