(2000) 06 RAJ CK 0001

In the Rajasthan High Court

Case No : Company Petition No. 2 of 1997

Kejriwal and Sons Pvt. Ltd. APPELLANT

Vs

Jaipur Mineral Water Pvt. Ltd. RESPONDENT

Date of Decision : 01-06-2000

Acts Referred:
Companies Act, 1956 — Section 433

Citation : (2001) 103 CompCas 833

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Advocate : Paras Kuhad, for the Appellant; S.M. Mehta and S.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

P.P. Naolekar, J.—The present winding up petition is filed against Jaipur Mineral Water Private Limited (for short "the respondent") on the allegations that by agreement to sell dated January 6, 1995, entered into between Kejriwal and Sons Private Limited (for short "the petitioner") and the respondent, a plot bearing No. F-734 on Road No. 9, F-2 Vishwakarma Industrial Area, Jaipur belonging to the petitioner was transferred for a consideration of Rs. 3,75,000. The respondent issued two cheques ; one for Rs. 18,832 and another for Rs. 3,56,168 for the payment of the consideration to the petitioner.

2. An understanding was reached between both the parties and the cheque for the amount of Rs. 3,56,168 was not encashed. The said amount was kept with the respondent as a loan without interest not to be reclaimed for at least fifteen months. The respondent has paid towards the dues of RIICO an amount of Rs. 37,950 which were against the petitioner and the balance remains with the respondent as loan is Rs. 3,18,218. It was also agreed between the parties that all the three directors shall be paid an amount of Rs. 7,500 each as remuneration and Rs. 2,500 towards petrol expenses for car per month, and the cheque issued by the respondent of Rs. 3,30,260 was towards the directors'' fees, petrol

expenses for car, telephone connection, power connection, etc.

3. In spite of statutory notice and the approach made to the respondent, no amount was paid. Thus the respondent is unable to pay its debts. After notice, the respondent entered appearance and filed a return admitting the fact that the amount of Rs. 3,56,168 was kept with the respondent as a loan without interest with the condition that it shall not be reclaimed for fifteen months at least. That the cheque which has been issued in favour of the petitioner was encashed on March 20, 1996, includes the amount of loan plus the amount of advance. Therefore, there is nothing due against the respondent to be repaid.

4. From the pleadings of the parties, it is clear that an amount of Rs. 3,18,218 remains in deposit with the respondent as loan. The question is whether the cheque issued by the respondent in favour of the petitioner is towards the repayment of the loan or towards the payment of directors'' fee, petrol expenses for car, telephone connection, power connection, etc.

5. It is an admitted fact that Mr. M. L. Kejriwal was one of the directors from December, 1994, to February, 1996, but it is disputed that any agreement was entered into between the parties for payment of fees to directors, petrol expenses, telephone connection, power connection, etc. Unless and until it is positively established that there was an agreement that the director shall be paid fees, petrol expenses, telephone connection, power connection, etc., the petitioner''s case that the admitted amount of Rs. 3,30,260 is towards those heads, cannot stand.

6. Apart from the fact that the cheque which was issued by the respondent is in the name of Kejriwal and Sons Private Limited and not in the name of director Mr. M. L. Kejriwal. Prima facie, it appears that the respondent''s defence that by the cheque issued in favour of the petitioner, the amount of loan was repaid, is correct, it would be for the petitioner to establish that the cheque is not towards the payment of loan amount but towards the directors'' fee, petrol expenses, telephone connection, power connection, etc. These are disputed questions of fact which cannot be gone into in the company petition. The respondent has, prima facie, a bona fide defence that the amount of loan was repaid.

7. For the reasons stated above, the company petition filed for winding up of the respondent-company is dismissed with costs which I assess to be Rs. 3,000.