(1998) 11 AHC CK 0072

In the Allahabad High Court

Case No : Petition No, 30 of 1997

Brushware and Company Ltd. APPELLANT

Vs

Agarwal Bristles Corporation Company RESPONDENT

Date of Decision : 02-11-1998

Acts Referred:

Companies Act, 1956 — Section 433(e)(f), 434(1)(a)

Citation : (1998) 11 AHC CK 0072

Hon'ble Judges : A.K.Banerji, J

Final Decision : Dismissed

Judgement

A. K. Banerji J.

1. By means of this company petition filed under Section 433 (e) and (1) of the Companies Act, 1956 (the Act in short) the petitioner M/s. Agarwal Bristles Corporation (Petitioner in short) has sought the windingup of the company M/s. Brjushware & Company Limited (Respondentcompany), on the ground that the said respondent is indebted to the petitioner and has not paid its dues despite tie service of statutory notice, hence, it will be deemed to be unable to pay its debts and, therefore, woundup.

2. The case of the petitioner in brief is that it had been supplying bristles to the respondentcompany between the period 1986 to 1995 on credit basis. Out of the supplied made for the amount of Rs. 5,48,303.27 paise an amount of Rs. 3,87,786.52 poisoning bills but then 1,60,516..75 paise very paid against rune was a balance of Rs. which the respondent Rajesh did not pay despite demands. Consequently, the petitioner sent a notice of demand dated 9111996. Despite the same, the respondent failed to pay the amount along with interest hence], it failed and neglected to pay its dues.

3. On notice toeing issued, the respondentcompany has put in appearance and has filed a counteri affidavit in which it has been inter alia, denied that the respondent is indebted to the petitioner. It was further stated that the amount

demanded under the notice was n0t payable besides the demand was also birred by time.

4. I have heard the learned counsel for the parties.

5. A preliminary objection was raised by Sri J.N. Tewari, learned senior counsel appearing for the respondentcompany that the petition was not maintainable as the notice allegedly served on the respondent was not a notice under Section 434 (l)(a) of the Act but appeared to be a notice under Section 80, C.P.C., demanding a sum of money failing which the respondent was threatened with a Suit. In the alternative, it was also contended that in any view of the matter, the petitioner could not claim any amount from the respondent as the same was time barred.

6. The first submission made by the learned counsel for the respondent is not without force. The copy of the notice dated 9 111996 addressed to the respondentcompany has been annexed as Annexure1 to the company petition. From the perusal of the same it would be evident that the petitioner had claimed Rs. 1,60,516.27 paise with interest @ 18 per cent per annum from the respondent and had mentioned that in case the respondent failed to pay this amount then a Suit would be filed against them for a decree for the said amount along with interest and the respondent shall also be liable for the cost of the Suit. In the last paragraph of the notice, it has been mentioned that if the amount is not paid after the expiry of 60 days of the service of notice, suitable legal action will be taken against the respondent. A copy of the said notice was also forwarded to the Secretary, Ministry of Textiles, Government of India, New Delhi, for information and necessary action. Sri Tandon, learned counsel for the petitioner has contended that as the petitioner had demanded a specified sum of money and had indicated that suitable legal action will be taken in case the same is not paid within 60 days, this can in effect be treated to be a notice under Section 434 of the Act. He has further contended that just because a period of two months has been given for making payment of the. amount instead of 2.1 days, this would not make the notice invalid. On the other hand, the learned counsel for the respondent has contended that in paragraphs 6 and 7 of the said notice, the petitioner has clearly indicated that it would file a Suit in case the money is not paid back with interest. In the last paragraph of the notice, the payment was required to be made after the expiry of 60 days as the company was taken over by the Government of India. Consequently, as per the notice under Section 80, C.P.C., two months period was given to the respondent before filing the Suit. Such a notice, learned counsel contends could not be treated to be a notice umer Section 434(1)(a) of the Act for winding up the company.

7. I have carefully considered the respective submissions made by the learned counsel for the parties. Section 434(l)(a) of the Act lays down in effect that if a company owes a sum exceeding Rs. 500 and does not pay the same despite the service of a notice sent by registered post or otherwise requiring the company to pay the said sum and if the company neglects to pay the same for three weeks

thereafter it will be deemed that the said company is unable to pay its debts. It is wellsettled that such a notice in which the consequences are deemed to follow will have to be strictly construed with. From the copy of the notice which is on record it is evident that the petitioner had specifically stated therein that if the amount is not paid a Suit will be filed claiming a decree for the said amount. The real indication of the petitioner which could be gathered from the notice, therefore, is that the Suit was in contemplation of the petitioner rather than a windingup petition before this Court. Consequently, if the respondentcompany was under the impression that in case the demand was not met a Suit would be filed against them which would be contested and, consequently did not give any reply to the saic1 notice. It was well within its rights to contend that valid notice under Section 434(1 (a) of the Act was not served upon them, consequently, the windingup petition was not maintainable. It is true that it is not necessary that a notice should specifically mention that the same was under Section 434(l)(a) of the Act. However, as held by this Court in the case of Paramjit Lal Badhwar v. Prem Spg. and Mills Ltd., (1986) 60 Com. Cases 120, that there should be some indication that in the event of noncompliance the creditor will take steps to apply for winding up. As already noticed above, there is no such indication in the notice. Consequently, this Court is of the view that the notice which the petitioner is alleging as the statutory notice was not a valid one as it does not comply with the provisions of Section 434(l)(a) of the Act and, therefore, the windingup petition is not maintainable as the same could not be filed without a valid notice under Section 434(l)(a)of the Act.

8. Consequently in view of the above discussions, this company petition fails and is hereby dismissed. However, it is made clear that the Court has not passed any orders on the merits of the claim and it shall be open to the petitioner, if so advised, either to file a fresh petition or to take appropriate legal proceedings against the respondent before the civil Court in case the claim is not barred by time.

