

(2008) 12 PAT CK 0014
In the Patna High Court
Case No : Com. Petition No. 3 of 1992
In Re: Precision Blanking India Ltd.

Date of Decision : 19-12-2008

Acts Referred:

Companies Act, 1956 — Section 446, 446(2), 446(2)(b), 458(A), 458A
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 20(1)

Citation : (2008) 12 PAT CK 0014

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : G.C. Yadav, S.D. Sanjay, Gautam Kejriwal and Akash Chaturvedi, for the Appellant;

Final Decision : Allowed

Judgement

S.N. Hussain, J.

IA. No. 7251 of 2008:

1. IA. No. 7251 of 2008 has been filed on behalf of M/s Saraswati Engineering Pvt. Ltd. for discharging the applicant from any liability of the Company in liquidation, namely M/s Precision Blanking (India) Ltd. The company petition bearing C.P. No. 3/1992 was initiated on 4.3.1992 on the request of the Board for Industrial and Financial Reconstruction, Government of India under the provisions of Section 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, which was sent by the Government of India on 25.2.1992 for industrial and financial reconstruction of the Company, namely M/s Precision Banking (India) Ltd. Thereafter on 23.11.1992 winding up order was passed by this Court but by order dated 30.11.1992 the said order was stayed. However, finally on 26.2.1993 stay was vacated and, thereafter, winding up process started. On 30.7.1993 Ex-management filed its Statement of Affairs in prescribed proforma sworn by the Managing Director.

2. It transpired that on 19.3.1996/ 5.4.1996 notice was sent by the Official Liquidator to the applicant asking it to deposit a sum of Rs. 2,08,596.88 being

the sundry debt as submitted by the Ex-management of the Company in liquidation, which was for the period 1989 to January, 1991. A reply to the said notice was sent by the applicant on 2.5.1996 for details of outstanding as in the Books of Accounts of the applicant-Company no such dues was shown. It is stated that, thereafter, there was no response to the said reply of the applicant nor any detail was provided with respect to the alleged dues. Subsequently on 10.5.2004, the Official Liquidator submitted his report for notice/summons to the debtors for noncompliance of demand notice issued at the level of the Official Liquidator, whereafter warrant was issued in the year 2006 against the applicant. An interlocutory application bearing IA. No. 4325 of 2006 was filed on 11.10.2006, whereafter, the said warrant was recalled on the order of this Court dated 12.10.2006.

3. On 23.11.2006, this Court passed an order in the instant case directing the counsel for the applicant to peruse the corresponding invoices, which were produced by the Official Liquidator to establish the dues and to clear the dues within two weeks, failing which, the warrant already issued against the Chief Executive Officer of the said Company shall be executed. The said order was challenged by the applicant in Company Appeal No. 5 of 2006, which was disposed of by a Division Bench of this Court on 1.3.2007 directing the Company Judge to reconsider the matter in view of IA. No. 4882 of 2006 filed by the applicant and to give an opportunity to the applicant-Company to file his objection to the corresponding invoices, if any and thereafter the matter would be heard by the learned Company Judge and necessary orders would be passed in accordance with law and till then the warrant of arrest issued against the applicant was kept in abeyance.

4. The matter was again considered by the Company Judge and by order dated 31.8.2007 it was held that there was no question of the dues of the Company in liquidation becoming time barred against a trade debtor whose trade relationship with the Company in liquidation was not in dispute as was evident from the part payment made by the applicant to the Company in liquidation and hence remainder amount should be paid as early as possible in any case within two months from that day.

5. The said order of the Company Judge was challenged by the applicant in Company Appeal No. 14 of 2007, which was allowed on 26.8.2008 and the said order of the Company Judge dated 31.8.2007 was set aside and the matter was remitted back to the Company Judge for fresh consideration in accordance with law as the said order was passed by the Company Judge without the Official Liquidator placing before the Company Judge the Books of Accounts, rather only some extracts from the ledger were produced.

6. Under the said circumstances, now the matter has again been placed before this Court.

7. Learned counsel for the applicant M/s Saraswati Engineering Pvt. Ltd. submits

that the claim of the Official Liquidator or the Ex-management with regard to the dues, even if such dues exist, is time barred and it cannot be legally sustained. He further submits that even according to the claim of the Official Liquidator or the Ex-management, the dues are with respect to the period 1989 to January, 1991 and considering the provisions of Sections 458(A) and 446(2)(b) of the Company Act, read with the principle of law settled in case of *Best and Crompton Engineering Ltd. vs. The Official Liquidator, Madras*, reported in AIR 1995 Madras 20 (Full Bench) as well as in case of *Karnataka Steel and Wire Products and Others Vs. Kohinoor Rolling Shutters and Eng. Works and Others*, , the said dues have become time barred.

8. Learned counsel for the Official Liquidator submits that warrants were issued against several trade debtors, but only the applicant did not pay the said amount due. He further submits that the dues of the Company are fully supported by the Books of Accounts which the learned Official Liquidator has produced in Court and copies of the original invoices have also been served upon the applicant-Company. He further submits that in the facts and circumstances of the case there is no question of the dues being time barred and false pretext is being raised by the applicant-Company only to avoid the payment of dues, which are legally payable by the applicant.

9. Considering the aforesaid facts and circumstances, it is quite apparent that so far the bar of limitation as provided under the Limitation Act, 1908 is concerned, either matter comes under Article 1 or 13 or 15 or 137, the period of limitation is three years. Section 458A of the Companies Act, 1956 provides that notwithstanding anything in the Indian Limitation Act, 1908 or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the Court, the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order shall be excluded. Section 446(2)(b) of the said Act provides that the Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain or dispose of any claim made by or against the company. Hence, according to this provision, the claim has to be raised before a Court either in a suit or in any other proceeding. "

10. The decision of the Full Bench of the Madras High Court in case of *Best and Crompton Engineering Ltd. (supra)* provides that the provisions of either Section 446(2) or Section 458A of the Companies Act do not warrant an interpretation by which the period of limitation will be different, if the proceeding is in the form of an application from that prescribed for a suit. Just because a convenient procedure is prescribed in Section 446(2) to enable the Official Liquidator to recover moneys due to the company without incurring huge expenditure and without much delay, it is not possible for the Official Liquidator to contend that

he has an option to extend the period of limitation by himself choosing to institute the proceeding in the form of an application instead of a suit.

11. Another decision cited by learned counsel for the applicant is of the Hon''ble Apex Court in case of Karnataka Steel & Wire Products (supra), which held that the aforesaid provision of law merely excludes the period during which a company was being wound up by the court from the date of the commencement of the winding up till the order of winding up is made and an additional period of one year immediately following the date of the winding up.

12. Considering the aforesaid provisions of law as well as the case laws and applying them to the instant proceeding, it is quite apparent that the instant company petition was initiated on 4.3.1992 and the stay of the winding up order was vacated on 26.2.1993 and hence the period during which the Company was being wound up, was about one year and if the additional period of one year as per the aforesaid provision is added it would come to two years and by adding to it the period of three years as prescribed under the provision of the Limitation Act, the total period, which can be excluded for counting the period of limitation, comes to five years. Admittedly, the dues are for the period 1989 to January, 1991 and if the said period of five years is added thereto, it comes to January, 1996 and hence the said dues clearly became time barred in February, 1996.

13. It may also be noted that no suit or any application under the provision of Section 446 of the Companies Act was filed by the Official Liquidator or the Ex-management of the Company either in the court below or before this Court even till today. Furthermore, much after the expiry of the said period of limitation for the first time the Official Liquidator sent a letter to the applicant-Company on 19.3.1996/ 5.4.1996 asking it to pay the said due amount without giving any details, hence the applicant-Company by letter dated 2.5.1996 asked the Official Liquidator for details of the outstanding, but neither any detail was supplied nor any response was given by the Official Liquidator and hence the applicant genuinely thought the matter to be closed.

14. However, much belatedly on 10.5.2004 the Official Liquidator submitted report for notice/summons to the debtors including the applicant for non-compliance of the demand notice issued at the official liquidator''s level, whereafter warrant of arrest was issued against the applicant in the year 2006, which compelled the applicant to file IA. No. 4325 of 2006 before this Court, whereafter the order of warrant was recalled. However, subsequently on 23.11.2006 the order of the Company Judge was passed, against which Company Appeal No. 5 of 2006 was filed by the applicant, which was disposed of on 1.3.2007 with special direction for the Company Judge. The Company Judge again passed order dated 31.8.2007, but the said order was set aside by the Division Bench on 26.8.2008 in Company Appeal No. 14 of 2007 and the matter was remitted to this Court again for fresh consideration.

15. In the aforesaid facts and circumstances, it is quite apparent that the claim

of the Official Liquidator or the Ex-management is hopelessly barred by law of limitation as provided under the Limitation Act, 1908 as well as under the specific provisions of the Companies Act, 1956, which is also clarified by the Hon''ble Apex Court in its decision in case of Karnataka Steel & Wire Products (supra). Accordingly, this interlocutory application bearing IA. No. 7251 of 2008 is allowed and the applicant, namely, M/s Saraswati Engineering Pvt. Ltd. is discharged from any liability of the Company-in-Liquidation, namely, M/s Precision Blanking (India) Ltd.