(2007) 02 CAL CK 0009

In the Calcutta High Court

Case No : C.P. No. 112 of 2006

Hooghly Mills Co. Ltd.	APPELLANT
Vs	
OCL Investments and Leasing Ltd.	RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Contract Act, 1872 — Section 25(3)
Limitation Act, 1963 — Section 18

Citation : (2008) 143 CompCas 83

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : M. Bhuteria, for the Appellant; Arijit Banerjee, for the Respondent

Judgement

Sanjib Banerjee, J.—Three points had been urged in the company''s affidavit. The first of them has been given up in the course of submission.

2. Of the two points which have been pressed in resisting an order of admission on this winding up petition, the first is that the writing on which the petitioner''s claim is founded and the endorsement thereon allegedly made on behalf of the company did not constitute a promise to pay within the meaning of Section 25(3) of the Contract Act, 1872 and since such writing was admittedly executed after the original debt was barred by limitation, the acknowledgment would not save limitation u/s 18 of the Limitation Act, 1963. The other, if slightly more feeble, ground urged was that the accountant who appears to have admitted and acknowledged on behalf of the company, had no authority to do so.

3. The letter that has been relied upon is one addressed by the petitioner to the company on September 28, 2004. The petitioner requested the company to confirm that a sum of Rs. 13,79,300 was due and owing from the company to the petitioner as at March 31, 2004.

4. The words "we confirm" appear at the foot of the letter with a dotted line below suggesting that the signature should be put on such dotted lines on behalf

of the company in confirmation. However, there appears to be a writing in hand of the company''s accountant with a rubber stamp of the company and a further rubber stamp giving the permanent Income Tax account number of the company. The writing in hand is spread over three short lines and reads as follows:

(Rs.) Principal amount due 5,00,000 Interest payable up to 31 -3-2004 5,69,250 Total payable as on 31.3.2004 10,69,250.

5 It is the last line that has been relied upon. Since the figures corresponding to the last line includes both the principal and interest, if on the basis of the last line in that handwriting it can be demonstrated that there was a promise on behalf of the company to make payment within the meaning of Section 25(3) of the Contract Act, 1872, the defence of limitation would not stand.

6. It has been submitted on behalf of the company that the word "payable" appearing in the last handwritten line does not imply any promise to pay. "Payable", according to the company is an acknowledgment of the debt but is no promise to discharge such debt.

7. If Section 25(3) of the Contract Act, 1872, required a formal declaration on the lines of "I hereby do promise...", then certainly the word "payable" is not a promise. But, there are authorities that suggest that Section 25(3) of the Contract Act, 1872 does not require such a strict interpretation. The petitioner has relied on a judgment of this court in Ashoka Agencies and Business Forms Ltd. In re [1999] 95 Comp Cas 172 and another judgment reported at Shanti Parkash v. Harnam Das AIR 1938 Lah 234, which has been noticed in the Calcutta judgment.

The writing which was claimed to be the promise in terms of Section 25(3) in that Calcutta (Ashoka Agencies and Business Forms Ltd. In re Business Forms Ltd. and Ashoka Agencies,), was a confirmation of accounts and went on the following lines (page 176):

This is with reference to your letter dated June 30, 1992. We hereby confirm that our books of account show a credit balance of Rs. 24,32,416.01 payable by us as on March 31, 1992, in your account.

8. Upon noticing the Lahore judgment, Shanti Parkash v. Harnam Das AIR 1938 Lah 234, it was held that inasmuch as the document clearly used the words "confirmation of account" and also used the phrase "payable by us", the document amounted to a promise to pay. It was also held that the "confirmation of account" also amounts to an account stated since what is asked for is confirmed.

9. In the instant case there was no more confirmation of account. There was a conscious departure by the company or its accountant to quote figures which were quite different from the amount claimed in the letter issued by the petitioner. Against Rs. 13 odd lakhs claimed, the company''s accountant confirmed the sum of Rs. 10 odd lakhs. It was a conscious admission and clearly

an assertion that the sum of Rs. 10,69,250 would be paid.

10. The only aspect that remains relates to the company questioning the accountant''s authority. The execution of the document is not denied nor is the accountant''s association with the company denied. It has been stated that that the accountant was not authorised, despite company''s stamp being available with him.

11. It is difficult to appreciate such defence as ordinarily it would be an accountant who would confirm accounts on behalf of a company. In any event, if the company feels that there was anything untoward done by the accountant, the company is entitled to proceed against the accountant and recover any damage suffered on account of the accountant. A third party should not be prejudiced for presuming that the company''s accountant had authority to confirm an outstanding amount on behalf of the company.

12. The company''s defence, once the objection as to the registered office was given up, appears to be sham. The winding up petition is admitted for the principal sum of Rs. 10,69,250 together with interest at the rate of eight per cent. per annum from October 11, 2004, to the date of the statutory notice.

If the entire payment, inclusive of interest is made by the company to the petitioner within a period of four weeks from date, the petition shall remain permanently stayed.

13. In default, the petition will be advertised once in The Telegraph and once in the Bartaman. The publication in the official gazette is dispensed with. The advertisements should indicate that the matter would appear in the next court date four weeks after the date of publication.

14. Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

