
(1999) 11 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 144 of 1998 and Company Application No's. 460 and 529-A of 1999

Ceat Financial Services Ltd.

APPELLANT

Vs

Haryana Suraj Maltings Limited

RESPONDENT

Date of Decision : 16-11-1999

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (1999) 11 P&H CK 0068

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : Deepak Dhingra and P.S. Saini, Kamal Sehgal, for the Appellant; S.S. Behl, for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—Ceat Financial Services Limited (hereinafter described as "the petitioner-company") has filed the present petition u/s 433(e) read with Sections 434 and 439 of the Companies Act, 1956 (for short "the Act") against the Haryana Suraj Makings Limited (hereinafter described as "the respondent-company").

2. It has been asserted that in the month of August, 1995, the respondent-company approached the petitioner-company and represented that it was in need of a vapour absorption system. It expressed its desire to take the same on hire-purchase. The respondent-company further represented to the petitioner-company that it was a financially sound company and would be able to meet its commitments devolving upon it under the arrangement that would be entered into. Both the parties agreed to the terms and conditions of the hire-purchase facility and entered into a hire-purchase agreement on September 14, 1995. Shri Mukesh Aggarwal executed a personal guarantee in favour of the petitioner-company. An amount of Rs. 27 lakhs was disbursed to Thermax Limited for supply of the aforesaid machine. It was duly supplied to the respondent-

company. The tenure of the hire-purchase agreement was for a period of 36 months. The respondent-company was liable to pay hire charges in consideration of the said equipment/machine. The respondent-company was liable to pay a sum of Rs. 23,50,248 in 12 quarterly instalments of Rs. 1,95,854 each. The respondent-company was liable to pay a further a sum of Rs. 13,82,496 in 12 quarterly instalments of Rs. 1,15,208 each commencing from September 22, 1995. The title of the machine/equipment was to vest with the petitioner-company during the term of hire. The respondent-company defaulted in the payments. Certain cheques were issued by the respondent-company which were dishonoured because of insufficiency of funds. The respondent-company has been assuring the petitioner-company that the outstanding amounts would be cleared shortly. On March 31, 1998, the respondent-company was in default of hire charges to the tune of Rs. 5,06,196 and had failed to pay the same. It requested the petitioner-company to convert the quarterly instalments into monthly instalments. On the representation of the respondent-company, the petitioner-company agreed to give another chance to the respondent-company and agreed to reschedule the hire instalment payment schedule. A supplementary agreement was executed on April 3, 1997. The respondent-company again defaulted in the payment of hire instalments and continued to enjoy the use of the equipment. The petitioner-company served a legal notice and demanded the balance amount of Rs. 22,13,244. The same had not been paid. Presently, it was stated that the respondent-company is indebted to the petitioner-company for a sum of Rs. 25,10,505 under the aforesaid hire-purchase agreement. The factory of the respondent-company had been taken over by the Haryana State Industrial Corporation Limited. It came out with a public notice offering for sale the unit of the respondent-company including the machinery given on hire-purchase. The petitioner-company filed a civil suit before the Delhi High Court. The Delhi High Court restrained the Haryana State Industrial Corporation Limited from selling the machinery/equipment. On these broad facts, the present petition for winding up of the respondent-company was filed.

3. In the reply filed by the respondent-company, it was admitted that the petitioner-company had already filed a civil suit in the Delhi High Court and obtained a stay regarding the transfer of the disputed machinery. The petitioner-company was stated to be harassing the respondent-company unnecessarily. It has been pointed out that the machines could not be used even for a single day. Even the respondent-company has also invested certain amount on the machines. The existence of the hire-purchase agreement, however, has not been disputed. It was admitted the respondent-company executed a hire-purchase agreement and the petitioner-company has disbursed Rs. 27 lakhs to the respondent-company. The amount became due because of the prohibition policy in the State.

4. A joint application (C. A. No. 529A of 1999) was filed by the parties. Therein it was pleaded that the respondent-company acknowledges and concedes the entire claims of the petitioner-company amounting to Rs. 30,04,624 which

comprises Rs. 25,10,505 as claimed in the company petition and Rs. 5,36,919 towards interest, delayed payment charges etc. They agreed that the respondent-company shall make to the petitioner-company the payment as per the schedule which has been appended with the application. Subject to complying with the schedule of payment, permission has been given to the respondent-company to advertise, negotiate and sell the vapour absorption system which is the subject-matter of the hire-purchase agreement under written prior communication to the petitioner-company. It will be the discretion of the petitioner-company to participate in the negotiation. The petitioner-company was allowed to have a first charge on the machinery till the entire amount in terms of the compromise is paid.

5. At that stage, an application (C. A. No. 460 of 1999) was filed by the Har-yana Financial Corporation (for short "the Corporation"). It wanted that the Corporation should be impleaded as a party. It was asserted that it had disbursed a total amount of Rs. 20 lakhs as loan to the respondent-company. The Corporation has to recover total amount of Rs. 18,40,643 with further interest. The Corporation is a secured creditor of the respondent-company and can stand outside its winding up and operate its security by taking possession of the properties. It has been pointed out that a settlement had been arrived at between the parties whereby they propose to sell the vapour absorption system lithium bromide. The respondent-company is stated to have hypothecated the present and the future assets of the company. The said machinery was described to be the future asset of the company. No permission of the Corporation has been taken. It is, thus, contended that the machinery cannot be allowed to be sold and the Corporation should be arrayed as a party.

6. Reply even was filed by the Corporation to the joint application filed by the parties. It was pointed out that it is a collusive compromise. It pleaded ignorance of any agreement of hire-purchase entered into between the parties.

7. The concept of hire-purchase is well known. At the outset, reference with advantage can well be made to the decision of the Supreme Court in the case of K.L. Johar and Co. Vs. The Deputy Commercial Tax Officer, Coimbatore III, , wherein it was held as under (p. 224) :

"The essence of a sale is that the property is transferred from the seller to the buyer for a price, whether paid at once or paid later in instalments. On the other hand, a hire-purchase agreement, as its very name implies has two aspects. There is first an aspect of bailment of the goods subjected to the hire-purchase agreement, and there is next an element of sale which fructifies when the option to purchase, which is usually a term of hire-purchase agreements, is exercised by the intending purchaser. Thus, the intending purchaser is known as the hirer so long as the option to purchase is not exercised, and the essence of a hire-purchase agreement properly so called is that the property in the goods does not pass at the time of the agreement but remains in the intending seller, and only passes later when the option is exercised by the intending purchaser. The

distinguishing feature of a typical hire-purchase agreement, therefore, is that the property does not pass when the agreement is made but only passes when the option is finally exercised after complying with all the terms of the agreement."

8. In other words, so long as the amount is not paid or there is intention to the contrary, ownership should vest with the person who has purchased the property and has given it on hire. At this stage, for the purposes of the present order, when the amount of instalments, admittedly, has not been paid, the property still must be taken to be of the petitioner-company.

9. On behalf of the Corporation, reliance was strongly placed on the fact that all present and future machinery would be hypothecated with the Corporation as per the terms of the loan advanced by the Corporation. In this regard, reference was made to paragraph 3.1 of the terms of the loan which read as under :

"Security for the loans.--(A) The loan together with all interest, additional interest, commitment charges, premia on prepayment or on redemption, costs, expenses and other monies whatsoever stipulated in this agreement shall be secured by :

(a) a first mortgage on pari pasu basis with HSIDC Ltd. and charge in favour of the lender in a form satisfactory to the lender of the borrower's immovable properties both present and future ; and

(b) a first charge to be shared on pari pasu basis with HSIDC Ltd. by way of hypothecation in favour of the lender of all the borrower's movable (save and except book debts) including movables, machinery, machinery spares, tools and accessories, present and future, subject to prior charges created and/or to be created : --

(i) In favour of the borrower's bankers on the borrower's stocks of raw materials, semi-finished and finished goods, consumable stores and such other movables as may be agreed to by the lender for securing the borrowings for working capital requirements in the ordinary course of business ; and

(ii) The borrower shall make out a good and marketable title to its properties to the satisfaction of the lender and comply with all formalities as may be necessary or required for the said purpose."

10. The said terms would make it clear that it is only the property of the respondent-company, present and future, which would be hypothecated with the Corporation. It does not include the property of the petitioner-company. Therefore, it is obvious that the Corporation cannot be taken to be a necessary party in this regard. The application under Order 1, Rule 10 of the Code of Civil Procedure, therefore, must fail and is dismissed. The presence of the Corporation is not necessary to adjudicate the question in controversy as to whether winding up order should be passed or not.

11. Admittedly, the petitioner-company has filed a civil suit in the Delhi High

Court and the Delhi High Court had restrained the Haryana State Industrial Corporation Limited from parting with possession or creating any third party interest with respect to the said machinery. By virtue of the proposed agreement placed on the record, the respondent-company is being given the right to sell the property subject to the conditions that had been mentioned therein. Since a lis has already been created, it is directed that no sale of the said machinery shall take place without the permission of the Delhi High Court, Subject to the above-said condition, the present company petition is disposed of. Company Application No. 460 of 1999 filed by the Corporation is dismissed. Company Application No. 529A of 1999 is disposed of with a direction that the respondent-company shall pay the amount in terms of the agreement subject to the aforesaid. In case default occurs, the petitioner-company would be at liberty to seek revival of Company Petition No. 144 of 1998.