
(1969) 12 P&H CK 0018
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 39 of 1969

Des Raj, Voluntary Liquidator

APPELLANT

Vs

Punjab Financial Corporation

RESPONDENT

Date of Decision : 04-12-1969

Acts Referred:

Companies Act, 1956 — Section 125, 132

Citation : (1970) 40 CompCas 551

Hon'ble Judges : Harbans Singh, J

Bench : Single Bench

Advocate : D.R. Nanda, for the Appellant; H.L. Soni, for the Respondent

Judgement

Harbans Singh, J.—This application has been filed by the voluntary liquidator of the Ludhiana Silicate and General Mills Private Ltd. (in voluntary liquidation), u/s 125 read with Section 530 of the Companies Act, 1956 (hereinafter referred to as "the Act").

2. The company was advanced a loan of rupees one lakh by the Punjab Financial Corporation, Chandigarh (hereinafter referred to as "the corpora-tibn "), on the security of a mortgage deed executed by the company on 14th of November, 1963, and a further advance of Rs. 36,000 was made in October, 1965. The company failed to pay the instalments as agreed and the corporation took steps in the Court of the District Judge, Ludhiana, for the recovery of the loan in accordance with the procedure laid down in the Punjab Financial Corporation Act, 1951. On an application being filed by the voluntary liquidator in C.O. No. 18 of 1969, the proceedings pending before the District Judge were stayed and ultimately the property of the company, which was subject to the mortgage with the corporation was sold by private negotiations with the permission of the court. The present application was made by the company to the effect that the mortgage executed by the company in favour of the corporation was without any legal effect and was void because the aforesaid charge was not registered in the office of the Registrar within 21 days from the date of its creation as required u/s

125 of the Act and for that reason the corporation cannot claim any priority for its dues.

3. The relevant part of Section 125 of the Act runs as follows :

"every charge created.....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 twenty-one days after the date of its creation....."

4. According to the proviso, which was added in the year 1960, the Registrar has been given power to allow the particulars and instruments, etc., to be filed within seven days next following the expiry of the said period of twenty-one days if the company satisfies the Registrar that it had sufficient cause for not filing the particulars and instrument or copy within that period.

5. The evidence of Om Prakash Sethi, clerk of the office of the Registrar of Companies, Jullundur, led on behalf of the petitioner, was to the effect that the company wrote a letter bearing the date 3rd of December, 1963 (exhibit P-1), to the Registrar of Companies, which was received in the office of the Registrar on 7th of December, 1963. He further stated that the prescribed form with particulars of the charge created by the company was also received the same day. Now the covering letter, exhibit P-1, sent by the company mentions that a copy of the mortgage deed dated 14th of November, 1963, was also being sent. Admittedly, there is no letter written by the Registrar intimating to the company that such a copy was not received. However, the above-mentioned witness stated that the copy of the mortgage deed is not on the record of the office of the Registrar. Subsequently, on 21st of December, 1963, certificate of registration of the mortgage was issued u/s 132 of the Act (copy exhibit P-3). It was, however, stated that there is no letter on the correspondence file showing that the Registrar called upon the company to explain why the intimation about the charge was not sent in time. These are the admitted facts.

6. It is clear from the above that the intimation along with the requisite form was received in the office of the Registrar on 7th of December, 1963, that is, 23 days after the date of execution of the mortgage deed. According to the covering letter, the copy of the mortgage deed was also sent. Therefore, all the requirements of Section 125 of the Act, except that the intimation was received by the Registrar after 21 days, were apparently duly complied with by the company. It is also clear that the Registrar considered that the provisions of Section 125 of the Act have duly been complied with because he did not make any back-reference to the company. On the other hand, he issued a certificate under his hand and seal of his office on 21st of December, 1963.

7. Section 132 of the Act deals with the effect of such a certificate, which is as follows:

" The Registrar shall give a certificate under his hand of the registration of any charge registered in pursuance of this part, stating the amount thereby secured; and the certificate shall be conclusive evidence that the requirements of this part as to registration have been complied with. "

8. On behalf of the learned counsel for the corporation, it was urged that Section 125 of the Act requires the requisite documents, etc., to be "filed with the Registrar" and this is not the same thing as delivered to or received by the Registrar as provided in Section 95 of the English Act and that so long as the company sends these particulars in time, it does not make any difference that due to inefficient service of the postal authorities, these reach the hands of the Registrar a little later. It was also urged that under the proviso if the Registrar is satisfied about the delay, it can condone it and no application is necessary to be given. I feel it is not necessary to go into all these questions for the obvious reason that Section 132 of the Act provides that the issue of the certificate is conclusive evidence of the fact that the requirements of this part of the Act have been duly complied with. The requirements of the part, inter alia, include the delivery of the particulars within the time specified and in case of delay the company has satisfied the Registrar with regard to the sufficiency of the cause for the particulars not having been filed within the prescribed period. The court cannot go into this matter. In Halsbury's Laws of England, third edition, volume 6, in paragraph 963, it is stated as follows:

" The certificate is conclusive evidence that the statutory requirements as to registration have been complied with and the court will refuse to go into the question whether the requirements as to registration have been complied with."

9. In view of the above, therefore, I feel that it is not open to this court to go into the question whether the filing was done in time or not or whether the Registrar considered it fit to condone the delay. It must also be taken that the mortgage deed was received in the office as stated in the covering letter though the same has been misplaced in the Registrar's office.

10. For the reasons given above, therefore, I find no force in this petition and in view of the registration certificate, the corporation holds a charge on the property of the company as secured creditor. There would be no order as to costs in these proceedings.