

(2001) 08 BOM CK 0037

In the Bombay High Court

Case No : Company Petition No. 188 of 2001

Dalmia Cement (Bharat) Ltd.

APPELLANT

Vs

Indian Seamless Steels and Alloys Ltd.

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Companies Act, 1956 — Section 433, 434

Citation : (2002) 112 CompCas 314

Hon'ble Judges : R.J. Kochar, J

Bench : Single Bench

Advocate : Pravin Samdani, instructed by Gagrath and Co, for the Appellant;
Shyam Divan and Ravindra Modgekar, instructed by Mulla and Mulla and C.B.C.,
for the Respondent

Final Decision : Dismissed

Judgement

R.J. Kochar, J.—The petitioner company has prayed for the order under Sections 433 and 434 of the Companies Act, 1956, to wind up the respondent company alleging failure on its part to pay off its debt which is said to be to the tune of Rs. 1,12,15,08 inclusive of interest on the principal amount of Rs. 92,18,693 as set out in the particulars of claim.

2. From the averments in the petition, the alleged debt appears to have arisen from the transactions between the parties in respect of the goods sold, supplied and delivered by the petitioner company to the respondent company. It appears that, initially, the total amount for the goods sold was Rs. 1,77,12,303, on the basis of the invoices. Subsequently, it appears that the respondent company had returned the material worth Rs. 79,00,589 for which the petitioner company issued a credit advice. It further appears that the respondent company made payment from time to time to the petitioners to the tune of Rs. 84,14,0121 reducing the balance to the tune of Rs. 92,18,693. To this amount, the petitioner company has added interest at the rate of 25% p.a. to the tune of Rs. 4,70,271 to which the petitioner company has further added interest alleging failure on the

part of the respondent company for delay in making payment. The petitioner company appears to have sent a debit note alleging failure to furnish the "C" Forms under the Central Sales-tax Act in respect of the sales and supplies made to the respondent company. The petitioner company has totalled up its entire claim to the tune of Rs. 1,20,75,041 and had sent a notice under Sections 433 and 434 of the Act calling upon the respondents to pay the aforesaid amount with interest.

3. The respondent company in reply to the said statutory notice by its letter dated 12 September, 2000, raised several disputes in respect of the claim of the petitioner company. The first dispute raised by the respondent company was in respect of the inferior quality and defect in the material supplied to the extent of Rs. 24,15,347. It is alleged that certain bills were erroneously raised by the petitioner company. The respondents had recorded its reconciliation of the petitioner's accounts with its own books and it is alleged that the material worth Rs. 2,51,977 was agreed to be supplied as free samples for trial purposes, and the same were erroneously billed as outstanding in the statement of account. It was also clarified that the purchase price for the supplies against the various purchase orders were subject to minimum guarantee line life even before purchase orders were placed as set out in the Annexure 8 of the purchase orders. It was also pointed out that the debit notes raised by the petitioner company for deduction towards short laden line life were not considered to the tune of Rs. 24,15,347. The respondent company brought down the claim of the petitioner to the tune of Rs. 92,98,282, from which amount, after deducting Rs. 26,67,787, the respondent company admitted the debt of Rs. 66,30,494. Lastly, the respondents proposed to pay off the debt in monthly installment of Rs. 10 lakhs each from September, 2000, onwards in addition to the payment of regular supplies, if any. Along with the aforesaid reply the respondents had also enclosed "C" Forms to the tune of Rs. 1,44,46,125. The petitioner's concurrence was requested for to the proposed payment plan suggested by the respondent company and had also requested to send its representative to thrash out the disputed points and collect the cheque of Rs. 10 lakhs. The petitioner company replied to the said letter by its letter dated 29 September, 2000, wherein the proposal to pay by installment appears to have been agreed upon coupled with a threat of an appropriate action of winding up petition and also a suit for recovery of the debt. The petitioners also added that there were no disputes and, therefore, there was no question of thrashing out the disputed points. The petitioners by their letter dated 19 October, 2000, questioned the case of the respondent company regarding the claim of short life of the previous supplies and raised certain contentions therein.

4. The respondent company filed its affidavit in reply to the petition filed by the petitioners. The respondent company has challenged various averments and statements made in the petition. It has also alleged [that] the motive of the petitioner company was [to use ?] pressure tactics to recover payment of the unjust amount claimed by the petitioner company. It has also pointed out that

the aforesaid petition was filed on 25 November, 2000, while on 8 February, 2001, the petitioner company filed a summary suit bearing No. 39 of 2001 in the Court of Civil Judge, Senior Division, at Pune, claiming a sum of Rs. 1,16,01,574. The said suit is pending consideration before the civil court at Pune. The respondent company has also made it very clear in the affidavit that its intentions are to make payments of the debt, but only the correct amount of the debt; and that it had offered to pay off the whole debt by installments of Rs. 10 lakhs per month. The petitioner company having accepted the proposed settlement by installment and after receiving the amounts, has filed not only the company petition, but has also filed a civil suit for recovery of the amounts which were inflated by the petitioner company. According to the respondent company, the claim was correctly stated by the respondent company in its correspondence with the petitioner company. The respondent has also alleged suppression of certain facts by the petitioner company. It has also alleged that there was mutual correspondence between the parties which has also not been disclosed. It is further disclosed by the affiant [respondent company ?] that after the payment of Rs. 10 lakhs on 19 May, 2001, the balance of the debt is reduced to Rs. 46,30,494 and has stated that nothing more than that was due to the petitioner company. The affiant [respondent company ?] has also stated in the affidavit several other facts in respect of the debit notes and questionable claim of interest and defective supply of goods, and also the non-payment of the cost of sample material. The respondent company has further stated that it is a going concern carrying on its business activities and is trying to reconstruct financially under the schemes proposed by various financial institutions and the said financial reconstruction package has been implemented from 31 May 1999. It has also specifically mentioned that the respondent company employs about 1,050 workers and the company has increased its turnover from Rs. 26,963 lakhs in the year ending 31 March, 2000, to Rs. 34,041 lakhs in the year ending 31 March, 2001. This increased has taken place in spite of recession in the market. The respondent company has firmly denied that the respondent company was unable to pay off its debt. The respondent has placed on record the installed capacity of the company to be 1,50,000 mt. of steel for the year ending 31 March, 1997, while it was 1,90,000 mt. at present. It has also given the sales figures which are as under:

4.1 It has emphatically asserted that the respondent company was commercially solvent and was capable of meeting its liabilities and debts. The respondent company has placed on record along with its affidavit several other material and relevant letters exchanged between the parties. The petitioner company has filed its rejoinder.

5. I have heard both the learned counsel for their respective parties. Both the learned counsel have made submissions in tune with their pleadings. Shri Samdani, the learned counsel for the petitioner, has vehemently submitted that the debt due to the petitioner company was as ascertained and liquidated amount on the basis of the terms and conditions of the supply of material under

various invoices, debit notes and credit notes. Shri Samdani has pointed out that a part of the claim is admitted by the respondent company, while the payment of interest was not disputed. In any case, the debt would exceed Rs. 500 and the respondents have not made payment after the statutory notice and, therefore, the petition deserves to be admitted. Shri Samdani has taken me through the petition as well as the several other documents. He has also submitted that filing of the civil suit was no bar for admission of the winding up petition. He has relied upon the following judgments in support of the contentions.

- (i) Seksaria Cotton Mills Ltd., In re (1969) 2 C LJ 155 : (1969) 39 CC 475 .
- (ii) Focus Advertising (P) Ltd., In re (1974) 44 C C 567.
- (iii) Fibrex Inc. v. A.B.K. Publications Ltd., (1999) 2 C LJ 31 : (1999) 97CC 947.
- (iv) Sree Lakshmi Silks v. Remanika Silks (P) Ltd., (1998) 4 C LJ 398 : (1998) 94 C C 440 .
- (v) Deepa Anant Bandekar (Smt.) v. Rajaram Bandekar (Sirigao) Mines (P) Ltd., (1992) 74 C C 42 .
- (vi) Suvarn Rajaram Bandekar v. Rajaram Bandekar (Sirigao) Mines (P) Ltd., (1997) 88 C C 673 .
- (vii) United Western Bank Ltd., In re (1978) 48 C C 378 (Bom).
- (viii) G. Claridge and Company Ltd. v. Nav Bharat Investments Ltd., (1977) 47 CC 428 .
- (ix) Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd., .
- (x) Pfizer Ltd. Vs. Usan Laboratories P. Ltd., .

5.1 Shri Diwan, the learned counsel for the respondents, has relied upon an order of this court in Company Petition No. 514 of 2000 passed on 27 April 2001.

6. According to me, the respondent company has raised a substantial dispute in respect of the amount of the debt claimed by the petitioner company. The dispute in respect of the payment of sample material, defective material, sales tax in the form of Form "C" and the agreement in respect of payment of interest are the major contentions which require to be considered amongst other points raised on behalf of the respondent company. The respondent company has placed the entire material on record in support on its contention that there is a genuine and bona fide dispute between the parties. It is clear that the respondent company has no desire to avoid the payment of the due debt of the petitioner company. It is further clear that the respondent company has shown its clear bona fides to make payment of the debt by proposing monthly installment of Rs. 10 lakhs, and by making that payment to the petitioner. From its contentions and from its conduct, it does not appear to me that there is any oblique or dishonest motive in the mind of the management of the respondent company to deny to make payment of the legitimate and correct amount of the

debt after reconciliation of the amounts. The respondent company has expressed its desire to make payment of the admitted amount and has further requested the petitioner company to sit across the table to thrash out the disputes. There is no use in taking an adamant stand as taken by the petitioner company that there were no disputes at all, and that the respondent company must bow to the dictates of the petitioner company to make payment of the amount claimed by the petitioner company without any grievance. The universally accepted principle in the commerce and trade world is that "errors and omissions are excepted (E.O.E.)". According to me, the petitioners ought to have discussed the points as offered by the respondent company. There is no doubt that the respondent company has been in financial difficulties, but, at the same time, it has recovered itself to meet the difficult situation with the help of the financial institutions. It must be borne in mind that had the respondent company been a commercially insolvent and economically unviable unit, the financial institutions would certainly not have come forward to help and salvage the respondent company. The financial institutions have considered it proper to help the respondent company in its rehabilitation scheme. The financial institutions have been satisfied with the economic viability of the potential of the respondent company. I, therefore, do not agree with the submissions of Shri Samdani, the learned counsel for the petitioner company, that the respondent company has become commercially insolvent, more particularly, because it has not agreed to make payment of the whole amount of debt of the petitioner company as dictated by the petitioner company in their statutory notice. It cannot, however, be said that merely because an entrepreneur or an industrialist faces some rough situation in the market, he has to be presumed to be commercially insolvent. In the fluctuating market, it is not surprising and is not something unusual that the businessmen face several difficulties. It is the spirit of the business which is to be considered. In the present case, the respondent company has withstood the rough weather and has come out successfully with the help of the financial institution. It has not refused to make payment of the debt to the petitioner company, though the correctness of the debt is disputed and that is the right of every debtor to question the correctness of the debt, demanded by the creditor. Neither in the petition nor in the submissions, there is any reference of other creditors of the respondent company who have filed any winding up petitions against the respondent company. Apart from making a bald statement that the respondent company has become commercially insolvent, there is no other material placed on record by the petitioner company to substantiate its contentions.

7. It will be very useful to reproduce the following observations of the learned Single Judge of this Court (Aggarwal, J.) in the case of G. Claridge and Co., (1977) 47 C C 428 (Bom) :

"Before proceeding to investigate into the matter, let me bear in mind some of the well-established principles on the point.

(i) 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. If the debt is not disputed on some substantial ground, the court may decide it on the petition and make the order.

(ii) If the 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 no neglect, the deeming provision does not come into play and the winding up on the ground that the company is unable to pay its debts -- is not substantiated:

(iii) Another consideration in order to determine whether the company is able to pay its debts or not is whether the company is able to meet its liabilities as and when they accrue due. Whether it is "commercially solvent" means that the company should be in a position to meet its liabilities as and when they arise.

(iv) No hard and fast rule can be laid down in inquiring into the question of a bona fide dispute with regard to any debt; whether there is a bona fide dispute or not will necessarily depend on the facts and circumstances of each particular case.

(v) Again, it is well settled that a detailed inquiry at the preliminary stage of admission should be avoided. All the same, the court has to consider the dispute raised by the company. This can be achieved by assessment and appreciation of the affidavit evidence before the court at the stage of the admission. It is for the limited purpose of arriving at a conclusion whether a bona fide serious and substantial dispute arises or not, that the court examines the matter. The court looks out for a prima facie case. If a petitioner makes out a prima facie case, then the court would exercise its discretion.

8. Applying the aforesaid test construed by the learned Judge to the facts and circumstances of the present case, I am of the opinion that there is neither inability on the part of the respondent company to pay the debt, nor is there negligence on its part to pay the debt of the petitioner company. I do not smell any ulterior motive in the case put forward by the respondent company. The case of the respondent company can be divided in two parts. One -- an admitted claim and its offer to pay the same by installments and, second, disputed claim coupled with its willingness to thrash out the disputes across the table. The respondent company has not totally denied to make payment even of the disputed amount, but it has offered to reconcile and thrash its case for the first time in its affidavit. At the threshold in its reply to the statutory notice, it has plainly put forward its admission as well as its dispute.

9. I have absolutely no doubt in my mind that the petitioner company has resorted to a winding up petition to coerce and pressurise the respondent company to make payment of its entire debt as per its calculations, and it has rejected the genuine, bona fide and businesslike offer made on behalf of the respondent company to sit across the table to thrash out the disputed point. It is now very well settled that the winding up petition is not a legitimate means to seek to enforce payment of a debt which is bona fide disputed by the company.

In my opinion, the respondent company has bona fide disputed the debt of the petitioner company. It has not put forward any frivolous or flimsy ground to deny the debt as a whole. The respondent company has offered to pay the part of the debt as admitted and has offered to thrash out the points of disputes which do not necessarily mean that the respondent company would never pay, if the petitioner company succeeds to satisfy the respondent company on the points of disputes. As has been rightly held by the learned Single Judge in the case of *Claridge, supra*, at this preliminary stage of admission, I am not called upon to make any detailed enquiry in the disputes. In fact, the aforesaid judgment of the learned Single Judge helps the respondents rather than petitioners. Similarly, the judgment of the Supreme Court in the case of *Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd.*, , also helps the respondents. The principles which are culled out in the head note of the said judgment are worth nothing.

"The rules for winding up on a creditor's petition are : if there is a bona fide dispute about a debt, and the defence is a substantial one, the court would not order winding up. The defence of the company should be in good faith and one of substance. If the defence is likely to succeed on a point of law, and the company adduced a prima facie proof of the facts on which the defence depends, no order of winding up would be made by the court. Further, u/s 557 of the Companies Act, 1956, in all matters relating to winding up of a company the court may ascertain the wishes of the creditors. If, for some good reason, the creditors object to a winding up order, the court, in its discretion, may refuse to pass such an order. Also, the winding up order will not be made on a creditor's petition, if it would not benefit the creditor or the company's creditors generally.

(1) In the present case, the claims of the appellants were disputed both in fact and in law. The company had given prima facie evidence that the appellants are not entitled to any claim. The company had also raised the defence of lack of privity and of limitation.

(2) One of the claims of the appellants was proved by the company to be unmeritorious and false, and as regards the admitted debt, the company had stated that there was a settlement between the company and the appellants that the appellants would receive a lesser amount and that the company would pay it off out of the proceeds or sale of the company's properties.

(3) The creditors of the company for the sum of Rs. 7,50,000 supported the company and resisted the appellants' application for winding up.

(4) The cumulative evidence in support of the case of the company is that the appellants consented to and approved of the sale of the machinery. As shareholders, they had expressly written that they had no objection to the sale of the machinery and the letter was issued in order to enable to company to hold an extraordinary general meeting on the subject. The company passed a resolution authorising the sale. The appellants themselves were parties to the

proposed sale and wanted to buy the machinery. Where the shareholders had approved of the sale, it could not be said that the transaction was unauthorised or improvident.

(5) In determining whether or not the substratum of the company had gone, the objects of the company and the case of the company on that question would have to be looked into. In the present case, the company alleged that with the proceeds of sale, the company intends to enter into some other profitable business, such as export business which was within its object. The mere fact that it had suffered trading losses will not destroy its substratum unless there is no reasonable prospect of it ever making a profit in the future. A court would not draw such an inference normally. One of its largest creditors, who opposed the winding up petition, would help it in the export business. The company had not abandoned the object of its business. Therefore, on the facts and circumstances of the present case, it could not be held that the substratum of the company had gone. Nor could it be held that the company was unable to meet the outstandings of any of its admitted creditors. The company had deposited money in court as per the directions of the court and had not ceased carrying on its business.

(6) On the facts of the case, it is apparent that the appellants had presented the petition with improper motives and not for any legitimate purpose. The appellants were its directors had full knowledge of the company's affairs and never made demands for their alleged debts. They sold their shares, went out of management of the company and just when the sale of the machinery was going to be effected, presented the petition for winding up."

10. I have followed the aforesaid principles by applying the same in the present case. As far as other case cited by the learned counsel for the petitioner are concerned, each one of them is decided on the facts and circumstances present in that particular case, and I need not burden this judgment by referring to all of them. As far as the principles are concerned, there is no doubt and dispute, and there cannot be one.

11. I am in complete agreement with the submissions of Shri Diwan, the learned counsel for the respondents, that the petitioners have filed the present petition with a motive to pressurise the respondent company to surrender or to yield to the dictates of the petitioner company. He has rightly submitted that the company petition is not a legitimate means to be resorted to, to recover any debt which is bona fide disputed by the debtor. I have narrated the entire material to show how the respondent company has bona fide disputed the claim of the petitioner company. Shri Diwan has also pointed out that the petitioner company has opened two fronts for the respondent company to fight, by way of this petition as well as the civil suit filed in the court of Pune. This fact itself is clear to establish that the petitioner company has filed the present petition for pressuring the respondent company to agree to make payment of the debt as demanded by the petitioner company. There are no other facts which are brought

on record to establish why the respondent company should be wound up entirely. It cannot be said that merely because one creditor claiming a large amount of debt seeks to wind up a company, the court should admit such petition and advertise the same to cause further damage and injury to the respondent company. It is not unusual that many times even big industrial houses face financial crunch, and are not able to honour the commitment in time. Such occasions do arise at times in the course of business. Is it that every such company or every such running concern should be wiped off from its existence at the wishes of one such creditor? The existence of the large companies like the respondent company helps the society also. AS is reflected in affidavit filed by the respondent company that it is a running concern and that the financial institutions are helping it to meet the financial crisis and that its turn over and its sales both have increased and that it employs more than 1,000 workers meaning thereby that it feeds more than 5,000 individuals. The employment has its own long term effect on the society. The employment creates and circulates further economic activities in the society. Winding up of one concern creates adverse economic consequences in the society. There is absolutely no doubt in my mind that if a company cannot pay even the smallest amount prescribed by the legislature as low as Rs. 500, such a company will have absolutely no right to survive in the industry and it must be extinguished forthwith. This cannot be said about the companies which have huge amounts of debts as it is always possible that such companies might often face financial crunch depending upon the large number of circumstances, some of them might be beyond their control. The petitioner company has already resorted to its legitimate civil remedy to recovery the debt. The civil court will examine the correctness of the contentions of both the parties and would pass appropriate orders in the suit. In my opinion, having resorted to the alternative remedy, it is not at all proper and legitimate for the petitioner company to seek admission of the present winding up petition on the basis of the same debt.

12. The law laid down by the Supreme Court in the judgment quoted below is crystal clear that the winding up petition is not a legitimate remedy for recovery of a debt which is bona fide disputed:

(i) Hind Overseas Private Limited Vs. Raghunath Prasad Jhunjhunwalla and Another, .

(ii) Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Krishnaswami and Anr. (1965) 35 C C 456 (SC) .

(iii) Pradeshiya Industrial and Investment Corporation of U.P. Vs. North India Petrochemical Ltd. and Another, .

12.1 In my case of Amalgamated Commercial Traders Pvt. Ltd., supra, the Supreme Court has held as follows:

"It is well settled that a winding up petition is not a legitimate means of seeking to enforce payment of the 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. At one time, petitions founded on disputed debt were directed to stand over till the debt was established by action. If, however, there was no reason to believe that the debt, if established, would not be paid, the petition was dismissed. The modern practice has been to dismiss such petition. But, of course, if the debt is not disputed on some substantial ground, the court may decide it on the petition and make the order.

We are satisfied that the debt in respect of which notice was given u/s 434 was bona fide disputed by the appellant-company. The appellant company had received legal advice and it had acted on it. On the facts, it seems to us clear that the appellant company did dispute the debt in order to hide its inability to pay debts. Further, we are satisfied that the question whether the declaration of dividend dated 30 December, 1959, is valid or not raises a substantial question as to the interpretation of Section 207 of the Companies Act. Further, whether the declaration dated 30 December 1959, is severable or not -- is also a substantial question. We do not propose to decide whether the declaration of dividend was valid or not, or whether it was severable or not, because in these proceedings, we are only concerned with the question whether the debt was bona fide disputed by the company on substantial grounds. If the debt was bona fide disputed, as we hold it was, there cannot be "neglect to pay" within Section 434(1)(a) of the Companies Act. If there is no 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."

12.2 In the case of Hind Overseas (P) Ltd., the Supreme Court in paragraphs 36 and 37 has observed as under-

"36. Section 433(f) under which this application has been made has to be read with Section 443(2) of the Act. Under the latter provision, where the petition is presented on the ground that it is just and equitable that the company should be wound up, the court may refuse to make an order of winding up if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

37. Again, under Sections 397 and 398 of the Act, there are preventive provisions in the Act as a safeguard against oppression in management. These provisions also indicate that relief u/s 433(f) based on the just and equitable clause is in the nature of a last resort when other remedies are not efficacious enough to protect the general interests of the company."

12.3 In the case of Pradeshiya Industrial & Investment Corporation of UP, supra, the Supreme Court, in para 29, has observed as follows:

"29. It is beyond dispute that the machinery for winding up will not be allowed to be utilised merely as a means for realising its debts due from a company.

In *Amalgamated Commercial Traders (P) Ltd. v. ACK Krishnaswami* (1965) 35 CC 456 (SC) this court quoted with approval the following passage from Buckley on the Companies Acts, (13th Edn., page 451):

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

30. Examined in the light of the above, we are unable to uphold the judgments of the courts below on the facts narrated above. Our reasons are as under:

(1) The basis of the claim of the first respondent for Rs. 72.50 lakhs is the promoter's agreement dated 1 July, 1988. This agreement has been cancelled by the appellant by notice dated 31st October, 1992. Though the learned Single Judge of the High Court referred to this aspect, he had not pursued it further. He has not considered as to what would be the consequence. Unfortunately, the Division Bench has overlooked this aspect when it held thus:

"In the present case, there is an allegation in the petition that there was an agreement between the company and Dalmia Dairy Industries for promoting the petitioner company, and that under the terms of that agreement, the company had to pay certain amounts. There is nothing on record to suggest that such an agreement was not entered into."

(2) The first respondent is not a creditor. The appellant is not a debtor, because it is a financial institution for an amount which is agreed to be subscribed. Neither the learned Single Judge nor the Division Bench has decided this important question whether there is a debt and the company has either neglected or is unable to pay.

(3) The same claim is the subject matter of arbitration which is pending adjudication. Therefore, there is no definiteness about it.

(4) In view of all the these, there is no prima facie dispute as to the debt.

(5) The defence raised is a substantial one and not mere moonshine. We find it difficult to appreciate the reasoning of the learned Single Judge when he holds that there are arguable issues and, therefore, the winding up petition has to be admitted. On this aspect, the courts below failed to note that the admission of the winding up petition is fraught with serious consequence as far as the appellant is concerned."

13. From the facts discussed above, and in the floodlight of the law laid down by the Supreme Court, it is not possible to entertain and admit this petition. The petitioners have abused the process of the court and are liable to pay cost to the respondents, which is quantified as Rs. 10,000. The petition is dismissed as above.