

(1996) 05 DEL CK 0044

In the Delhi High Court

Case No : Company Petition No. 45 of 1995 and Company Application No's. 738 of 1995 and 57 of 1996

Indana Spices and Food Indus. Ltd.

APPELLANT

Vs

Indian Charge Chrome

RESPONDENT

Date of Decision : 13-05-1996

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (1996) 3 AD 443 : (1997) 89 CompCas 570 : (1996) 38 DRJ 1

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Arun Bhardwaj, Rajeev Behl and Shashi Saxena, for the Appellant;

Judgement

Vijender Jain, J.

(1) This is a petition filed by the petitioner on the basis of inter-corporate loan to the sum of Rs.150 lakhs, which was advanced to the respondent and further sum of Rs.32 lakhs, which was advanced to the respondent in January, 1992. This petition was filed on 20.12.1994. Notice to the respondent was issued on 15.3.1995. As reply was not filed within the stipulated period, the petition was admitted on 21.8.1995 and citation was ordered to be published in Delhi Gazette, "Statesman" (English) and "Vir Arjun" (Hindi) for 4.12.1995. In the meanwhile, an application was filed by the respondent i.e. Ca No-738/95 with the prayer that order regarding advertisement be stayed and further the proceedings be also stayed and the respondent be allowed to file reply and reply filed along with may be ordered to be taken on record. However, no reply in terms of the prayer, as mentioned along with Ca 738/95, was filed by the respondent for obvious reasons.

(2) From the tenor and contents of the said application, it must be observed that it was a clever device by the respondent to create an impression that there was bona fide disputes between the parties as the petitioner was secured creditor. On the ground that security in shares as well as collateral security for alleged inter-

operate depose

(3) Curiously, even in sub-para (K) of Para-6, at page-20 of the paper book, an averment has been made that the respondent company be allowed to place on record the detailed reply, which is being filed along with this application. As I have observed, no reply along with this application was filed and even the same is not on record till date. In these circumstances, the respondent company, by this application, prayed that the order passed for admitting the petition be modified and vacated. During the course of hearing of this application, a specific query was raised from the respondent to state as to whether the respondent has received the inter-corporate deposit of Rs.50 lakhs, Rs.1 crore and Rs.32 lakhs respectively from the petitioner or not. Affidavit dated 7.12.1995, pursuant to the directions of this Court, was filed by Mr. H S Jalan, Chairman of the respondent company, on 8.12.1995. Para-3 of the said affidavit is important and the same is reproduced as under -

"THAT I say Respondent company in pursuance of Board Resolution dated 27th Sept.1991 had accepted the loan of Rs.150 lakhs from the Petitioner company as under :- Rs. 50.00 lakhs vide petitioner co's cheque dated 8.10.1991; Rs. 50.00 lakhs vide petitioner co's cheque dated 11.10.1991; Rs. 50.00 lakhs vide petitioner co's cheque dated 11.10.1991; Subsequently to the best of my knowledge the Respondent company also received a sum of Rs.32.00 lakhs from the Petitioner company in or about November, 1991 and in all Respondent Company received inter corporate loan of Rs. 182 lakhs in 1991."

(4) However, in para-4 of the said affidavit, it was stated that the respondent company had not received a sum of Rs.150 lakhs from the petitioner company in January, 1992, as has been alleged by the petitioner in para-11 of the sub-para-3 of the petition. This is one of the grounds, which have been vehemently contended by Mr.Behl, learned counsel for the respondent to non-suit the petitioner on limitation, which I shall deal later. From December"1995, the matter was adjourned on various dates.

(5) In the meantime, another application being_C4 No.57/96 was Filed by the petitioner for amending the petition under Order 6 Rule 17 read with Section 151 of the CPC and Rule 9 of the Companies (Court) Rules. By this application, the applicant-petitioner wanted to incorporate the following amendments -

"5-THAT the applicant/petitioner seeks to make the following amendments- (1) That in para 1 of the petition, address of petitioner's Advocate may be changed from 113-114, Indra Prakash Building, Barakhamba Road, New Delhi-1100001 to C-577, defense Colony, New Delhi-110024. (2) That paras 11(iii) to 11(v) of the petition may be deleted and in their place the following paragraphs may be substituted:- (iii) That on 27.9.1991, the Board of Directors of M/s Indana Spices and Food Industries Ltd. (respondent No.1 in the petition) resolved and authorised Shri H.S. Jalan and Shri K..C. Jain to avail Inter Corporate Deposits of Rs.150 lacs on such terms and conditions as they may deem Fit. The Board also

authorised Shri H.S. Jalan and Shri K.C. Jain to execute papers and documents which may be necessary for availing the Inter Corporate Deposits. The Board also authorised Shri H.S. Jalan and Shri K.C. Jain to affix the common seal of the company. (iv) That M/s Indana Spices and Food Industries Ltd. (respondent No.1 in the petition) obtained the First Inter Corporate Deposit of Rs. 50 lacs from M/s Indana Charge Chrome Ltd. (petitioner herein) for a period of 3 months vide Cheque No.617507 dated 8.10.1991 drawn on Citibank, N.A., New Delhi. The said amount was paid through bank and was transferred/credited into account of M/s Indana Spices and Food Industries Ltd. on 9.10.1991. (v) That at the time of obtaining the First deposit of Rs. 50 lacs on behalf of the company, Shri K.C. Jain wrote a letter dated 8.10.1991 to the petitioner enclosing the following documents and requesting the petitioner to release the amount immediately:- 1) Pronote for Rs.50 lacs in favor of ICCL. 2) Personal guarantee of Shri H S Jalan, Chairman of the Company. 3) Board's Resolution for accepting the deposits. 4) Cheque No. 167706 dated 7.1.92 for Rs. 50 lacs drawn on Central Bank of India, Janpath, New Delhi. 5) Cheque No-167709 dated 7.1.92 towards interest. (v-a) That M/s Indana Spices and Food Industries Ltd. obtained another Inter Corporate Deposit of Rs. 100 lacs for a period of 3 months vide two Cheques bearing No.617508 and 617512 dated 11.10.1991 for Rs. 50 lacs each. The said deposit of Rs. 100 lacs was also paid by cheque and was transferred/credited into account of M/s Indana Spices and Food Industries Ltd. on 11.10.1991. (v-B) That at the time of obtaining the deposit of Rs. 100 lacs on behalf of the Company, Shri K C Jain wrote a letter dated 10.10.1991 to the petitioner enclosing the following documents and requesting the petitioner to release the amount immediately:- 1) Pronote for Rs.100 lacs. 2) Personal guarantee of Shri H S Jalan 3) Board's Resolution for accepting deposit. 4) Two Cheque for Rs. 100 lacs and interest after deduction of tax at source dated 10.1.92 (v-c) That on 17.1.1992, M/s Indana Spices and Food Industries Ltd. obtained another deposit of Rs. 32 lacs for a period of one year carrying an interest @ 18% per annum payable quarterly. The said amount of Rs. 32 lacs was transferred/credited into the account of M/s Indana Spices and Food Industries Ltd. on 17.1.1992 vide Manager's Cheque No.026807 issued by Citibank N.A. (2) That in para 11(vi) of the petition, in the list of documents, at Sr.No.4, the figure 15,000 may be substituted by 50,000. (3) That after para 11(vii) of the petition, the following paragraphs may be added:- (vii-a) That M/s Indana Spices and Food Industries Ltd. confirmed the receipt of deposit of Rs. 50 lacs vide their letter dated 11.1.92, the deposit of Rs.100 lacs vide their letter dated 11.1.92 and the deposit of Rs. 32 lacs vide their letter dated 17.1.92. (vii-b) That M/s Indana Spices and Food Industries Ltd. further confirmed the receipt of the deposit vide letter dated 25.3.92 and also confirmed that the same was renewed for a further period of one year and the same had become due and payable to the petitioner and the deposits of Rs. 50 lacs and Rs. 100 lac had become due and payable on 6.1.93 and 9.1.93 respectively. (vii-c) That vide letter dated 3.4.1992, M/s Indana Spices and Food Industries Ltd. confirmed that a sum of Rs. 50 lacs was due and payable to the petitioner on 6.1.93, Rs. 100 lacs was due and payable

on 9.1.93 and Rs. 32 lacs was due and payable on 16.1.93 along with interest @ 18% payable quarterly. (vii-d) That the Company had issued cheque No.167709 dated 10.1.92 for Rs.1,55,265.85 towards payment of interest .The said cheque was encased in favor of the petitioner. Another cheque No.167718 dated 10.1.92 for Rs.3,10,531.70 was also issued by the Company towards payment of interest. The same was dishonoured but, however, was replaced by a Pay Order bearing No-011531 dated 20.1.92 and the same was encashed in favor of the petitioner on 20.1.92. In this manner, so far the petitioner has received a sum of only Rs.4,65,797.55 in January, 1992 towards interest. (vii-c) That on 24.12.92, the petitioner deposited the following post- dated cheques issued by the Company for realisation as they had become due for payment :-

Date	Cheque No.	Amount	7.07.92	178602	Rs.1,73,250	10.07.92	178608
		Rs.3,46,500	19.07.92	178621	Rs.1,10,888	7.10.92	178603
							Rs.1,73,250
			10.10.92	178609	Rs.3,46,500	19.10.92	178622
					Rs.1,10,888		

(vii-f) That on being presented, the said cheques got dishonoured and were returned unpaid. The petitioner, through their counsel, sent Notice dated 5.1.1993 calling upon the Company to make payment of the dishonoured cheques immediately. (vii-g) That in the month of January, 1993 the petitioner deposited the following post-dated cheques issued by the Company for realisation as they had become due for payment:-

Date	Cheque No.	Amount	7.1.93	167748	Rs. 50,00,000	7.1.93	178604	Rs.
1,73,250	19.1.93	178623	Rs. 1,10,880	17.1.93	178605	Rs. 1,00,00,000	17.1.93	
		178624	Rs. 32,00,000					

(vii-h) That on being presented, the said cheques got dishonoured and were returned unpaid. The petitioner, through their counsel, sent Notice dated 22.1.1993 calling upon the Company make payment of the dishonoured cheques immediately. (vii-i) That in reply to the Notices dated 5.1.93 and 22.1.93, petitioner's counsel received replies dated 4.2.93 from Shri Subash C Verma, Advocate, 72, Janpath, New Delhi. (vii-j) That the petitioner lodged the share certificates along with duly filled in share transfer form with the Company vide letter dated 19.3.93 but the same has not been done by the Company. (vii-K) That the documents to prove the above facts are already on record and be treated as part of this petition. However, the same are filed along with the amended petition. (5) That para 12 of the petition may be deleted and in its place the following paragraph may be substituted:- 12. That the Company has failed to pay the debt/dues of the petitioner. Hence, it is clear that the Company is unable to pay its debt and is liable to be wound up on this ground."

(6) Reply was Filed by the respondent to this application. I would like to observe here that the amendment, which was sought, was not necessary as all the aforesaid documents were filed by the petitioner along with the original petition on 10.3.1995 and it was so noted in the order sheet dated 13.3.1995 and it was only after these documents were taken into consideration, the Court issued show

cause notice on 15.3.1995. Amendments sought in para-11 sub-para (iii) - resolution of the board of the respondent company; letter dated 8.10.1991, para-11 (iv) and (v) - letter dated 10.10.1991 amendment sought vide para-II (v-b); letter dated 17.1.1992 - amendment sought in para-11 sub para (v-c); letters dated 11.1.1992 - amendment sought in para-11 subpara (vii-a); letter dated 25.3.1992 - amendment sought in para-11 sub para (vii-b); and photocopies of other cheques, for which amendment is sought in subsequent paras, were already placed with the original petition. However, I have dealt with this application later, Therefore, it is suffice to state at this stage that, as a matter of fact, there was no need for aiding the petition and in any case nothing new was sought to be incorporated by the petitioner by virtue of these amendments.

(7) Keeping in view the conduct of the respondent and the averments made in various applications as well as in the petition wherein the receipt of Rs.182 lakhs is admitted by Mr. H S Jalan in his affidavit, referred to above. To delay the hearing for winding up would have resulted in grave miscarriage of justice and amounted to abuse of the process of law, Therefore, by this order, I intend to dispose of all the application as well as main petition.

(8) Appearing for the respondent Mr.Behl, has contended that no averment in the petition has been made that Rs.150 lakhs as inter-corporate loan was given to the respondent and, Therefore, in the absence of any specific averment as to how this intercorporate loan was given and except a bald statement made by the petitioner that sometime in January"1992 the respondent company obtained from the petitioner a sum of Rs.182 lakhs when, as a matter of fact, Rs.150 lakhs was not received in January"1992, to allow amendment would amount to extending the period of limitation and, Therefore, the application for amendment as well as winding up petition, as originally maintained by the petitioner, has to be rejected. The second contention, which has been vehemently urged by the learned counsel for the respondent before me, is that the affidavit in support of the company petition for winding up nowhere slates that the respondent company is unable to pay its debt apart from being not in conformity with Rule-11 sub Rules-18, 21 and form-3 of the Companies (Court) Rules. In support of his contentions, he has cited Moot Chand Wahi vs. National Paints (Private) Ltd. & another 1986 (60) C.C. 402. Mr.Behl has also contended that if amendment is allowed, it will relate back to the date of presentation of the petition and, Therefore, affidavit in support of this company petition is a substantive evidence and if the same is defective, that defect cannot be cured. In support of his contentions, he has cited Registrar of Companies, Punjab vs. New Suraj Financiers and Chit Fund Co.Pvt-Ltd. 1990 (60) C.C. 104. Other ground, which has been urged before me by the Seamed counsel for the respondent is that the respondent has given adequate security as shares numbering 2,00,000 were given to the petitioner having market value of Rs.35 lakhs. In addition to that collateral security for a building to be constructed on a plot of land in the shape of a agreement between Smt. Pushpa Lata Bansal and M/s.Wisdom Investments

Limited wherein said M/s.Wisdom Investments Limited have offered and agreed to undertake and carry out, develop and construct commercial complex on the said plot of land bearing No.76, situated in M-Block Market, Greater Kailash-II, New Delhi, measuring 195 sq.yds., was given to the petitioner. The respondent has themselves filed photocopy of a letter of M/s.Wisdom Investments Limited dated 17.1.1992 addressed to the petitioner, which, according to Mr.Behl, was copy supplied from the criminal case pending in Court at Patiala House, which was filed by the petitioner, it makes an interesting reading. It, inter alia, states

"THAT with a view to provide collateral security for inter-corporate deposit of Rs.182 lakhs to the petitioner, they are depositing the collaboration agreement in respect of construction of premises at M-76 with a rider that the aforesaid agreement will remain in the possession but in no case will be utilised by the petitioner for any other purpose or be passed on to any third person for any reason whatsoever and the same is held by the petitioner as collateral security for safe custody and in trust on behalf of M/s.Wisdom Investments Limited".

(9) Then from pages 53 and 55 to 60 are the letters from M/s. A.F. Investment Limited, M/s. Known Leasing & Hire Purchase Co.Ltd. and M/s.Suvidha Leasing & Finance Limited companies, who have given shares to the petitioner as security. The shares numbering 2,00,000 have been admitted by the respondent in para-3 of the affidavit of Mr.H S Jalan dated 27.3.1996. The submissions of Mr.Behl is that these shares are of the value of Rs.35 lakhs and the same are being held by the petitioner as security towards payment of loan and the petitioner should first take recourse to encash the security and then resort to winding up of the respondent company as the winding up is the last resort and winding up should not be used to pressurize the respondent for making the payment of the due amount. Mr.Behl has further contended that for the recovery of the amount, a suit has also been filed by the petitioner. Yet another arguments advanced by Mr.Behl is that in any event Mr.K C Jain had no authority to extend the liability of the respondent company. Another contention raised by the learned counsel for the respondent is that in the original petition, the petition was filed on the ground of company to be wound up on account of just and equitable and not on the ground company being unable to pay its debt. In support of his contention, he has cited Hind Overseas Private Limited Vs. Raghunath Prasad Jhunjhunwalla and Another, .

(10) Lastly, Mr.Behl has contended that no statutory notice, as contemplated under Sections 433, 434 and 439 of the Companies Act, has been served on the respondent company and in the absence of any notice and receipt thereof placed on record, the petition for winding up is not maintainable. In support of his contention, he has cited Kalra Iron Stores Vs. Faridabad Fabricators P.Ltd. 1992 (73) C.C. 337.

(11) Adverting to the arguments advanced by the learned counsel for the respondent Mr.Arun Bhardwaj, learned counsel appearing for the petitioner, has contended that what is postulated under Rule-11 sub Rules-18, 21 and Form-3 of

the Companies (Court) Rules has been fully complied with. He has further contended that it is not necessary for the petitioner to aver in the affidavit that the company is unable to pay its debt if the same has been mentioned in the petition for winding up. He has argued that in para-3 of the supporting affidavit filed with the petition, it has been specifically averred that the contents of the petition be read in addition to this affidavit. In para-3 of the affidavit, it has also been mentioned that the deponent confirms the submissions and averments made in the petition and has further stated in para-4 of the said affidavit that on account of circumstances stated in the petition, the company petition be made absolute with cost.

(12) Coming to the arguments advanced by the counsel for the respondent regarding notice, limitation and amendment of the petition, Mr. Bhardwaj has contended that notice dated 1.8.1994 was sent by registered A/D post on 16.8.1994 and a letter in respect of the same stating that Receipt Nos.1869, 1870 and 1871 dated 16.8.1994 was delivered at the office address of the respondent company. Mr.Behl has taken objection that on the registered letter the date is 1.8.1994, then why there is no certificate of service on the respondent regarding letter dated 1.8.1994 and, Therefore, this notice cannot be treated as notice, which has been served on the respondent.

(13) Refuting the arguments of learned counsel for the respondent Mr.Bhardwaj has contended that the stand of the respondent is contradictory regarding furnishing of collaboration agreement and furnishing of 2,00,000 shares of different companies as security. Mr.Bhardwaj has invited the attention of this Court to the affidavit filed by Mr.H S Jalan dated 27.3.1996. In para-5 of the said affidavit, the stand taken by the respondent is as follows -

"THAT the Deponent states and submits that the deponent made inquiries from M/s.Wisdom Investment Limited (now known as Siddartha Businesses Limited) with regard to creation of equitable mortgage of their interest in Property No.M-76, Greater Kailash-II, New Delhi, in favor of the petitioner company. Upon inquiry from Wisdom Investment Limited the company who furnished the collateral security has informed the respondent company that they are not in possession of the original documents, Agreement to Sell or Builders Agreement to confirm the valid creation of equitable charges. The charge of the property, alleged to have been created by Wisdom Investment Limited, does not appear to have been registered with the Registrar of Companies. In the facts and circumstances, it appears the same must be in possession of the petitioner company as is evident from the averments made by the petitioner company in para 11 (vi) (1) of the petition. Documents are not traceable with M/s.Wisdom Investment Limited. In such circumstances, deponent cannot admit or deny as to whether there is a valid and binding security created by Wisdom Investment Limited in favor of the petitioner company. The deponent has stated that the petitioners are the Secured Creditor on the basis of their averments and admissions made in the petition in para 11. It is reaffirmed that the Deponent

has stated that the Petitioner are the Secured Creditors on the averments made by the Petitioner in the petition. In such circumstances, the Deponent is not in a position to confirm as to whether Wisdom Investment Limited has created a legal, valid and equitable charge of their property, as described in the photo copy of the alleged agreement filed by the Petitioner."

(14) MR.BHARDWAJ has also contended that the petitioner has never evaluated the market value of these shares, numbering 2,00,000, to Rs.35 lakhs. In the correspondence ,the same has come on account of valuation fixed by the respondent company but, as a matter of fact, the respondent was never interested either in transferring these shares in the name of the petitioner company nor the shares had any market value.

(15) During the course of hearing, time and again I had directed the respondent to place on record the market value of the shares but no effort was made by the respondent to state before this Court as to what is the value of the shares today. I have been told, during the course of hearing, by the learned counsel for the petitioner that these shares are not listed in Stock Exchange and there is no buyer. Just to test the bona fide of the respondent this Court put a question and gave option to the respondent as to what price the respondent would like to buy these shares but the respondent has not offered any price for these 2,00,000 shares except harping that the said shares are security in the hand of the petitioner. A security or collateral security must have a intrinsic value so as to satisfy the debt or the amount for which security is furnished. The security has to be real with some value and not simple piece of paper worthless or incapable of Realizing a penny. Therefore, I hold that security in terms of 2 lakh shares is not real and as such no security in the eyes of law.

(16) Pursuant to Board's Resolution of respondent company, H S Jalan and K C Jain were further authorised to execute papers and documents as were deemed necessary for availing the deposit and use the common seal of respondent Co. if required to be affixed in the presence of Mr.H S Jalan, Director. It was further resolved that Mr.Jalan will give his personal guarantee. On 8.10.1991, respondent company wrote a letter to petitioner company, which is at page-31 of the paper book, for providing inter-corporate deposit of Rs.150 lakhs for three months. By this letter they executed pronote and forwarded it to the petitioner along with personal guarantee, Board's Resolution, a post-dated cheque dated 7.3.1992 for Rs.50 lakhs and cheque of the same date towards interest. At page-32 of the paper book, there is a letter dated 10.10.1991 by the respondent to the petitioner, inter alia, requesting them to further provide inter-corporate deposit of Rs.100 lakhs for three months and similar documents, as were executed along with letter dated 8.10.1991 for inter-corporate loan of Rs.50 lakhs, were sent to the petitioner vide the said letter dated 10.10.1991. At page 33 of the paper book, there is another letter dated 11.1.1992 by the respondent company, signed by Mr.K C Jain, inter alia, stating that the respondent company confirms the inter-corporate deposit of Rs.50 lakhs received

by them by way of renewal of deposit of Rs.50 lakhs, which was initially provided to the respondent on 8.10.1991 by means of cheque No.617507. A similar letter is also written on the same date, i.e.11.1.1992, by the respondent in relation to the inter-corporate deposit of Rs.100 lakhs. On 17.1.1992, a fresh inter-corporate deposit of Rs.32 lakhs was received by the respondent company vide Cheque dated 17.1.1992 for a period of one year, an advance cheque No.178624 drawn on Central Bank of India, was issued by the respondent in favor of the petitioner dated 17.0.1993, i.e. date of maturity. The same was filed along with the original petition filed by the petitioner and the same is at page-44 of the paper book. Similarly, for repayment of Rs.100 lakhs a cheque bearing No.178605 dated 17.1.1993, drawn on Central Bank of India was issued by the respondent company. At page-36 of the paper book, there is a letter from the respondent dated 25.3.1992, inter alia, requesting the petitioner that the inter-corporate deposit of Rs.100 lakhs and Rs.50 lakhs is due for payment for January"1992 and the respondent was thankful for allowing them to roll over for same for a further period of one year. I do not think, it is necessary for me to go into this aspect, as admittedly the respondent in para-3 of his affidavit filed in this Court in December"1995 has admitted that the inter-corporate loan of Rs.182 lakhs was received from the petitioner. Moreover, respondent has not come forward to state as to which was the letter which was served on him vide postal receipts, which are filed by the petitioner. Respondent is trying to take advantage of technologies without Realizing that in view of specific admission of respondent that Rs.182 lakhs" inter-corporate deposit was received, and respondent has not shown any inclination to pay the same in Court, the stand of respondent lacks bona fides. Lastly, most important objection, which has been raised in the arguments advanced by learned counsel for the respondent is regarding limitation and averment regarding payment received from the petitioner. It has been mentioned that the loans were obtained in January"1992 to the extent of R.150 lakhs in the same paragraph in the petition, however, the petitioner has also mentioned that the respondent company itself wrote a letter dated 8.10.1991 and enclosed pronote for Rs.50 lakhs in favor of the petitioner giving personal guarantee of Mr.H S Jalan, Chairman of the respondent company and respondent company"s Board Resolution for accepting the deposit and cheque dated 7.1.1992 for Rs.50 lakhs drawn in Central Bank of India and further cheque dated 7.1.1992, in the same paragraph, towards interest would show that the deposit was taken initially for a period of three months, the same was got renewed for a further period of one year in January"1992. No ambiguity is there in the petition and on page-30 of the paper book a Resolution of the respondent company authorising Mr.H S Jalan and Mr.K C Jain to avail inter-corporate deposit of Rs.150 lakhs on the terms and conditions as they may deem fit has also been filed. Therefore, in the background of the aforesaid, the plea taken by the respondent regarding limitation is only a dilatory tactic, devoid of any force.

(17) Dealing with the plea of the respondent regarding creation of collateral

security, from the tenor, contents and documents placed on record by M/s.Wisdom Investments Limited, I have seen that this document, which creates collateral security in favor of the petitioner, is not even executed by M/s.Wisdom Investments Limited. In the absence of any document executed by M/s.Wisdom Investments Limited in favor of the petitioner, it cannot be said that there is any collateral security, which has been created in favor of the petitioner. Therefore, the arguments of the counsel for the respondent is legally untenable and factually incorrect. Even otherwise in his affidavit, which I have referred to earlier, Shri H S Jalan has now taken the plea that as no charge was registered, the collateral security is not binding. That shows the mala fide of the respondent that on one hand arguments have been advanced that on account of the collateral security winding up petition is not maintainable and on the other hand affidavit has been filed that no valid binding security exists in favor of the petitioner.

(18) In view of these correspondence on record and hesitant but specific admission on the part of Mr.H S Jalan, Chairman and Director of the respondent company, pursuant to the directions of this Court to file affidavit, which I have referred to above, there is no dispute that the amount of Rs.150 lakhs, which was averred in the petition in the year 1992 is the same amount, which was initially given to respondent on 8.10.1991 for a period of three months. Therefore, the facts amplifying the transaction or documents in relation to the same transaction, which has been pleaded in the original petition, can always be taken on record even without amendment. What is not permissible by way of amendment is to introduce a new cause of action or to extend the period of limitation by allowing amendment or not to allow the amendment if it is otherwise mala fide. In view of the fact of the case in hand that the inter-corporate loan by the respondent company not in dispute, if in such a case amendment is refused, it will not further the cause of justice but will result in creating impediment in effectually deciding the matter. Keeping in view the above facts, I am of the considered opinion that the transaction was a running transaction regarding inter-corporate deposit. Rs.150 lakhs was rolled over after the first period of three months starting from 8.10.1991 and, Therefore, the petition is not barred by limitation and if amendment, sought for amplifying the facts regarding the transaction, is allowed, the same is neither mala fide nor would extend the period of limitation.

(19) Dealing with the arguments of counsel for the respondent that affidavit filed along with the petition is no affidavit in the eyes of law, relying on the provisions of Companies (Court) Rules in this regard, I have no hesitation in holding that what is required under law for compliance of the requirements of filing a petition in Form-3, have been fully complied with by the petitioner.

(20) However, in this matter, the application for amendment is not necessary. The petition for winding up and the relief prayed for in the original petition itself can be granted on the basis of un-amended petition. The defense put up by the respondent is nothing but dilatory tactics in order to delay the ultimate order of

winding up against the respondent company. .The conduct of the respondent in not filing the reply to the main petition and thereafter filing an application for modification/vacation of the order passed by this Court for citation and averring in that application that reply is being filed along with this application but not filing the reply on record, speaks volume about the conduct of the respondent. Respondent was trying to play hide and seek before this Court. Ultimately, it was on account of the specific direction passed by this Court that the respondent filed affidavit dated 7.12,1995, which I have referred above, admitting the receipt of inter-corporate deposit of Rs.182 lakhs. In response to the directions of this Court when another affidavit was filed by the respondent dated 27.3.1996 where in he has tried to deny giving of collateral security by way of collaboration agreement not binding and respondent's stand with regard to the shares numbering 2,00,000, which, according to the respondent were given to the petitioner as security, whose value cannot be given by the petitioner, speaks volume of his conduct and intentions .

(21) In the aforesaid affidavit of Mr.Jalan, Chairman and Director of the respondent company, it is admitted that the petitioner lodged the shares in March"1993 with the respondent company for transferring the same in the name of the petitioner but the transfer of shares could not take place as the companies objected to the same as well as on account of the dispute going on between the respondent company and the petitioner company. At the same time, in the said affidavit, respondent goes on to state that if direction is issued by this Court, the respondent is prepared to transfer same in the name of petitioner company. Time and again, this Court had directed the respondent to state the valuation of the shares, which are shares given to the petitioner by the respondent as security, but till date no valuation has been given by the respondent. Respondent has scant respect for the process of law, as is evident from para-5 of the aforesaid affidavit. What Mr.Behl had contended before this Court was that on account of collateral security in relation to the property in Greater Kailash, New Delhi given to the petitioner by the respondent the petition is not maintainable, whereas Mr.Jalan, in his affidavit has stated in para-5 that it is not possible to confirm that there was any valid confirmation of equitable charge regarding the said property. The conduct of the respondent goes to show that they have neither any intention to pay nor capacity. Said affidavit of their contradict their own stand as in the affidavit under discussion it has been slated that the charge of the property has not been registered with the Registrar of Companies and no reply could be given as papers are not traceable with the said M/s.Wisdom Investments Limited and the stand of the respondent on which lengthy arguments were advanced before this Court was that in view of collateral security, petition is not maintainable. The conduct of the respondent speaks for itself that he has no respect for the process of law.

(22) I do not find any substance in this application filed by the respondent for modification of the order passed by this Court issuing citation on 21.8.1995 as the respondent has misused and abused the process of law. I, Therefore, dismiss

this application with cost of Rs , . Company Application No.57/96 Counsel for the petitioner says that he does not press this application and the same may be dismissed as withdrawn. Application is dismissed as withdrawn. Company Petition No.45/95 This petition was admitted by this Court vide order dated 21.8.1995.

(23) As the respondent company has no bona fide defense, as discussed above, I hereby order that the respondent company be and is hereby wound up. The Official Liquidator attached to this Court is hereby appointed the liquidator of the company. The Official Liquidator is directed to take into possession all the assets of the company forthwith. Let citation be published of the winding up in the Delhi Gazette, "Statesman" (English) and "Jansatta" (Hindi).

(24) Registry is directed to prepare a formal order and notification in accordance with Rules and copy of the same be sent to the Official Liquidator immediately.