

(1996) 02 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 81 of 1995

Ghanshyam Patel and Sons	Vs	APPELLANT
Hind Woollen and Hosiery Mills Pvt. Ltd.		RESPONDENT

Date of Decision : 29-02-1996

Acts Referred:

Companies Act, 1956 — Section 433, 434, 439

Citation : (1996) 86 CompCas 715

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : A.K. Chopra and Gurpal Singh, for the Appellant; R.K. Chhibbar, Senior Advocate and Anand Chhibbar, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Garg, J.—Ghanshyam and Sons, a partnership firm which is engaged in the business of freight, forward and commission agents has filed the present petition under Sections 433 and 434 read with Section 439 of the Companies Act, 1956 (for short "the Act") for winding up of the respondent-company. The case as set up in the petition is that the respondent-company was incorporated on March 30, 1970, under the Act and its registered office is at 866, Industrial Area-A, Ludhiana. The objects of the respondent-company have been enumerated in para. 6 of the petition. The petitioner-firm rendered its services as clearing and forwarding agents to the respondent-company from time to time and is also maintaining the account of the respondent-company. The petitioner has placed on record a statement of accounts of the respondent-company," annexure P-1 according to which a sum of Rs. 4,06,308.73 has been shown due to it from the respondent, along with interest at the rate of 21 per cent. per annum. Further, the petitioner also placed on record a certificate dated August 1, 1992, annexure P-2 issued by the respondent-company confirming the credit balance with the petitioner-firm as it stood on July 31, 1992, and further undertaking to pay the same within three months. All outstanding bills were sent by the petitioner to the

respondent-company and when no payment was received even in spite of repeated reminders, the petitioner sent a legal notice. Ultimately, the petitioner sent two notices of demand, dated August 27, 1993 and April 7, 1994, copies annexures P-3 and P-4 respectively which were served on the respondent-company at its registered office, but the respondent-company failed and neglected to pay its debts to the petitioner and thus was unable to do so despite demand.

2. In the written statement filed on behalf of the respondent-company, the averments as made in the petition have been stoutly denied. The respondent has raised two preliminary objections, viz., no notice u/s 434 of the Act was ever received by the respondent-company at its registered office and secondly, the petitioner has mis-stated the facts as the respondent-company had never any business dealings with the petitioner, On the merits it has been stated that the respondent-company does not owe any amount to the petitioner-firm nor is it entitled to interest. The respondent has specifically stated that letter annexure P-2 was not issued by the company and it is a forged and fabricated document. The amount as mentioned in annexure P-2 to be outstanding as on July 31, 1992, has never been shown in the books of account of the respondent-company in the name of the petitioner-firm. Though it has been admitted that the letter pad used for preparing the letter annexure P-2 is of the respondent-company but it has been clarified that the respondent-company shifted its registered office from its previous place being 866, Industrial Area-A, Ludhiana, to Plot No. A-6, Phase-V, Focal Point on March 31, 1990, and thus the letter annexure P-2 bearing the date August 1, 1992, allegedly issued by the respondent-company cannot be taken to be a genuine document. The respondent-company has never received any bills or reminders thereof from the petitioner and even has never acknowledged its liability to pay any debt to the petitioner. Subsequently, the petitioner placed on record certain documents being annexures P-7 to P-17.

3. Learned counsel for the petitioner at the very out-set submitted that since the respondent-company has failed to pay its debts to the petitioner-firm the liability of which has been admitted by confirmation letter, annexure P-2 and even no reply has been received from the respondent-company to the demand notices, annexures P-3 and P-4, it may be held that the said company is unable to pay its debts and thus, may be ordered to be wound up. Reacting sharply to the contentions raised by the petitioner's counsel, learned counsel for the respondent submitted that the respondent-company had no dealings with the petitioner-firm. Letter annexure P-2 allegedly issued by the respondent-company is a forged and fabricated document and, therefore, it cannot be said that the respondent-company had confirmed any credit balance or had ever undertaken to pay the same. Learned counsel further submitted that no notice u/s 434 of the Act was ever received by the respondent-company at its registered office. Learned counsel for the respondent further submitted that even if the entries contained in the ledger for 1990-91 maintained by the petitioner-firm are taken to be correct, the present petition is barred by time. It was urged by counsel that

as per the entries made in the statement of account annexure P-17, the last payment on behalf of the respondent-company is shown to have been made on March 18, 1991, whereby a sum of Rs. 40,000 has been paid through the cheque. After March 18, 1991, there is no acknowledgment of debt on behalf of the respondent of any kind whatsoever and, therefore, by taking the limitation which is three years for recovery of debts, etc., from the aforesaid date, the petition in hand filed on August 8, 1995, is clearly barred by time. In the last limb of arguments, learned counsel for the respondent submitted that the petition for winding up is in the nature of summary proceedings and since in the wake of denial by the respondent of having any business transactions with the petitioner-firm and further in the absence of any cogent proof on the record in that behalf, a disputed question of fact is involved and, therefore, the present petition is not maintainable. In support of his submissions, learned counsel for the respondent relied upon *Hiralal and Others Vs. Badkulal and Others*, and *Chemical Enterprises v. Kalpanalok Ltd.* [1984] 55 Comp Cas 552.

4. I have considered the rival contentions raised by learned counsel for the parties and perused the documents on record. The present petition for winding up of the respondent-company is based on one of the six circumstances as envisaged u/s 433 of the Act, namely, that the respondent-company is unable to pay its debts to the petitioner-firm. Section 433(e) of the Act provides that a company may be ordered to be wound up if in spite of repeated demands by a creditor, it has neglected to pay and this is a prima facie evidence of its inability to pay. Further, as per Section 434 of the Act, a company shall be deemed to be unable to pay its debts, if a creditor to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company at its registered office a demand under his hand requiring the company to pay the sum. In the case in hand, it does not at all stand established from any document on record or otherwise that the petitioner-firm ever had any business dealings or transactions with the respondent-company. In the petition there is simply an averment that the petitioner-firm rendered its services as clearing and forwarding agents to the respondent-company on account of which certain amount as mentioned therein is due to it from the respondent-company and the respondent-company has in spite of repeated demands, failed to pay its debts. In support of this averment, statement of account, annexure P-1, and letter dated August 1, 1992, annexure P-2, have been pressed into service in order to establish that the sum as mentioned in annexure P-1 was due and the said credit balance was confirmed by the respondent-company, vide annexure P-2 whereby it was also undertaken that the same will be paid within three months. The respondent-company has categorically denied knowledge about statement of account, annexure P-1, and it has further categorically denied that the confirmation letter, annexure P-2, was ever issued by the respondent-company, though the letter pad used for preparing it is of the respondent-company. Thus precisely the case as brought out by the respondent-company on the record is that there were no business dealings between the parties and no amount was

due from the respondent to the petitioner on any account whatsoever and the so called confirmation letter, annexure P-2, is not a genuine document and it has been fabricated by using the letter pad of the company just to make out a false claim against the respondent.

5. After considering the matter, I am in agreement with the contention of learned counsel for the respondent. The version as brought on record by the respondent has not at all been controverted by the petitioner. In the wake of total denial coupled with an attack that the so called confirmation letter annexure P-2 is a false and fabricated document, it was incumbent upon the petitioner to bring on record some material at least to satisfy the court that there were dealings between the parties. It is specifically averred in the petition that the petitioner-firm rendered its services to the respondent-company from time to time and it was maintaining proper accounts of the respondent-company to whom the bills were sent at different points of time. But not even a single bill has been placed on record to prove the above fact. Not only this, the petitioner has averred that the company failed to pay the sum despite repeated reminders, but again there is not even one on the record to support the fact. If the petitioner-firm had in fact been dealing with the respondent-company, the petitioner-firm must have produced on record some copies of the correspondence, namely, letters from the respondent-company whereby a request may have been made to the petitioner-firm for making its services available or some other correspondence of the like. In the absence of any such material, it is difficult to countenance the case as set up by the petitioner-firm. Even otherwise, since there is a dispute between the parties about having business dealings with each other and apparently this being a disputed question of fact, it cannot be gone into in the present proceedings of summary nature. In view of this, it has to be inevitably held that the present petition is not maintainable.

6. Further the respondent has categorically denied that no notice as required u/s 433 read with Section 434 of the Act was ever received by it at its registered office. In order to succeed in a petition for winding up it was the prime duty of the petitioner to prove that the demand notice was served on the respondent-company at its registered office. It is the specific stand of the respondent that it shifted from the previous place to another place though in the same city, on March 31, 1990. Thus, the demand notices, annexures P-3 and P-4, sent through registered post in August, 1993, and April, 1994, respectively, even if taken to have been sent in the name of the respondent-company, cannot be said to have been served on the respondent-company at its registered office. Thus, the requirement of Section 434 of the Act does not stand satisfied and it is held that no notice u/s 434 of the Act was ever served on the respondent-company at its registered office.

7. Apart from the above, the present petition on the face of it is barred by time. Undisputedly, the period of limitation for filing a petition for winding up is three years. Obviously, this period is to be taken from the date the amount as sought

to be payable to the petitioner from the respondent-company became due. However, in view of Section 18 of the Limitation Act, a fresh period of limitation shall be computed from the time when the acknowledgment of liability is so signed. Though in the present case, on an objection being raised by learned counsel for the respondent that the petition is barred by time, learned counsel for the petitioner did not utter a word to show that the said objection is misconceived and the petition is not barred by time, yet it is worthy to mention here that in the statement of account, annexure P-1, produced on record by the petitioner, the last payment on behalf of the respondent to the petitioner has been shown to have been made on March 18, 1991. Though the respondent has specifically denied any knowledge about the said statement of account but even if it be taken to be an extract from the ledger of the petitioner-company for the present purpose, the present petition filed on August 8, 1995, is clearly barred by time as once limitation is computed from March 18, 1991, the date allegedly denoting the payment on behalf of the respondent towards the outstanding amount, the petition could be filed till March 18, 1994. Not only this, the petitioner has placed on record a certificate dated August 1, 1992, annexure P-2, with a view to show to the court that certain amount was outstanding against the respondent-company and by the said letter, the respondent-company has confirmed the balance credit. As already noticed above, the genuineness of this document has been disputed on the ground that it is a fake and fabricated document. Even if it be taken to have been written by the respondent-company, it can by no stretch of imagination be said to be an acknowledgment, for it is not addressed to the petitioner. It is clearly written on the top of the said letter "To Whom It May Concern", meaning thereby it may relate to anyone whosoever is concerned. From this it cannot be ascertained that it was addressed to the petitioner-firm. Further, the said document is dated August 1, 1992, and even if the limitation is computed from the said date, the petition could be filed till August 1, 1995, and therefore, the present petition filed on August 8, 1995, is on the face of it barred by time,

8. For the reasons recorded above, I refuse to entertain this petition which is consequently dismissed. No costs.