(1998) 03 AHC CK 0137

In the Allahabad High Court

Case No : Company Petition No. 58 of 1997

G.T.C. Industries Ltd. APPELLANT

Vs

Parasrampuria Trading and Finance (P) Ltd. RESPONDENT

Date of Decision : 25-03-1998

Acts Referred:
Companies Act, 1956 — Section 10

Citation : (2001) 104 CompCas 368

Hon'ble Judges : A.K. Banerji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Banerji, J.—The petitioner M/s. G. T. C. Industries Limited (the "petitioner" in short) has filed this petition u/s 433(e) and (f) read with Sections 434 and 439 of the Companies Act, 1956 (the "Act" in short) for winding up of the company M/ s. Parasrampuria Trading and Finance (P) Limited (the "respondent-company" in short) on the ground that the said respondent is unable to pay its debts, consequently, should be wound up.

2. Briefly stated, the relevant facts as set out in the petition are that the petitioner-company is engaged in the business of sale of cigarettes besides other business. The respondent-company approached the petitioner for being" appointed as its wholesale buyer of cigarettes in the Kanpur area. On the request being'' accepted an agreement was entered into between the parties. In pursuance of the said agreement, the petitioner supplied goods to the respondent and raised bills in respect thereof for payment. A running account was maintained by the petitioner-company in the ordinary course of business. On March 31, 1995, there was a debit balance outstanding of Rs. 22,27,502.82 payable by the company to the petitioner. Though the respondent acknowledged its liability but neglected to pay the said amount despite repeated requests and reminders by the petitioner. Consequently, the petitioner was constrained to serve the statutory notice dated February 28, 1997, on the respondent-company

claiming Rs. 22,27,502.82 as due on March 31, 1995, and a sum of Rs. 10,24,551.28 towards interest at the rate of 24 per cent. per annum. Despite the service of the statutory notice, the company neither sent a reply hereto nor paid the amount, hence, the aforesaid petition.

3. On May 21, 1997, this court issued notice to the respondent to show cause why the petition may not be admitted and advertised. The respondent-company put in appearance and filed a counter affidavit wherein they did not dispute that a sum of Rs. 22,27,502 is outstanding against them. However, they denied their liability to pay any interest. It was also stated that according to the terms and conditions of the agreement all disputes arising out of the contract was subject to the exclusive jurisdiction of the courts at Bombay ; therefore, this court had no jurisdiction to entertain the petition. It was further stated that the petitioner''s claim was barred by limitation. A rejoinder affidavit was filed to the said counter affidavit wherein it was denied that interest was not payable or that the claim was barred by limitation and the jurisdiction lay with the courts at Bombay. Having heard learned counsel for the parties this court vide the order dated August 29, 1997, was prima facie of the view that a case for admitting this petition and for advertising the same under Rule 24 of the Companies (Court) Rules, 1959 was made out. However, it directed that before the petition is advertised, the respondent-company be given one opportunity to avoid the winding up provided they pay the principal amount claimed by the petitioner in two equal monthly installments. This direction was not complied with. Consequently, learned counsel for the petitioner took steps to get the petition advertised. The office report shows that the notices have been duly published as required under Rule 24 of the Companies (Court) Rules, 1959, and a date for hearing has been fixed.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner has contended that in the balance-sheet as well as in the counter affidavit, the respondent-company has admitted that a sum of Rs. 22,27,502 is outstanding against them. Despite opportunity to pay this amount they have not done so. Consequently, it is proved beyond any doubt that the company is unable to pay its debts and is more or less insolvent, therefore, necessary orders for winding up of the company and for appointing the official liquidator be passed. On the other hand, learned counsel for the respondent-company has raised the same argument which was submitted at the time when the court was considering the matter whether the petition should be admitted and advertised. He has strongly contended that in view of Clause 10 of the agreement between the parties all disputes or differences were subject exclusive jurisdiction of the courts in Bombay city only. In my order dated August 29, 1997, I had already considered the said submission and had held that as the Companies Act is a special Act and the jurisdiction for filing a winding up petition has been mentioned u/s 10 thereto which lays down that the High Court where the registered office of the company concerned is situate shall have the

jurisdiction to entertain the petition, consequently, even if there was any agreement to the effect that in case of dispute the same shall be resolved before the courts at Bombay but as the registered office of the company is at Kanpur, the winding up can only be filed before this court. I, therefore, do not find any substance in the said submission.

6. Learned counsel has also raised the plea of limitation. The court had also considered the said submission in the order dated August 29, 1997, and had repelled the same. The said order has become final and has not been challenged. Therefore, I do not find any force with regards to the same either.

7. As a result, from the facts and the circumstance of the case, this court is satisfied that the respondent-company M/s. Parasrampuria Trading and Finance (P) Limited is unable to pay its debts, consequently, a case is made out for the winding up of the company and it is hereby wound up. The official liquidator, High Court is appointed the liquidator. The petitioner shall take steps in accordance with Rule 113 of the Companies (Court) Rules, 1959, for advertising this order in Form No. 53. The office is directed to comply with Rules 109 and 111 of the Companies (Court) Rules, 1959.

8. I order accordingly.

