(1979) 03 CAL CK 0009

In the Calcutta High Court

Case No : Company Petition No. 553 of 1978

John Paterson and Co. (India) Ltd. APPELLANT

Vs

Promod Kumar Jalan RESPONDENT

Date of Decision : 27-03-1979

Acts Referred:

Companies Act, 1956 — Section 152

Citation : (1983) 53 CompCas 255

Hon'ble Judges : Salil K. Roy Chowdhury, J

Bench : Single Bench

Advocate : R.C. Nag and S.C. Chowdhury, S.C. Sen and Sudipta Sarkar, for the Appellant;

Judgement

Salil K. Roy Chowdhury, J.—This is an application for the stay of a winding-up petition and other consequential orders.

2. The present application was moved on the 14th of Feb., 1979, when it was made returnable the next day, the 15th Feb., 1979. On the returnable date a conditional order was made for stay on the deposit of Rs. 1,00,000 by the applicant-company. I am now told that the company preferred an appeal from the said order and the amount of deposit was reduced to Rs. 50,000 by the appeal court. . The said order was not produced before me.

3. The petitioning-creditor''s claim is for Rs. 2,46,500 on account of a principal sum alleged to have been lent and advanced by the petitioning creditor to the company on the 15th of May, 1976, by cheque, as stated in para. 6 of the winding-up petition. It is alleged by the petitioning-creditor that the said amount was payable on demand together with interest at the rate of 18% per annum and the amount of interest from 15th of May, 1976, to 15th of November, 1978, amounted to Rs. 76,500 and the total claim in the winding-up petition was Rs. 2,46,500. The petitioning-creditor annexed a copy of the certificate of the banker, United Commercial Bank, which was to the effect that the said amount has been realised by the company by encashing the said cheque. The petitioning

creditor''s claim is that on the 6th of September, 1978, a statutory notice was served on the company and the company has not paid the said amount and has replied to the petitioning creditor''s notice evasively. The petitioning-creditor has annexed the relevant correspondence to the winding-up petition which is set out hereunder :

"A/150/78 9th Aug., 1978. M/s. John Paterson & Co. (I.) Ltd. 96, Garden Reach Road, Calcutta-700023.

Registered with A.D.

Dear Sir,

My Client:-- Sri Promod Kumar Jalan of No. 32, Seth Jamunalal Bazar Street, Calcutta.

Under instructions from my client abovenamed I address you as follows :

On or about 15th May, 1976, my clients above-named at your request, lent and advanced you a sum of Rs. 1,70,000 (rupees one lakh seventy thousand only), repayable on demand. You agreed to pay interest on the sum @ 18% per annum.

In spite of repeated requests and demands you have failed and neglected to pay to my client the said sum of Rs. 1,70,000 or any part thereof. You have also failed and neglected to pay any interest on the said sum as agreed by you.

In the circumstances I, on behalf of my client, hereby call upon you to pay my client or to me on his behalf within 3 weeks the said sum of Rs. 1,70,000 together with the agreed interest thereon @ 18% per annum failing which my client will file application for your winding-up.

This notice is being served upon you u/s 434 of the Companies Act, 1956.

Yours faithfully, "

"Regd. A/D.

A/239/78 6th Sept., 1978. John Paterson & Co. (I.) Ltd., 103-A, Foreshore Road, Shibpore, Howrah.

My client :--Sri Promod Kumar Jalan of No. 32, Seth Jamunalal Bazar Street, Calcutta.

Dear Sirs,

Under instructions from my client above-named I address you as follows :

On or about May 15th, 1976, my client above-named at your request lent and advanced to you a sum of Rs. 1,70,000 (rupees one lakh and seventy thousand only), repayable on demand. You agreed to pay interest on the said sum at the rate of 18% per annum.

In spite of repeated requests and demands you have failed and neglected to pay to my client the said sum of Rs. 1,70,000 or any part thereof. You have also failed and neglected to pay any interest on the sum as agreed by you.

In the circumstance I, on behalf of my client, hereby call upon you to pay to my client or to me on his behalf, within 3 (three) weeks the said sum of Rs. 1,70,000 together with the agreed interest thereon @ 18% per annum failing which my client will file application for your winding-up.

This notice is being served upon you u/s 434 of the Companies Act, 1956.

Yours faithfully, (Sd.) A.P. Agarwalla."

"Annexure ''B''

John Paterson & Co. (India) Limited. 96, Garden Reach Road, Calcutta-700023. 13th Sept., 1978.

Ref. No. JP/BG/NPM/2235/78

Shri A.P. Agarwalla, Advocate, 8, Old Post Office Street, Calcutta-700001.

Dear Sir,

Your Client:--Shri Promod Kumar Jalan.

Please refer to your letter dated the 6th of Sept., 1978.

We do not appear to have borrowed Rs. 1,70,000 on interest @ 18% per annum from your client. In order to look into the matter please let us have particulars or the receipt for the said alleged sum and produce the same for our inspection for our doing the needful.

Yours faithfully, For John Paterson & Co. (India) Ltd. (Sd.) Illegible. (Accountant)."

"Registered with A.D,

A/314/78. 21-9-1978, To John Paterson & Co. (India) Ltd., 103/A; Foreshore Road, Shibpore, Howrah.

My Client:---Sri Promod Kumar Jalan.

Dear Sirs,

I am in receipt of your letter No. JP/BC/NPM/2235/78, dated September 13, 1978, and I have received instructions to reply thereto as follows :

The sum of Rs. 1,70,000 (rupees one lakh and seventy thousand only), was paid to you by my client by account payee cheque being Cheque No. AT/13/8312629, dated 15th May, 1976, for Rs. 1,70,000 (rupees one lakh and seventy thousand only) drawn upon the United Commercial Bank, Burra Bazar, Calcutta, in your favour. The said cheque was duly encashed upon presentation. In the circumstances it is a futile attempt on your part to deny such payment.

As you have failed and neglected to make payment of the said sum of Rs. 1,70,000 together with up-to-date interest as demanded in my letter dated Sept. 6, 1978, my instructions are to file application for your winding up pursuant to the statutory notice dated Sept. 6, 1978, served upon you.

Yours faithfully,"

"Annexure ''B'' Registered with A/D.

John Paterson & Co. (India) Limited. 96, Garden Reach Road, Calcutta-700023.

Ref. No. JP/2292/2300

Shri A.P. Agarwalla, Advocate, 8, Old Post Office St., Calcutta-700001.

Dear Sir,

Your letter No. A/314/78 dated 21st Sept., 1978, was received by us on the 7th Oct., 1978. Your client has alleged that he lent and advanced to us a sum of Rs. 1,70,000 repayable on demand with interest at the rate of 18% per annum. From our records we do not appear to have borrowed the said sum on interest at the rate of 18% per annum from your client. We naturally, therefore, wish to examine the matter on merits and have accordingly requested you to produce our receipts for the said sum and/or any other documents regarding the terms of the alleged loan. On receipt of such particulars and inspection of documents we reserve our rights to deal with your letter under reply. It seems that your client is only interested in making unwarranted threats of winding up without producing any particulars or documents. Such a threat is unwarranted and motivated and action that your client may take will be at his own risk and responsibility.

Yours faithfully, For John Paterson & Co. (India) Ltd. (Sd.) Illegible." (Accountant)

"Annexure ''B'' Registered with A/D.

Ref. No. A/402/78 11-11-78. John Paterson & Co. (India) Ltd., 103-A, Foreshore Road, P.O. Shibpore, Howrah.

Dear Sirs,

My client :--Promod Kumur Jalan.

I am in receipt of your letter No. J-P/2292/2300, dated Nov. 4, 1978, and have received instructions from my client to reply thereto as follows :

The various allegations contained in your reply are false, frivolous and meant to delay the payment of just and equitable dues of my client.

Your feigning of ignorance will not help in the matter. The cheque No. AT/13/8312629 dated May 15, 1976, drawn by my client in your favour was duly encashed by you through your banker, Punjab National Bank. A copy of certificate dated Oct. 24, 1978, issued by the United Commercial Bank, Burrabazar Branch, Calcutta, is enclosed herewith. The said loan would also be corroborated from your books of account. Inspection of the original bank certificate is offered to you any time during office hours at my office.

You are once again requested to pay the dues of my client together with up-to-date interest instead of raising frivolous disputes.

Yours faithfully,

Enclo : As above. (Sd.) A.P. Agarwalla." The company admitted that the said amount was paid by the petitioning-creditor to the company but alleged that the said amount was paid in respect of 170 debentures of Rs. 1,000 each allotted to the petitioning-creditor pursuant to an application for debenture dated the 15th May, 1976. The company produced before this court the original, in duplicate, of the alleged application of the petitioning creditor, a photostat copy of which is annexed to the affidavit of Anirudha Bose affirmed on the 13th Feb., 1979, being the grounds of the present application. The said alleged application is set out hereunder :

"Annexure ''C''

Promod Kumar Jalan

Phone: 33-4001/2 Office : 32, Seth Jamunalal Bazar Street, Calcutta-7. Phone: 47-5111/2 Residence : 3/1, Queens'' Park, Calcutta-19.

15th May, 1976.

Application for Debenture

The Directors, M/s. John Paterson & Co. (India) Ltd., 103/A, Foreshore Road, Shibpur, Howrah.

Dear Sirs,

I send herewith cheque No. CINO-AT/13/032629, dated 15-5-76, for Rs. 1,70,000 being the deposit for 170 Nos. of debentures of Rs. 1,000 each in the abovenamed company and I request you to allot us 170 Nos. of debentures on the terms and conditions of the memorandum and articles of association of the company.

Usual Signature :-- Full Name : Promod Kr. Jalan Present Address : 32, Seth Jamunalal Bazar Street, Calcutta. Occupation: Business Dated 15th May, 1976. "

4. The company also produced the debenture register which I have directed to be kept in the custody of this court along with the alleged application for the allotment of the debenture by the petitioning creditor. The petitioning creditor denied the said contention of the company that the said debentures were issued in his favour and, as he signed two blank papers and handed over to Gajanan Khaitan, which could be made use of by way of application for debenture on

certain conditions, yet the conditions not being fulfilled there was no question of any debenture being issued and the said amount was a simple loan payable on demand by the company with interest at the rate of 18 per cent. per annum as would appear from the correspondence. The petitioning creditor also made an alternative case in the present application that assuming the said amount was paid for 170 debentures, the company having not paid any interest thereon which amounts to about Rs. 44,000 the company must be deemed to be insolvent and in any event, the entire amount of the said debenture has become payable under the conditions of the alleged debenture bond. The petitioning creditor also disputed the said issue of debenture and submitted that the said application for allotment of debenture was a forgery and the register of debenture has been manufactured to set up the false case of the company before this court to dispute the undisputed claim of the petitioning creditor, if possible.

5. Mr. S.C. Sen, appearing with Mr. Sudipta Sarkar for the company, submitted that the petitioning creditor''s claim is bona fide disputed and there is substance in the defence raised by the company both in fact and in law. The petitioning creditor has come before this court in this winding-up petition on the case that the said amount of Rs. 1,70,000 paid by him to the company by an account payee cheque being the money lent and advanced by the petitioning creditor to the company payable on demand with interest at the rate of 18 per cent. per annum. The petitioning creditor has not produced any document showing the receipt of the amount by the company or the company ever agreed to repay the said amount on demand with interest at the rate of 18 per cent. per annum whereas the company has produced applications in duplicate made by the petitioning creditor for the issue of 170 debentures of Rs. 1,000 each in his favour dated the 16th of May, 1976. In fact, the company has issued the said debentures to the petitioning creditor on the 29th of June, 1976. Therefore, the petitioning creditor has come before this court with a false case and the said amount is not the money lent and advanced by the petitioning creditor to the company but paid in respect of 170 debentures which has been duly issued and delivered to the petitioning creditor. Therefore, the company has produced document to show that the petitioning creditor''s claim as made out in the winding-up petition is not only incorrect but false. The said amount is not payable on demand but only the value of the debentures issued by the company to the petitioning creditor on his application. The company has produced the documents being the said applications and also the said register of debentures to show that the said debentures had been duly issued in favour of the petitioning-creditor. This is a bona fide dispute raised by the company and, therefore, the winding-up petition is an abuse of the process of the court and should not be admitted. Mr. Sen also submitted that the company was not financially insolvent or unable to pay its debt as would appear from the balance-sheet for the year 1977-78, which is produced before this court and, therefore, the company cannot be said to be unable to pay its debt arid the winding-up petition should be taken off the file.

6. Mr. Sudipta Saikar referred to two English decisions the first being that of Re Lympne Investments Ltd. [1972] 2 All ER 385 (Ch D), where a creditor''s application for winding up was dismissed on the ground that in the facts of that case the debt was disputed and the statutory notice was short by one day and, therefore, the winding-up petition was not maintainable. The said decision was possibly cited by Mr. Sarkar as there was a question raised by the company that the petitioning creditor''s claim of the amount as a loan was, in fact, paid by the petitioning creditor to the company to be held in trust for the payment for shares in another company and, therefore, in the facts of that case it was held to be a bona fide dispute and the winding-up petition was held to be not maintainable. But, in my view, the said decision has no application to the facts of this case where the company is alleging the said amount, which the petitioning creditor is claiming as a loan to the company to be a payment for the issue of debentures of the company in favour of the petitioning creditor. Here the company is admitting the liability in respect of the debentures alleged to have been issued in favour of the petitioning creditor by the company itself. Secondly, the question of the issue of debentures in favour of the petitioning creditor is a matter which is to be scrutinised having regard to the materials produced before the court which are to be examined carefully and minutely. Another decision Mr. Sarkar cited is also an English decision of the same learned judge, Megarry J. in Re A Company [1974] 1 All ER 256 (Ch D), where a winding-up petition was dismissed on the ground that the allegation in the petition was either tricky or false and in spite of the court giving an opportunity to the company (petitioner ?) to amend the petition, that was not done and the petition was held to be an abuse of the process of the court. In that case an order of the court was held to be on a misrepresentation in the winding-up petition and, therefore, the winding-up petition was dismissed. This case again has no application to the facts of the present case where the company itself has admitted receipt of the amount and made out a case of debenture which the petitioning creditor could have made and admittedly there is arrears of interest payable on the alleged debentures of the company to the petitioning creditor which amounts to more than Rs. 44,000. Therefore, the said two English decisions cited by M. Sarkar have no application to the facts of the present case, although the principles laid down therein are so well-known and elementary that no question arises, and if to the facts of a particular case the said principle can be applied the winding-up petition would amount to an abuse of the process of the court. Mr. Sarkar in his usual thoroughness had also referred to Palmers'' Company Precedents, Vol. 1, where the same principle is stated that a mis-statement of facts in a winding-up petition makes it liable to be dismissed and also for suppression of material facts. He submitted that here the petitioning creditor has not disclosed in the petition that the said amount was paid to the company for the issue of debentures on his application as would appear from the said letters signed by the petitioning creditor and the register of debentures produced by the company in court. I may note here that the petitioning creditor''s case was that the said blank papers were signed by him and handed over to Gajanan Khaitan, who is a de facto director of the company,

at his request, to use the said documents as an application for issue of debentures, if necessary, with the prior approval and consent of the petitioning creditor. As the loan was in contravention of the Companies (Acceptance of Deposits) Rules, 1975, it was also the case of the petitioning creditor that at no point of time the said Gajanan Khaitan ever took the consent of the petitioning creditor to convert the said blank signed forms into an application for debenture. The petitioning creditor has also asserted that no debenture was ever issued to the petitioning creditor at any point of time which from the documents disclosed in this proceeding appears to be highly probable and acceptable, as at no point of time before the present winding-up petition the company ever contended that the said amount of Rs. 1,70,000 was paid by the petitioning creditor to the company on account of issue of debentures and which were in fact issued. The reply to the petitioning creditor''s demand for repayment of the said loan together with interest at the rate of 18 per cent. per annum was replied evasively by the company and had it been the real fact, it would have been stated at the first opportunity in reply to the petitioning creditor''s first demand notice which is dated the 9th of August, 1978, or the letter dated the 6th of September, 1978. The company''s replies, which have already been set out before, are evasive and it is obvious that the company at that time had not thought out the stand it will finally take to the claim of the petitioning creditor for the repayment of the said amount together with interest at the rate of 18 per cent. per annum.

7. Mr. R.C. Nag, appearing with Mr. S.C. Chowdhary for the petitioning creditor, firstly, submitted that the petitioning creditor''s case is that the said amount was money lent and advanced to the company repayable on demand with interest thereon at the rate of 18 per cent. per annum is true and correct. The petitioning creditor did sign blank letters and handed them over to Gajanan Khaitan, who is a de facto director of the company on his (latter''s) representation that as the loan may be hit by the Companies (Acceptance of Deposits) Rules, 1975, it may be necessary to convert the said loan into debenture and for that purpose those blank letters would be utilised with the consent of the petitioning creditor. But as no consent was ever taken from the petitioning creditor by the said Gajanan Khaitan, it now appears that the said blank forms signed by the petitioning creditor are now converted into an alleged application for debentures of the company for the purpose of the present winding-up petition. Mr. Nag rightly submitted that, had those documents been there from the very beginning, the company would have produced or referred to the same at the first opportunity in reply to the petitioning creditor''s demand letter. The company, at the admission stage, took directions for filing affidavits and did not file any affidavit ; on the other hand, at the time of admission of the said petition by the order dated the 9th of January, 1979, contended before the court that the said loan was hit by the Companies (Acceptance of Deposits) Rules, 1975, and, therefore, not recoverable. Mr. Nag also rightly commented that the register of debentures which is now being produced, is a suspicious document and does not appear to be a book kept u/s 152 of the Companies Act, 1956, by a limited company, but

has been brought into existence for the purpose of this application. It may be noted here that, in fact, the matter was adjourned after hearing for some time to enable the parties to settle the matter on the basis that the petitioning creditor is the holder of 170 debentures of Rs. 1,000 each of the company and the arrears of interest amounting to Rs. 44,000 odd would be paid by the company and the company would also issue the debenture certificates to the petitioning creditor but subsequently it appears that nothing happened and the matter could not be settled in that manner and was to be fought out on the legalistic basis inspired by the said decision of Megarry J., which was decided entirely on different facts.

8. Mr. Nag also referred to Section 58A(4) of the Companies Act, 1956, in support of his contention that assuming the said loan was hit by the Companies (Acceptance of Deposits) Rules, 1975, in that event, that amount should have been repaid by the company within a month from the date of such receipt as it was in contravention of the provisions of the Act but the company has not done so. The company''s liability to pay the said amount to the petitioning creditor cannot be denied or avoided. Mr. Nag referred to an old English decision in Cercle Restaurant Castinglione Co. v. Lavery [1881] 18 Ch D 555 , where an earlier decision in Niger Merchants Co. v. Capper [1877] 18 Ch D 557, has been set out and the observation of Jessel M.R. that "when company is solvent the right course is to bring an action for the debt and where the company is insolvent no doubt it is reasonable to wind up the company even where the debt is disputed". The said observation was made in an application for an injunction restraining a petitioning creditor from presenting a winding-up petition against the company where the debt was bona fide disputed and the company was solvent. Relying on the said observation, Mr. Nag submitted that from the company''s balance-sheet it appears that the company is not solvent and, therefore, if the debt is disputed the winding-up petition is maintainable and cannot be said to be an abuse of the process of the court. Mr. Nag also cited a Division Bench decision of this court in Davco Products Ltd. Vs. Rameswarlal Sadhani and Others, , where it has been observed that where a winding-up application by a fully paid up shareholder was supported by creditors, the application was in substance a creditors'' application and the winding-up order which was made on a defective verification of the winding-up application was not set aside. The said decision was cited by Mr. Nag (for the proposition) that even a defective application cannot be thrown out if there were grounds ultimately made out for maintaining the same on other grounds. Mr. Nag, thereafter, cited the Supreme Court decisions in Srinivas Ram Kumar Vs. Mahabir Prasad and Others, , and Ramashankar Prosad and Others Vs. Sindri Iron Foundry (P) Ltd. and Others, , that it was always open to the court to take the entire pleadings of both the parties, and the admission of the company in this case that the said amounts were paid to the company by the petitioning creditor in respect of 170 debentures issued by the company in favour of the petitioning creditor could be the basis of the winding-up petition and as admittedly no interest had been paid on the said debenture by the company, the entire amount due on the said debentures together with the arrears of interest

had become payable by the company to the petitioning creditor immediately and, therefore, those were debts due by the company to the petitioning creditor and the company was unable to pay the said debt. Mr. Nag also referred to the Division Bench decision in Bangasri Ice and Cold Storage Ltd. Vs. Kali Charan Banerjee, , and submitted that the court-could look into the conduct of the company as to whether they have manufactured the defence sought to be raised in the winding-up petition, as, in this case, initially no defence was raised to the claim of the petitioning creditor in the correspondence except some vague and evasive replies and at the admission stage no question of debenture was raised but only for the purpose of the present application for stay the case of debenture was raised and when a conditional order was made for the deposit of Rs. 1,00,000 for the grant of the stay, the company preferred an appeal and only obtained an order reducing the deposit to Rs. 50,000. Therefore, Mr. Nag submitted that there is no bona fide dispute raised by the company ; on the other hand, the company is neither paying the said amount as a loan nor paying the arrears of interest on debenture. The company is utterly insolvent and Mr. Nag analysed the balance-sheet and submitted that the company is not carrying on any business save and except leasing out its factory to the other company and realising the amounts only. He also rightly commented on the debenture register wherefrom it appears that the debentures in favour of the sons of Gajanan Khaitan have been redeemed including other members of the Khaitan family. Mr. Nag rightly submitted that the story of the debenture is a myth and has been set up as a defence to the petitioning creditor''s claim, if possible, with a view to make an undisputed claim a disputed one. The company is neither paying the arrears of interest on the debenture nor the said sum as a loan but admittedly the company is indebted to the petitioning creditor and is unable to pay the said debt. Therefore, the winding-up petition cannot be said to be an abuse of the process of the court and should be admitted and direction for advertisement should be given.

9. Considering the matter very carefully I have no hesitation in holding that the winding-up petition is not an abuse of the process of the court. On the other hand, the company''s defence is mala fide, highly improbable and inconsistent. The company seems to be a public danger as the manner in which it has conducted the present proceedings before this court is not only deplorable but lacking in commercial morality, probity and honesty. I am inclined to accept the version of the petitioning creditor that the money was originally given to the company from the said Gajanan Khaitan, who appears to be a neighbour of the petitioning creditor, as stated by Mr. S.C. Sen, appearing on behalf of the petitioning creditor, and both the families were well known to each other, being neighbours. The said amount was advanced to the company by way of an accommodation loan or otherwise with the condition that the blank form signed by the petitioning creditor will be converted into an application for debentures with the consent of the petitioner. The form which the petitioners signed has been filled up by the company and has been produced before this court from

which it appears that the wordings are in the usual form and it has ignored the fact that the petitioner is an individual person and it has also used the words "to allot us". Had it been a letter written out by the petitioner himself it is quite certain that he would not have used the said word "to... us" but "to... me". On the other hand, the said blank letters have been converted into applications for debenture by the company without the notice or knowledge of the petitioner The intrinsic evidence of such conversion appears to be apparent on the face of this application. Therefore, the said amount, prima facie, appears to be a loan advanced by the petitioning creditor to the company and became payable after the same was demanded by the petitioning creditor from the company. Assuming the alternative case which the company has made out that the said amount was paid for the issue of 176 debentures of Rs. 1,000 each in the company to the petitioning creditor, which case, the petitioner could have made, had he known about the fact of the alleged conversion of the said loan and the application and the blank letters form in which the application for debenture and that the debentures were in fact issued to the petitioning creditor. The company has not paid the interest payable on the debentures under the terms of the said debenture bond and an amount of Rs. 44,000 old has admittedly become payable to the petitioning creditor The company took time to pay the same but, admittedly, declined to do so. Therefore, on the company''s own admission, the company is unable to pay its debt.

10. It is now well settled that the alternative case which the party can make if it is made by the other party then the court will proceed on the basis of the alternative case and deal with the same accordingly without doing any injustice to any of the parties with a view to do justice in a proper case. Here, as I have already noted, the conduct of the company in dealing with the claim of the petitioning creditor by evasive reply and hedging the issue from the very beginning and, ultimately, coming out with the case of debenture in the stay application is something which the court will not swallow as an honest and bona fide dispute to the claim of the petitioning creditor. Further, the debenture register, which has been produced before the court, on the face of it, appears to be a document which has been brought into existence recently and sought to be given a look as if it is a document of the company kept in the usual course from the very beginning. Further, the debenture counter-foils or issue books have not been produced and I am inclined to accept the version of the petitioning creditor that no such debenture was ever issued in favour of the petitioning creditor or at least no notice of the same was ever given to the petitioning creditor.

11. The balance-sheet of the company for the year ending 31st March, 1978, which has been produced and kept in the records of these proceedings clearly shows that the company is not at all in a financially sound position. On the other hand, the company appears to be an insolvent company.

12. After carefully examining the case made out by the respective parties before me I hold that the winding-up petition at this stage is not an abuse of the

process of the court and, on the other hand, the dispute sought to be raised by the company is not at all bona fide or raised in good faith.

13. Therefore, I am making the following order :

The interim stay hereby granted will stand vacated and the application is dismissed with costs and the advertisement of the winding-up petition directed by the order dated 9th January, 1979, will be published and the matter will appear in the list on the 15th May, 1979.

14. Let it be recorded that the balance-sheet for the year ending 31st March, 1978, is kept in the file of these proceedings and the debenture register and two copies of the applications for the debenture alleged to be made by the petitioning creditor dated 15th May, 1976, are kept in the custody of this court and the Registrar, original side, of this court will keep the same in a sealed cover until further order of this court.

15. The Registrar, original side, to act on a signed copy of the minute.

