

(1991) 10 MAD CK 0065
In the Madras High Court

B. Viswanathan, Prop. Meenakshi Paper Mart

APPELLANT

Vs

Seshasayee Paper and Board Limited

RESPONDENT

Date of Decision : 03-10-1991

Acts Referred:

Companies Act, 1956 — Section 433(e), 434

Citation : (1992) 1 MLJ 232

Hon'ble Judges : Lakshmanan, J

Bench : Division Bench

Judgement

Lakshmanan, J.—This is a petition under Sections 433(e) and (f), 434(1)(a) and 439(i) and (b) of the Companies Act 1956, for winding up of the respondent company. It is stated in the petition that the respondent is justly and duly indebted to the petitioner in a sum of Rs. 1,36,525 being the amount due on account of failure in supplying seven tonnes of paper inspite of receiving money in advance for ten tonnes, compensation of loss due to breach of contract and expenditure caused by the respondent to the petitioner. According to the petitioner, he approached the respondent for supply of ten tonnes of 10 kg. poster paper and paid an advance of Rs. 1,78,200 on 21.6.1989. The said money was paid by means of a demand draft drawn on Bank of Baroda, Vellore branch in favour of the respondent. It is the further case of the petitioner that the company supplied only three tonnes of paper and failed to supply the remaining seven tonnes. The value of three tonnes of paper is only Rs. 53,070 excluding tax. On account of the non-supply of seven tonnes of paper by the respondent, the petitioner could not fulfil his obligation towards his customer, one Royal Agencies, with whom the petitioner had entered into a contract for the supply of ten tonnes of paper. The petitioner states that he had incurred a loss of Rs. 10,395 due to the breach of contract committed by the respondent. A notice of demand was issued through an Advocate by the petitioner on 9.9.1989, for which the respondent sent an evasive reply. This notice was issued u/s 434 of the Companies Act. In the above circumstances, the petitioner prays for winding up of the respondent company.

2. The respondent has filed a counter affidavit, denying the claim of the petitioner that it is indebted in a sum of Rs. 1,36,525. According to the respondent, the demand draft for Rs. 1,78,200 dated 21.6.1989 was received by the respondent from its indenter M/s. Efficient Enterprises, who has given specific instructions to appropriate the amount covered by the demand draft towards the dues of the petitioner and supply of three tonnes of poster paper. Accordingly, the respondent carried out the instructions given by the indenter and supplied three tonnes of paper to M/s. Royal Agencies and appropriated the balance towards the dues of the petitioner. The respondent had denied knowledge of the contract said to have been entered into by the petitioner with M/s. Royal Agencies. It is the claim of the respondent that even after adjustment, a sum of Rs. 54,642 together with interest is outstanding in the account of the petitioner. M/s. Efficient Enterprises have filed O.S.No. 389 of 1989 in the court of the Sub-Judge, Sankari against the petitioner for the recovery of Rs. 54,642 in respect of the transaction in question. It is the case of the respondent that no notice was issued as envisaged by Section 432(1)(a) of the Companies Act, that the notice issued by the petitioner was addressed to the Managing Director and not to the company and that such notice was not addressed to the registered office of the Company. It is the specific case of the respondent that no amounts were due to the petitioner and the application has been filed for winding up with mala fide intentions.

3. The petitioner examined himself as P.W. 1 and the Accounts Officer of the respondent company has been examined as R.W. 1. Both the petitioner and the respondent have filed documents in support of their respective cases. I have heard Mr. Jayachandran, learned Counsel for the petitioner and Mr. A.L. Somayaji, learned senior counsel for the respondent.

4. Though the petition refers to Section 433(f) of the Companies Act, the learned Counsel for the petitioner confined his case only to Sub-Section (e) of Section 433 of the Companies Act, hereinafter referred to as the Act. Therefore the present petition is based on the ground that the respondent is unable to pay its debts. According to the respondent, there is a bona fide dispute about the debt.

5. It is a settled proposition of law that if the debt is bona fide disputed and if the defence is a substantial one, the Court will not wind up the company. In order to determine whether the debt is bona fide disputed or not, it is necessary to find out whether the dispute raised by the company is a real and substantial one or it is a mere cover or it is an empty dispute with a view to cover up its real inability. The Supreme Court in the case of Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Krishnaswami (1965) 35 Com. Case 456, has clearly laid down that an order of winding up will not be made, where a debt is bona fide disputed by the company and the Court is satisfied with the company's defence and the following ratio is very pertinent:

It is well-settled that a winding up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed by the company. A

petition presented ostensibly for winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatised as a scandalous abuse of the process of the Court.

If a debt is bona fide disputed there cannot be "neglect to pay" within the meaning of Section 434(1)(a) of the Companies Act, 1956. If there is not neglect, the deeming provision does not come into play, and the ground of winding up, namely, that the company is unable to pay its debts, is not substantiated.

Subsequently in *Bhalchandra Dharmajee Makaji v. Alcock, Ashdown & Co. Ltd.* (1972)42 Com. Case 190, the Bombay High Court reiterated its earlier view and had laid down in categorical terms that if the debt is bona fide disputed and if the defence is a substantial one, the Court will not wind up the Company. The court held thus:

After the amendment of Sections 397 and 398 of the Companies Act by Sections 10 and 11 of the Companies (Amendment) Act (LIII of 1963), it would appear that the affairs of the company have to be conducted not only in the best interest of its members for their profit but also in a manner which is not prejudicial to public interest. The element of public interest enters into the management of the companies after 1963. The modern Corporation has become the accepted instrument of social policy, because it affects a large part of the economic life of the community. It has become an instrument for the improvement of the economic standards of the people and for economic growth of the nation. Society depends for some of its needs on corporate enterprise. It has therefore an interest in its stability and efficiency as an economic institution. The element of public interest also arises from the responsibility for ensuring a minimum wage to the numerous employees in the corporate sector. It is necessary to see that people who put their labour and lives into a concern get fair wages, continuity of employment and a recognition of their right to their jobs where they have trained themselves to highly skilled and specialised work. In deciding whether the Court should wind up a company or change-its management the Court must take into consideration not only the interest of the shareholders and creditors but also public interest in the shape of the need of the community and the interest of the employees. This, in my opinion, is the requirement of Sections 397 and 398 of the Companies Act. This country has been spending vast sums of money in promoting new industries in public and private sectors in the interest of the economic progress of the country and improvement of living standards. In face of this it would appear to be improper to destroy a company which has worked for nearly 87 years and has acquired experience and expertise in manufacture and supply of structural and in boat building and ship repairing.

In *G. Loganayaki v. Moolangudi Chit Funds (P) Ltd.* (1979) 49 Com. Case 644, it has been held by Madras High Court (Ramaprasada Rao, J. (as he then was)) as follows:

It is fundamental that in order to sustain a case for winding up of an incorporated company on the ground that it is unable to pay its debts, the debt which is the substratum of the action either u/s 433(e) on its own or u/s 433(e) read with Section 434(1)(a) of the Act is not a disputed debt or a debt which could be found after an investigation and adjudication, on the claims made inter se between the so called creditor and the debtor company. Any such investigation which would involve the determination of the quantum and quality of the liability would certainly raise a reasonable presumption that it is a disputed debt. Once such a lingering doubt arises in the mind of the company court that the debt is not a sure debt but a debt which could only be ascertained and determined after an investigation into the facts and circumstances of the case, then, unless there is demonstrative mala fides on the part of the company concerned, the Company Court cannot undertake the examination as to the quantum of the liability or the nature of the indebtedness of the company in question to the claimant in a petition u/s 433(e) of the Act.

A similar view has also been taken by the Karnataka High Court in Kamadenu Enterprises v. Vivek Textile Mills (P) Ltd. (1984) 54 Com. Case 68, which is as follows:

The jurisdiction of the Court u/s 433 of the Companies Act, 1956, is not that of a Court which is essentially meant for settling money disputes between parties, but is to sub-serve the object of winding up of companies which have not paid their debts or which are unable to pay their debts. Therefore, the first pre-requisite must be to establish prima facie a debt against the respondent. But when a claim or debt is disputed, the proper forum for that is a civil Court. Where, therefore, admittedly there was a genuine dispute as to the liability of the respondent company to pay the difference between what has been admitted and what has been claimed, it would not be proper to decide the case in the summary proceedings u/s 433.

In this context, it is relevant to refer to the evidence of P.W.1 (the petitioner herein). On 2.8.1991, the petitioner deposed to the following effect:

Q. What is your prayer in this petition?

A. No amount is due by me to the Mill. They have taken my money and cheating me. In the year 1986 they have stated that I owe a sum of Rs. 21,000, now they say that I owe Rs. 53,000. They have not credited the amount of Rs. 1,78,200. They say that I owe Rs. 53,000 to them. Even though I paid money for supply of goods, I did not receive the goods. So, for getting back money I filed this petition.

Q. The draft for Rs. 1,78,200 you handed over to Efficient Enterprises?

A. The draft was taken in favour of the Mill and handed over to the Efficient Enterprises.

Q. Why did you hand over to Efficient Enterprises?

A. Because the goods supplied through Efficient Enterprises.

Q. Efficient Enterprises have filed a suit against you before the Sub Court, Sangagiri, claiming Rs. 54,642 with interest and that is pending in respect of the very transaction?

A. Yes. It is a false suit.

In my opinion, the principles laid down in Kamadenu Enterprises case (1984)54 Com. Case 68, and in G. Loganayaki's case (1979)49 Com. Case 644, squarely apply to the present case. From the evidence of P.W.1 (the petitioner herein), as extracted above, it is seen that the petitioner has approached this Court and filed the company petition only to get back his money. As rightly held in Kamadenu Enterprises case (1984) 54 Com. Case 68, the jurisdiction of this Court u/s 433 of the Companies Act, 1956 is not that of a Court which is essentially meant for settling money disputes between parties, but is to sub-serve the object of winding up of companies which have not paid their debts or which are unable to pay their debts. In my opinion, the petitioner has not satisfied the pre-requisite to establish a prima facie case against the respondent company. As rightly contended by Mr. A.L. Somayaji, learned senior Advocate, when a claim or debt is disputed, the proper forum for that is a civil Court. In my opinion, admittedly there was a genuine dispute as to the liability of the respondent company to pay the amounts claimed in this Company Petition. Under these circumstances, I am of the view that it would not be proper for me to decide the case in the summary proceedings u/s 433 of the Act.

6. In the light of the above rulings, it has to be considered whether the debt is bona fide disputed by the respondent or not.

7. It is undisputed that the petitioner had handed over the draft for Rs. 1,78,200 to M/s. Efficient Enterprises, No. 74, Raja Street, Pallipalay am, Erode, who is one of the indentors of the respondent. P.W.1 had also admitted that the abovementioned draft was handed over to the indentor because the goods are to be supplied through the indentor. Admittedly no order has been placed by the petitioner on the respondent. On the contrary the indentor has placed an indent on the respondent. It is mentioned in Ex.R-1, the letter dated 22.6.1989 that the draft for Rs. 1,78,200 had been enclosed towards the dues of the petitioner. It is also mentioned in the said letter that the petitioner wants to continue to do business with the respondent and with that view, he requests for the supply of poster paper. It is clearly mentioned in the said letter, Ex.R-1 that after appropriating the value of three tonnes of paper from and out of the draft money, the balance should be adjusted towards the dues of the petitioner. The indentor has also undertaken to realise the money from the petitioner in case any amount is due from the petitioner after such adjustment. The indent placed by the indentor is for the supply of three tonnes of poster paper to the petitioner. An invoice has been raised by the respondent on the basis of the indent placed by Efficient Enterprises. In fact, in the notice, dated 14.8.1989 (Ex.P-7) issued

by the petitioner through his Lawyer the petitioner had clearly admitted that he entered into a contract with M/s. Efficient Enterprises (Indentor) for the supply of ten tonnes of poster paper. Therefore, it is clear that the petitioner has not placed any order on the company for the supply of paper and has not sent the demand draft directly. The entire transaction has been done by the petitioner with M/s. Efficient Enterprises. The respondent acted only in accordance with the instructions given by the said M/s. Efficient Enterprises. Admittedly, according to the petitioner the contract for supply of poster paper was entered only with M/s. Efficient Enterprises. In the above circumstances, there is no privity of contract between the petitioner and the respondent. Unless the legal relationship between the petitioner and M/s. Efficient Enterprises on the one hand and between the respondent and M/s. Efficient Enterprises on the other hand is determined, the debt claimed to be due cannot be determined. Ex.R-2 is an indent bearing No. 685, dated 22.6.1989. The name of the customer, M/s. Meenakshi Paper Mart, Chunnaambukara Street, Vellore and the name of the indentor M/s. Efficient Enterprises have been clearly mentioned. The indent was placed by M/s. Efficient Enterprises, Pallipalayam, Erode-6 to M/s. Seshasayee Paper and Boards Limited, Pallipalayam, Erode, the respondent herein. Based on this indent, supply has been made by-the respondent company to the petitioner, viz, M/s. Meenakshi Paper Mart. The said indent has also been signed by the indentor, M/s. Efficient Enterprises.

Ex.R-3 is the invoice raised by the respondent Company. The customer code, name of the indentor and all the other particulars have been mentioned in the invoice. In the column "Case in need" the name of the indentor, Efficient Enterprises has been shown.

Ex.R-5 is the suit filed by Efficient Enterprises, represented by its partner L. Lakshmanan (indentor) against M/s. Meenakshi Paper Mart, represented by Proprietor B. Viswanathan (the petitioner herein) and another on the file of the Subordinate Judge, Sankari. It is mentioned in the plaint that the defendant Meenakshi Paper Mart has been receiving supplies from the Seshasayee Paper and Boards Limited by placing indents through the plaintiff M/s. Efficient Enterprises and in respect of such supply, there was an outstanding due from the defendants to the turn of Rs. 1,32,076 and that the said sum is lawfully due from the defendants for a long time and that the defendant has failed and neglected to pay the same. In paragraph V of the plaint, it is mentioned as follows:

V. However during the month of June, 1989 the 2nd defendant for himself and as proprietor of the 1st defendant Vilasam requested the plaintiff to resume business relationship. The plaintiff asked and mentioned to the defendant to pay the entire amount outstanding and due from the defendant and also stated that if only the defendants repay the amounts, the plaintiff would resume the business transactions. The second defendant for himself and on behalf of the first defendant agreed and issued at Pallipalayam a demand draft for a sum of Rs. 1,78,200 and wanted three tonnes of paper for the balance after appropriating

the outstanding due by him. Accordingly the plaintiff requested M/s. Seshasayee Paper and Boards Limited to adjust and appropriate a sum of Rs. 1,23,878 from out of the amount due from the defendants and also to supply three tonnes of M.G. Plain poster white paper. Accordingly, as the defendants instructed 305 reams of M.G. Plain Poster Paper (white) was supplied to Rani Printers, Madras-600007 as per invoice on 24.6.1989. The said supply was made on the instructions of the defendants. The value of the said supply is Rs. 54,322 and the same was deducted from out of the draft amount of Rs. 1,78,200 and hence Rs. 1,23,878 only was appropriated towards the outstanding due from the defendant lawfully. Thus there is still a balance of Rs. 8,198.00 p. from the defendant.

As stated above, Ex.P-7 is a notice issued by the petitioner to the Managing Director, Seshasayee Paper and Boards Limited, Erode. Ex.P-7 notice, dated 14.8.1989 was signed by the petitioner through his Lawyer. The name of the indenter has been specifically mentioned in the said notice. In paragraphs 2 and 3 of the notice, it is slated as follows:

My client states that he is in paper trade for the past ten years and he used to trade with your mill often through, one M/s. Efficient Enterprises, Pallipalayam, Erode who is one of your indentors/stockists.

My client states that when he met your indenter/ stockists M/s. Efficient Enterprises in person two months ago they both entered into a contract for the sale of ten tonnes (1000 reams) of 10 kg. Poster Paper at the rate of Rs. 17,400 per ton.

My client further states that on the basis of this contract entered into with your indenter/stockist my client took a demand draft for Rs. 1,78,200 (Rupees one lakh seventy eight thousand and two hundred only) 1,74,000 towards cost of 1000 reams of paper and 4,200 rupees for tax and surcharge totally for Rs. 1,78,200 on 21.6.1989 in the Bank of Baroda in favour of your Mill.

Ex.P-8 is the reply notice dated 2.9.1989 sent by M/s. Aiyar and Dolia to the counsel for the petitioner, Mr. G. Jayachandran.

Ex.P-9 is the notice, dated 9.9.1989 sent by the petitioner to the Managing Director, Seshasayee Paper and Boards Limited, demanding payment of Rs. 1,36,425, failing which it is stated that the petitioner will approach the company Court for winding up u/s 431(e) of the Act. It is thus seen that the debt in question requires a detailed investigation and hence the parties have to be directed to adjudicate their claims only before the civil forum.

8. It is also well settled that in a summary proceedings like winding up, a detailed investigation and adjudication of the dispute should be avoided. This principle has been laid down in the case reported in (1979) 49 Com. Case 644, as extracted above.

9. It is also equally well settled that winding up petition is not a legitimate means of seeking to enforce payment of a debt which is bona fide disputed by a

Company. A petition presented ostensibly for a winding up order but really to exercise pressure will have to be dismissed. This principle has also been laid down in (1965) 35 Com. Cases 45, as extracted above.

10. Therefore, I am of the opinion that the debt is bona fide disputed by the respondent and therefore, it is not a fit case for ordering winding up of the respondent company.

11. The notice dated 9.9.1989 marked as Ex.P-9, issued by the petitioner through his Lawyer is addressed to the Managing Director of the respondent Company. The following is the address given in the said notice:

To

The Managing Director, Seshasayee Paper and Boards Limited, Erode 638 007.

In this context, it is useful to reproduce Section 434 of the Act, which is as under:

Section 434. Company when deemed unable to pay its debts; (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts and, in determining whether a company is unable to pay its debts and in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the Company.

Under Section 434 of the Act, the deemed inability to pay the debts will arise when a creditor to whom the company is indebted in a sum exceeding Rs. 500 has served on the company by causing it to be delivered at its registered office a demand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor. Unless the statutory notice is in conformity with the mandatory requirements of Section 434(1)(a) of the Act, the presumption of inability cannot be raised. In the present case, the notice is addressed only to the Managing Director and not the company. The registered office of the company is at Pallipalayam, Salem District as can be seen from the Postal Index Number Code of Delivery Post Offices in Tamil Nadu Circle, marked as Ex.R-6, the Pin Code Number of Pallipalayam is 638 006. The notice purporting to have been issued u/s 434 is not only one addressed to the Managing Director, but also the PIN Code Number given is 538007. Therefore the statutory (Ex.P-9) notice does not conform to the mandatory requirements of

Section 434(1)(a) of the Act. The consequence of the statutory notice being not in accordance with the mandatory requirements of Section 434 of the Act, is that the presumption contemplated under the said Section cannot be raised against the respondent. But that does not preclude the petitioner from still proving by other evidence that the company is unable to pay its debts. That appears to be the view taken in *Bukhtiarpur Bihar Light Railway Company Ltd. v. Union of India* (1954) 24 Com. Case 507, which is as follows:

The appellant/company which was formed for constructing and maintaining a railway established a railway. The railway line was connected with the East Indian Railway and there was interchange of coaching and goods traffic between the two railways. The Union of India representing the East Indian Railway served a notice of demand addressed to the Patna office of the Company on June 6, 1950 claiming the sum of Rs. 5,22,313 due as a result of interchange of coaching and goods traffic. The company replied giving reasons as to why it was not liable, in any event for the whole of the demand. Another notice dated June 30 addressed to the registered office of the company was served claiming payment of two sums of Rs. 5,23,203 p. and Rs. 61,530. On July 18, the Union of India made an application for winding up the company alleging that in spite of the two letters of demand no payment had been made; that the railway had been taken over by a local authority and that a sum of about Rs. 10 lakhs had been paid by that authority as compensation. Winding up was asked for on the grounds that the company was unable to pay its debts and that the substratum of the company was gone;

Held, (i) that the first notice was not a valid notice of demand inasmuch as it was not addressed to the company's registered office; and that because the interval between the second notice and the making of the winding up petition was less than three weeks there was no valid statutory demand.

and in *Tripura Administration v. Tripura State Bank* AIR 1959 Tri. 41, which is as follows:

A proper demand made in accordance with the provisions of Section 434(a) only gives the benefit of the presumption that arises under it, but if the demand is found to be invalid for any reason then it is still open to the creditor to fall back upon Section 434(c) and prove that the company cannot pay its debts AIR 1948 Cal. 335, and *Bukhtiarpur Bihar Light Railway Co. Ltd. Vs. Union of India (UOI)* and Another, Rel. on.

12. In the present case, there is no evidence at all to establish that the respondent company is unable to pay its debts. Hence, the present petition is also liable to be dismissed on the ground that the statutory notice issued by the petitioner does not meet the requirements of Section 434 of the Act.

13. It is settled principle of law that the relief of winding up is a discretionary relief and the Court has to find out whether winding up would be in the interest of justice and also public interest. The following principle has been laid down in

the case of Bhalchandra Dharmajee Makaji s case (1972) 42 Com. Case 190, as has been extracted above.

14. The decision reported in Nopany and Sons (P) Ltd. In re (1991) 70 Com. Case 262, can also be usefully applied to the facts of the present case, wherein the learned single Judge of Calcutta High Court held as under:

The basic requirement of the provisions of Section 434 of the Companies Act, 1956, is the existence of a debt due and payable by the company to the petitioning creditor. Where the petitioning creditor establishes such a claim, though prima facie the question of the maintainability of the petition under the provisions of the Companies Act for winding up of the company cannot be doubted. The burden lies on the company to satisfy the Court as to the existence of a bona fide dispute in regard to the matter in issue and where a debt is bona fide disputed, the proper course would be for the law Courts not to proceed with the winding up proceedings further and give leave to the petitioning creditor to file a suit for the adjudication of the disputes in the matter in issue. Where a doubt is disputed, it is the duty of the Court to go into the question of the genuineness or otherwise of the dispute and, in the event the Court is primarily satisfied as regards its genuineness and bona fides, the Court ought not itself to embark upon a detailed adjudication of the disputes between the parties. Conversely, however, in the event the dispute raised by the company does not seem to be genuine, it is a plain exercise of the judicial power to direct winding up of the company.

In the present case the respondent has discharged its burden and satisfied the Court as to the existence of a bona fide dispute in regard to the matter in issue. Under these circumstances, the proper course in my opinion would for the law Courts not to (sic) with the winding up proceedings fur-(sic) give leave to the petitioning creditor to file a suit for the adjudication of disputes in the matter in issue. Hence, it is open to the petitioning creditor to file a suit for the adjudication of disputes in the matter in issue, if he so desires. Learned Counsel for the petitioner invited my attention to the decision in Ofu Lynx Ltd. v. Simon Carves India Ltd. 41 Com. Cases 174. The passage extracted hereunder has been relied on for the purpose of this case by the learned Counsel for the petitioner:

Whether the disputes which are raised or sought to be raised are bona fide or not and whether the same have been manufactured for the purpose of resisting a case for winding up of the company will have to be considered and determined by the Court on the basis of the facts of each particular case and on the basis of the materials that may be available to the Court at the time the Court is called upon to decide the question.

There is no dispute with regard to the proposition laid down by the Calcutta High Court. But, however as rightly held by the Calcutta High Court each case will have to be considered and determined by the Court on the basis of the facts of

each particular case and on the basis of the materials that may be available to the court, at the time, the Court is called upon to decide the question. As already observed by me that on the facts and circumstances of the present case, there is a bona fide dispute with regard to the debt, which forms part of the subject matter of the winding up proceedings. This court will not entertain any winding up petition, on the basis of the said disputed debt and hence, the only option left to this Court is to grant leave to the parties to resolve the disputes in appropriate proceedings in the appropriate forum. Mr. Jayachandhran, learned Counsel for the petitioner has next relied on the recent Judgment of Punjab and Haryana High Court reported in Northern India Iron and Steel Company Ltd. v. Haryana Ispat (P) Ltd. (1990) 68 Com. Case 42, for the purpose of showing that the respondent company has not produced the extracts from its ledgers, account books, balance sheets etc., As has been already observed by me, the respondent company has filed the necessary documents in this Court and it is not for this Court to express any opinion at this stage, when both parties are granted leave to agitate their respective claims before the appropriate forum.

15. Admittedly in the present case the respondent is a public limited company and the paid up capital of the company is Rs. 7.75 crores. Nineteen per cent of the share holdings are held by T.I.I.C. Limited and 39% is held by public financial institutions, nationalised Insurance Companies and its subsidiaries. The company is paying about Rs. 30 lakhs per month by way of excise duty to the Central Government. It is also paying about Rs. 25 lakhs as Sales Tax to the Government of Tamil Nadu and is paying about Rs. 61 lakhs towards Electricity Charges to the Tamil Nadu Electricity Board. The monthly turnover of the company is about Rs. 6.5. crores. The total number of workers in the Mill are about 2100 in number, and the monthly wage bill is about Rs. 70 lakhs. During the year 1990, the company has paid a sum of Rs. 1.69 crores to the financial institutions and Banks towards principal and interest. The working results of the company for the year ending 31st March, 1991 discloses that the Company has made a profit of Rs. 1.57 crores after providing for depreciation and taxes. Having regard to the above uncontroverted facts it would not in any event in the interest of justice or public interest to wind up the respondent company.

16. Hence, this Company Petition is dismissed. However, it is open to the petitioner to file a suit at the appropriate forum for appropriate relief, if he so desires. No costs.