courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 05/09/2026

(1998) 05 DEL CK 0031

In the Delhi High Court

Case No : C.A. 98/90 in C.P.98/85

Deepak Singh APPELLANT

Vs

M/s. Integral Marketing Pvt. Ltd. and another RESPONDENT

Date of Decision : 06-05-1998

Acts Referred:

Citation : (1998) 05 DEL CK 0031

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Ms. Ritu Bhalla, Adv Ms. Geeta Sharma, for the Appellant; Ms. Ruchi Sindhwani, for the Respondent

Judgement

Anil Dev Singh, J.—This is an application filed u/s 446(1) of the Companies Act whereby applicant, State Bank of India seeks leave to continue claim proceedings before Debt Recovery Tribunal, Delhi against, amongst others, M/s. Integral Marketing Pvt. Ltd., a company under liquidation. The brief facts giving rise to this application are as follows:

2. The applicant is the State Bank of India. It had granted to M/s. Indian Electric, a firm, credit facilities including cash credit bills facility. As on 15th April, 1985, the following sums of money were allegedly due from M/s. Indian Electric to the applicant:-

MTL (Machinery) Rs.2,20,524.77 Cash Credit(Factory Type) Rs.3,52,637.49 Cash Credit Bills Rs.6,25,499.68 MTL Equity Fund Assistance Rs. 66,000.00 3. M/s. Indian Electric used to the practice of making issuance bills drawn on M/s. Integral Marketing Pvt., Coimbatore requested the applicant for advance against the bills so drawn under the cash credit bills facility. The applicant according to the above said request granted the facility to M/s. Indian Electric. Though the facility was availed of by M/s. Indian Electric but the bills drawn on M/s. Integral Marketing Pvt. Ltd. were noted honoured. Since moneys were due and payable to the applicant on account of several credit facilities to the Indian Electric including cash credit bills facility, a suit being Suit No.2387/86 for recovery of the money was filed by the State Bank of India in this Court against M/s. Indian Electric, Mr. Deepak Singh and Mr. Krishna K. Rawat, both partners of Indian Electric and M/s. Integral Marketing Pvt. Ltd. It appears that Mr. Deepak Singh, one of partners of M/s. Indian Electric, had filed a company petition No.95/85 under sections 433, 434 and 439 of the Companies Act, 1956 for winding up of Integral Marketing Pvt. Ltd. On 16th September, 1988, winding up order was passed by this Court in respect of M/s. Integral Marketing Pvt. Ltd. The applicant has filed the instant application for leave to continue the above said suit as M/s. Integral Marketing Pvt. Ltd. is one of the defendants in the suit. Subsequently, the suit was transferred to the Debt Recovery Tribunal.

4. The question which has been urged by learned counsel for the applicant is that the applicant is a secured creditor and is out side the winding up proceedings, and Therefore, it should be allowed to continue the proceedings before the Debt Recovery Tribunal against M/s. Integral Marketing Pvt. Ltd., the company in liquidation. On the other hand, learned counsel for the O.L. submitted that the applicant is not a secured creditor and the application should be rejected. He further contended that assuming that charge was created by pledge of goods by M/s Indian Electric, the same ought to have been registered u/s 125 of the Companies Act, 1956. The question for determination is: whether the applicant is a secured creditor or not? Learned counsel for the applicant submitted that as per the agreement between the applicant and M/s. Indian Electric, the applicant has the first and permanent lien on the bills drawn on the applicant or its customers in the name of the bank or endorsed in its favor and the moneys received there under and the goods covered by the railway receipts, truck receipts, shipping or other documents remain pledged to the banks and irrespective of its right as a pledgee of said goods in case of any dispute, the applicant has a banker''s lien on all bills, goods and security documents. She further submitted that the charge created by way of the pledge of goods was not liable to be registered u/s 125 of the Companies Act as a charge by way of pledge on moveable property of the company is outside the provisions of section 125 of the Companies Act. It was also pointed out that since the charge was not created by a company but by a firm, section 125 will not apply.

5. A perusal of Clauses 3 and 4 of the agreement dated 24th August, 1983 by and between the applicant and M/s. Indian Electric, clearly reveals that a charge was created on the goods covered by the railway receipts, truck receipts or shipping or other documents. These Clauses read as follows:

3. The Bank shall have the absolute right to decide whether or not it shall accept as security any bills from time to time offered to the Bank by me/us.

4. The Bank shall have first and permanent lien on the said bills and the moneys received there under and the goods covered by the railway receipts or truck receipts or shipping or other documents shall remain pledged to the Bank and irrespective of its rights as a pledge of such goods in case of any dispute the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/deepak-singh-appellant-hash-ms-…

Bank shall also have the Banker''s lien on all bills goods securities documents and moneys belonging or purporting to belong to me/us for all moneys claims and demands due or to become due from me/us to the Bank.

6. Thus a reading of the above said Clauses, leaves no manner of doubt that the applicant has first and permanent lien on the bills which are offered by the Indian Electric as security. Besides the goods covered by the railway receipts, truck receipts, shipping or other documents, also remain pledged to the bank. Now the question is: whether the charge created by pledge of the goods in favor of the applicant by M/s. Indian Electric required registration. Similarly it also needs to be determined as to whether the lien created by clause 4 on the bills and goods required registration. Section 125 of the Companies Act in so far as it is relevant, may be quoted at this stage:

125. (1) Subject to the provisions of this Part, every charge created on or after the 1st day of April, 1914, by a company and being a charge to which this section applies shall, so far as any security on the company''s property or undertaking is conferred thereby, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the charge, together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof verified in the prescribed manner, are filed with the Registrar for registration in the manner required by this Act within thirty days after the date of its creation.

x x x x x x x x x x x x

(4) This section applies to the following charges:

(a) a charge for the purpose of securing any issue of debentures;

(b) a charge on uncalled share capital of the company;

(c) a charge on any immovable property, wherever situate, or any interest therein;

(d) a charge on any book debts of the company;

(e) a charge, not being a pledge, on any movable property of the company;

x x x x x x x x x x x x x x x

7. For the above it is clear that section 125(1) one applies where charge in the first instance is created by a company. Since the charge was not created by a company but by a firm, section 125 will have no application. Even other- wise, section 125 will not apply as the charge in the instant case was created by pledge of moveable property of the firm and Therefore, charge was not required to be registered. In Ideal Bank Ltd. (In Liquidation) vs. Pride of India Pictures Ltd. (In Liquidation), AIR 1983 Delhi, it was held as follows:-

"Secondly, it was urged that the charge created by Ex.P-14 over the various assets of the company by pledge, etc. became void as against the official

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/deepak-singh-appellant-hash-ms-…

liquidator of the Company and its creditor on the order to wind up the company by virtue of S. 125 of the Companies Act as the charge was not registered with the Registrar of Companies. It was not disputed on behalf of the Bank that the charge was never registered and the challenge to its validity, Therefore, appears to be formidable at first sight. It, however, does not survive closer scrutiny. A charge by way of pledge is outside the provision of Section 125 and this is made clear by Section 125(4)(e).

8. Learned counsel for the O.L. argued that assuming that the charge was not liable to registered, the applicant is not a secured creditor qua Integral Marketing Pvt. Ltd. The plea has no force. Learned counsel for the O.L. while making these submissions, has over looked the fact that the bills being made out by M/s. Indian Electric in the name of the bank, were accepted by M/s. Integral Marketing Pvt. Ltd. The bills obviously were made pursuant to clauses 3 and 4 of the agreement dated 24th August, 1983 which categorically stated that the bank shall have the first and permanent lien on the bills which are accepted as security for the amounts due to the bank and the goods covered by the railway receipts, truck receipts, shipping or other documents, shall remain pledged to the bank.

9. In view of the above discussion, it seems to me that the applicant isa secured creditor and Therefore, outside the winding up. Accordingly, the permission is granted to the applicant to continue the claim petition (Suit No.2387/86) before the Debt Recovery Tribunal. However, in the event of the suit being decreed, the execution will be subject to leave of this Court.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/deepak-singh-appellant-hash-ms-…