
(1994) 11 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Company Petition No. 4 of 1991

Bhagwan Das Gopal Prasad

APPELLANT

Vs

Ashoka Oil Products Pvt. Ltd.

RESPONDENT

Date of Decision : 11-11-1994

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (1995) 82 CompCas 299

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : B.C. Meena, official liquidator in person, S.R. Joshi, for the Appellant; Paras Kuhad, for the Respondent

Judgement

V.K. Singhal, J.—This petition has been filed by Bhagwan Das Gopal Prasad u/s 433(e) of the Companies Act, 1956, on March 13, 1991, alleging that a sum of Rs. 5,75,000 is payable to the petitioner by the company, Ashoka Oil Products Pvt. Ltd. It is stated in the petition that a notice dated February 7, 1991, was served on the company at its registered office by hand, but the company has failed and neglected to pay the debt. In the reply dated March 4, 1991, the company has shown its inability to pay the debt. On March 15, 1991, notice to show cause as to why this company petition may not be admitted/advertised was directed to be sent. On April 12, 1991, the petitioner was directed to accompany the official liquidator and identify the property of the company which has not yet been transferred so that the official liquidator may take possession of the property. On May 17, 1991, a pointed query was put to Mr. Joshi that in view of the admitted facts that all the assets of the respondents had been sold under registered sale deeds even before he moved an application for winding up of the company and even possession had been delivered, whether the official liquidator of this court has any power to make any orders in respect of that property or not. The official liquidator as well as Mr. Joshi were given time to satisfy the court. On July 5, 1991, the official liquidator informed that he has taken the instructions of his advocate and will file an application for taking action. On the

application filed by the official liquidator notices were issued to the 76 persons who have been arrayed as non-petitioners in this company petition on August 16, 1991. The copy of the petition was not provided to Mr. Kuhad on December 20, 1991, and on December 20, 1991, five days' time was given to Mr. Kuhad to file the reply. Mr. Joshi was directed to provide the copy to Mr. Kuhad. A last opportunity was sought to file the reply by Ms. G. Rathore on February 28, 1992, and on September 18, 1992, Mr. Kuhad pleaded no instruction on behalf of non-petitioners Nos. 4 to 76. The court had taken into consideration the submission of Mr. S.R. Joshi that the property has been illegally transferred to respondents Nos. 4 to 76 in Application No. 36 of 1991. The reply was not filed and a prayer was made that the property be taken in possession by the provisional official liquidator so that it may not be transferred and sold hereinafter. Shri Meena was authorised to take possession of the factory of Ashoka Oil Products Pvt. Ltd. situated at Kherli, District Alwar, and seal the same. The Superintendent of Police, Alwar, was directed to provide sufficient police force and assistance to Shri Meena to enable him to execute the order of this court. The prayer of Mr. Joshi to publish the information regarding appointment of the provisional official liquidator in the daily newspaper Navbharat Times, Jaipur, was allowed.

2. Today, Mr. Kuhad appearing on behalf of the respondents submits that he has already filed the reply in Company Petition No. 36 of 1991 and from the reply it is evident that the said petition is filed with a prayer that the sale deeds dated December 5, 1990/December 3, 1990, be declared illegal, ineffective and void. In the reply, which has been submitted by Mr. Kuhad to this petition, it has been contended that at the service of notice the acknowledgment of liability obtained from Ashok Dalmia is a part of a conspiracy and in fact neither the notice was served nor the letter dated March 4, 1991, was sent by Ashoka Oil Products Pvt. Ltd. to Bhagwan Das Gopal Prasad. So far as the determination of Petition No. 36 of 1991 is concerned, I feel that it would be proper to consider it in due course and pass orders thereon. So far as Petition No. 4 of 1991 is concerned, I do not consider that the contention raised by Mr. Kuhad in Petition No. 36 of 1991 would be considered. The service of the notice has been effected by this court and in spite of the services, none has appeared on behalf of the company. Even for the sake of argument, it is considered that the petitioner and the company are in collusion, persons like respondents Nos. 4 to 76 in Application No. 36 of 1991 have no locus standi to say in this petition that neither there is any valid debt or the notice has not been served on the company or there is no acknowledgment of debt by the company. It is for the company to allege that any amount which has been claimed by a creditor is in fact not payable or a disputed one. No one appeared on behalf of the company and, therefore, there is no option but to admit the petition. The provisional official liquidator has already been appointed. The petition be advertised in two newspapers, Navbharat Times (Hindi) and Hindustan Times (English). The petition may also be sent for publication in the Official Gazette.

3. The petition stands disposed of in accordance with the observations made

above.