

(2003) 11 CAL CK 0059
In the Calcutta High Court
Case No : C.P. No. 532 of 2002

Ellenbarrie Tea Co. Ltd.

APPELLANT

Vs

Vivek Kejriwal

RESPONDENT

Date of Decision : 07-11-2003

Acts Referred:

Companies Act, 1956 — Section 433, 434

Citation : (2004) 52 SCL 342

Hon'ble Judges : Pinaki Chandra Ghose, J

Bench : Single Bench

Judgement

Pinaki Chandra Ghose, J.—After considering the facts as pleaded in the petition and the submissions made by the learned Advocate appearing on behalf of the petitioning creditor and the company it appears that excepting the particulars of the bill which has been specifically stated in paragraph 9 of the petition the Company has already paid the bill dated 9th September, 1999 Bill No. TSI/1999-2000/073, Bill dated 31-12-1999 being No. TSI/1999-2000/110 and dated 3-1-2000 being No. TSI/1999-2000/112.

2. The dispute has been taken by the Company since according to them the machinery which has been supplied by the petitioning creditor is not working properly and the letter had also been addressed to the petitioning creditor by the Company but it appears that the facts stated in the said letter are little bit confusing. So the statement made in the said letter cannot be taken as the fact really stated by the Company in respect of the said machine in question. The amount which has been stated and dealt in the said letter addressed by the company to the petitioning creditor is appearing in the letter dated 4th July, 2000. However, there is no dispute that the said machine and the accessories which have been supplied by the petitioning creditor to the company under bill dated 20th January, 2000 being bill No. TSI/1999-2000/125 for a sum of Rs. 82,781 and the bill dated 29th December, 1999 being No. TSI/1999-2000/105 being a sum of Rs. 2,21,522 is due and payable by the company to the

petitioning creditor excepting there is only a dispute as has been pointed out to me by Mr. Basak that the said machine is not functioning properly. In view of that there cannot be said to be that the petitioning creditor is not entitled to get the said amount.

3. Hence the company is directed to secure the said claim by furnishing security either by way of Bank guarantee or by way of cash in favour of the Registrar, O.S. and further part of the claim of the petitioning creditor is relegated to the suit. Such security is to be furnished within 3 weeks from date.

4. So far as the bills dated 12-4-2000 for a sum of Rs. 2,20,040, dated 12-4-2000 for a sum of Rs. 1,90,140, dated 20-1-2001 for a sum of Rs. 62,530 and bill dated 20-1-2001 for a sum of Rs. 60,110 are admitted by the Company aggregating to a sum of Rs. 5,32,820 and the winding up petition is admitted to that extent subject to scrutiny by the department.

5. The company is directed to make such payment of the said amount of Rs. 5,32,820 as submitted by Mr. Basak in 6 equal monthly instalments. Such amount shall carry interest at the rate of 9 per cent per annum from the date of filing of this application until the payment is being made by the Company. Interest will be calculated from the date of the bill until payment. The first of such instalment is to be paid on or before the 4th day of December, 2003 and thereafter on the 4th day of each succeeding month until the full payment is made.

6. So far as the balance amount as claimed in this petition, the petitioning creditor shall be at liberty to take steps for filing of the suit, if they so advised, before the competent Court of jurisdiction.

7. In default of making payment as directed above or furnishing of security as directed the petitioning creditor shall be at liberty to make publication once in "The Statesman" and once in "Aajkal" Publication in the Calcutta Gazette is dispensed with.

8. The petitioning creditor is directed to file suit within 3 weeks from the date of the furnishing of the security by the company. In default thereof the company shall be at liberty to pray for release of the security to be furnished by it.

9. If such payment as aforesaid is made, the winding up petition is permanently stayed. In default this matter is made returnable 8 weeks after publication.