

(1982) 04 CAL CK 0012

In the Calcutta High Court

Case No : Company Petition No. 377 of 1981

In Re: Synthetic Wire Industries Pvt. Ltd.; Ex Parte: Adhir Ranjan De

Date of Decision : 23-04-1982

Acts Referred:

Companies Act, 1956 — Section 433, 434, 439

Citation : (1984) 56 CompCas 461

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : N.C. Mullick and P.K. Das, for Company, S.B. Mookherjee and Gourishankar Mitra, for the Appellant;

Final Decision : Allowed

Judgement

Basu, J.—This is an application under Sections 433, 434 and 439 of the Companies Act, 1956, for the winding up of a company.

2. The facts relating to the application may be briefly noted.

3. On May 15, 1981, the petitioner, according to the petition, lent and advanced a sum of Rs. 45,000 by way of an accommodation loan to M/s. Synthetic Wire Industries P. Ltd., a company incorporated under the Companies Act, 1956, having its registered office at No. 12A, Camac Street, Flat No. 2B, Calcutta-17 (hereinafter referred to as "the company"); According to the petition, the agreed rate of interest was 18% per annum.

4. In order to secure the repayment of the loan of Rs. 45,000, the company along with the then board of directors of the company, namely, Meghraj Berlia, Mohit Kumar Berlia, Lalit Kumar Berlia, Amit Kumar Berlia and Sujit Kumar Berlia along with Kamal Kumar Khaitan and Smt. Kamala Khaitan, executed a hundi and/or promissory note for Rs. 45,000 on May 15, 1981. It is the case of the petitioner that the money still remains unpaid in spite of the service of the statutory notice u/s 434 of the Companies Act, 1956.

5. Mr. S.B. Mookherjee, appearing on behalf of the petitioner, draws my attention to certain records of the company which are annexed to the petition. Exhibit-B is

the minutes of the proceedings of a meeting of a board of directors of the company held on May 18, 1981, at 11.00 a.m. It appears from the minutes that among those present were Meghraj Berlia, Mohit Berlia, Lalit Berlia and Amit Berlia, chairman and directors of the company. The minutes/inter alia, contain the following :

" Thereafter, the chairman informed the board that to accommodate the working capital of the company some loans have been taken from Mr. A.R. De, Smt. Mithu Chakrabarti, Mr. Shanti Kant Jhingan and Mr. N.N. Chakrabarti at 18% per annum interest for a short period against separate hundis in respective names in favour of respective persons duly signed by the remaining directors of the company in their personal capacity and also on behalf of the company, countersigned by Sujit Kumar Berlia and Mr. & Mrs. K.K. Khaitan, relatives of the above-named directors.

Resolved that the loan taken by the company from the following persons on interest at 18% per annum repayable on or before September 16, 1981, is hereby approved.

Name of the persons Principal amount taken

Rs.

1. Shri N. N. Chakrabarti 40,000
2. Smt. Mithu Chakrabarti 45,000
3. Shri A. R. De 45,000
4. Shri Shanti Kant Jhingan 40,000

Shri A.R. De, whose name is mentioned against Sl. No. 3 in the aforesaid minutes, is the petitioner before me.

My attention was also drawn to Ex. C to the petition which is a letter dated September 25, 1981, from the company signed by its director, Mohit Berlia, to the petitioner.

It records "Our hundi No. 44, dated May 5, 1981, for Rs. 45,000 taken as loan ". The letter states that the company could not honour the hundi in the stipulated time due to paucity of funds. The letter, however, contains an assurance that the entire sum will be paid within November 10, 1981. It is also stated in the letter that several resolutions regarding the above matter had been passed at the board meetings of the company and certified copies of the extract of the minutes of those board meetings are. enclosed with the letter. The letter ends with an appeal to the petitioner from the company to the effect that in view of their present financial position, they hope that the petitioner will bear with them. Page 18 of the annexures contains one of the annexures to the above-mentioned letter which is an extract from the minutes of the meeting of the board of directors of the company held on September 21, 1981. The following extracts from the minutes may be noted :

" The chairman then informed that the following sums of money received as loan bearing 18% interest in cash by the company against which promissory notes" were executed by all the then directors of the company together with the company, Mr. & Mrs. K.K. Khaitan and Mr. Sumit Kumar Berlia, now also a director, jointly and severally in their personal capacities, have fallen due for payment together with interest on September 16, 1981."

6. After setting out the names of the various creditors which have been mentioned before and the dates of the respective loans and the amounts, the following extract occurs :

" He also informed the board that all the promissory notes, as mentioned above, had duly been presented on the due date, that is, on September 16, 1981, for payment. Due to paucity of funds the commitments could not be met. Instead, letters Nos. SEI/755/81-82, SWI/756/81-82, SWI/757/81-82 & SWI/758/81-82, all dated September 15, 1981, respectively, addressed to all the lenders, as mentioned above, and signed by one of the directors of the company, Sri Lalit Kumar Berlia, were sent to the said lenders through peon as well as by registered post with acknowledgment due.

The chairman requested the board to confirm the following which were unanimously adopted by the board.

That the letters, as mentioned" above, written by the company to Mrs. Mithu Chakrabarti, Mr. A.R. De, Mr. Shanti Kant Jhinghan & Mr. N.N. Chakrabarti, signed by Sri Lalit Kumar Berlia, be and are hereby cancelled.

That the payment of interest on the said borrowings at 18% per annum accrued up to September 15, 1981, be paid on or before September 30, 1981, to each lender of money, as mentioned above, by Account Payee Banker's Pay Orders in favour of each :

" That the overdue amounts of loans taken from the lenders be repaid against the said promissory notes to the mentioned lenders or their orders as per the following schedule together with interest at 18% per annum from September 16, 1981, till the date of such repayment.

Name Instrument No. Date Amount Revised date of repayment (on or before)

1. Mrs. Mithu Chakrabarti 43 15-5-81 45,000 15-12-81
2. Mr. A. R. De 44 15-5-81 45,000 10-11-81
3. Mr. Shanti Kant Jhinghan 45 15-5-81 40,000 20-10-81
4. Mr. N. N. Chakrabarti 46 15-5-81 40,000 30-11-81

These minutes are signed by Mohit Kumar Berlia, Lalit Kumar Berlia, Amit Kumar Berlia and Subroto Chowdhury and is certified to be a true copy by Meghraj Berlia.

7. On November 16, 1981, Mr. Gourishankar Mitra, an advocate, on behalf of the petitioning creditor addressed a statutory notice to the company. The reply of the company is from Mr. N.C. Mullick, an advocate of, this court, on behalf of the company and is dated December 4, 1981. In the second paragraph of that letter, the following sentence occurs: " It is specifically denied that your clients had granted loan to my clients ". The following paragraph contains a somewhat inconsistent plea that Meghraj Berlia and others--without specifying who the others are--have already paid in full settlement of the claim of the petitioner and they are holding a receipt for the same. According to this paragraph, Meghraj Berlia has already informed the company that they have paid the amount due to the petitioner in full and as such the question of further payment does not arise.

8. Mr. Mookherjee, appearing for the petitioner, emphatically stated before me that all the documents of the company, portions whereof have been extracted above, fully corroborate the case of the petitioner in every detail. He also pointed out the fact that the reply to the statutory notice contains clearly inconsistent statements and is completely contrary to, the records of the company which have been extracted above.

9. Mr. P.K. Das, appearing on behalf of the company, drew my attention to the affidavit-in-opposition which has been affirmed by Mohit Kumar Berlia on January 25, 1982. In my view parts of this affidavit are not only inconsistent with the records of the company but are, really and truly, incomprehensible. By way of illustration, I shall set out a part of para. 3 of the affidavit which contains the following statements:

"With reference to the allegations contained in para. 6 of the petition, I state that the petitioner did not lend and advance the said sum of Rs. 40,000 to the company, the said sum was actually lent and advanced by the company to Meghraj Berlia, Lolit Kumar Berlia, Amit Kumar Berlia, Sujit Kumar Berlia, P.B. Khaitan and Smt. Kamala Khaitan in their personal capacity and the said sum was received by them. At the request of the petitioners, the company has actually signed the alleged loan document to secure the loan granted to the said Meghraj Berlia and others.""

10. As I have said if the loan had been granted to the Berlias by the company, it completely boggles one's imagination why at the request of the petitioner, the Berlias would execute a loan document, by which I take it the deponent, means the hundis, in favour of the petitioning creditor. The same paragraph contains the following somewhat inconsistent statement :

" It was actually agreed by and between the petitioner and the said Meghraj Berlia and others that the said sum of Rs. 40,000 together with interest at 18% per annum would be repaid to the petitioner by the said Meghraj Berlia and others. The company has been duly informed by the said Meghraj Berlia by his letter that he has duly paid the said loan together with interest accrued thereon to the said petitioner ."

As correctly pointed out by Mr. S.B. Mookherjee, the pleading of this agreement, which I have just now extracted immediately above, is an improvement on the reply to the statutory notice where no such agreement is pleaded at all.

11. Mr. P.K. Das also sought to contend that the hundis have not been properly stamped and as such they cannot be enforced in law. The hundis have been produced before the at the hearing and they appear to be properly stamped. Even if they were not, there would not be difficulty, in my view, in the way of the petitioner relying on the hundis. This is because of the well-settled proposition that although a particular instrument may not be enforceable by reason of insufficient stamping, it can always be admitted in evidence in collateral proceedings. In this case as is obvious, I am not being called upon to pass a decree on the hundis. In the winding-up applications, after pleading the original consideration, the petitioner is seeking to rely on the hundis as and by way of corroborative evidence. In my view, the petitioner is fully entitled to do so.

12. Certain other paragraphs of the same affidavit appear to take the stand that the company has nothing to do with the repayment of the loan to the petitioner as the loan was taken by Meghraj Berlia and; others. It is significant that in the entire affidavit-in-opposition there is no challenge to the genuineness of the board meetings or of the contents of the minutes which have been annexed to the petition. In para. 8 there is only a statement to the effect that the board meeting dated September 21, 1981, was held at the request of the petitioner. As I have indicated, it is not stated that any of the recordings of the board meetings are not correct.

13. The receipt which is mentioned is the affidavit-in-opposition as having been granted to Meghraj Berlia and others was produced before me by Mr. Das at the hearing of this application and was directed to be kept in the custody of the Registrar, Original Side, until my decision in this case. The receipt is signed by one A. Chakraborti and is to the following effect:

" Received from Sri Meghraj Berlia and others, on behalf of my father-in-law, Sri A.R. De of 156/1B Harish Mookherjee Road, Calcutta-25, the sum of Rs. 45,675 (Rupees forty-five thousand six hundred and seventy-five only) in full and final settlement of the loan taken along with interest accrued till date."

It is clear from the/receipt that the signatures of Mr. A. Chakraborti and the body of the receipt has been written by two different hands and in two different kinds of ink. In the affidavit-in-reply it has been stated that the receipt is a manufactured document. It is on record that Mr. A. Chakraborti, whose full name is Ashoke Chakraborti, was the managing director of the company and he sent his resignation letter on May 14, 1981, which was accepted, by the company at its board meeting on May 18, 1981. After a close examination of the receipt, I am of the view that this alleged receipt, which is incidentally on a slip of paper, must have been signed by Mr. A. Chakraborti at some anterior date. In other words, I am clearly of the opinion that this receipt is not a genuine one.

14. Mr. Mookherjee, appearing for the petitioner, also drew my attention to those statements, in the affidavit-in-reply where it has been stated that Mr. A. Chakraborti was not authorised by the petitioner to receive the payment and no authorisation has been shown by the company in respect thereof. In my view, this submission of Mr. Mookherjee should be accepted.

15. In my view, the story set up in the affidavit-in-opposition in the instant case is totally unbelievable and can only be characterised as a cock and bull story. In other words, the defence sought to be disclosed in the affidavit-in-opposition cannot, in my view, even be described as a moonshine defence. It must necessarily follow that the contentions on behalf of the company must be rejected.

16. In-the result, this application succeeds and the following order is made.

17. The petition is admitted. Let it be advertised once in the Statesman, Calcutta Edition, and once in Ajkal within a period of six weeks from date. The publication in the Calcutta Gazette, is dispensed with. Returnable eight weeks hence. Let the order for advertisement be kept in abeyance for a period of two weeks from date.