
(1989) 05 P&H CK 0064
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 85 of 1985

Kirpal Singh and Another

APPELLANT

Vs

Sutlej Land Finance Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 24-05-1989

Acts Referred:

Companies Act, 1956 — Section 433, 434, 434(1)

Citation : (1989) 66 CompCas 841 : (1990) 97 PLR 517

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : S.N. Sharma, for the Appellant; N.K. Sodhi and Nitin Kumar, for the Respondent

Final Decision : Dismissed

Judgement

G.R. Majithia, J.—This is an application u/s 435 read with Sections 433 and 434 of the Companies Act (for short " the Act") for winding up the respondent-company.

2. C.P. No. 85 of 1985 was originally filed by some of the creditors of the company. By order dated September 11, 1986, the company petition was ordered to be advertised and the order was duly complied with. On September 3, 1987, counsel for the petitioners admitted that the entire claim of the petitioners had been paid to them. On August 11, 1988, the counsel for the petitioners made a statement that he did not want to prosecute the petition on behalf of the petitioners since they had entered into a settlement and had received the entire amount due to them. C.A. No. 100 of 1987 in C.P. No. 85 of 1985 was moved by some of the creditors for substitution as petitioners. The application was allowed and counsel for the petitioners was directed to file an amended petition. It is the amended petition on behalf of the fresh creditors allowed to be substituted which is being disposed of.

3. In the petition, it is stated that the petitioners deposited various amounts with

the respondent-company against receipts details of which are as under :

S. No.

Name

Receipt No.and date

Amount deposited Rs.

Rate of interest P.A.

1.

Daulat Ram

003848/80 dt. 31-3-80

3500

12%

2.

Smt. Amrit Kaur

004041/80 dt. 25-11-80

2,500

12%

3.

Smt. Promila Saini

004018/80 dt. 30-10-80

1,000

12%

4.

Ramandeep Singh

003862/80 dt. 30-4-80

3,400

12%

5.

Jagdish Singh Saini

003634/79 dt. 1-9-1979

3,000

12%

Total Rs.

13,400

4. The amount was not paid when demanded. The respondent-company has defaulted in making payment of the sum due. The respondent-company admitted that the amounts were deposited by the petitioners. Payment of interest to some of the creditors on their deposits was also admitted, but this was before October 1, 1982. On December 31, 1982, the petitioners came to the company's office, abused the managing director of the respondent-company and demanded immediate payment. After December 31, 1982, the petitioners did not approach the respondent-company. It was pleaded that their claim had become barred by time. It was also pleaded that the petitioners did not serve the statutory notice u/s 434 of the Act before filing the petition.

5. It is well-settled that the machinery for winding up cannot be allowed to be utilized as a means for realizing debts due from the company. If the debt was bona fide disputed, there cannot be neglect to pay within the meaning of Section 434(1)(a) of the Act. The principles on which the company court acts are : (1) that the defence of the company is in good faith and one of substance ; (2) the defence is likely to succeed in point of law ; and (3) the company produced prima facie proof of the facts on which the defence depends. In the instant case, the respondent-company has succeeded in proving that their defence is in good faith and one of substance. It was held in *Chemical Enterprises v. Kalpanalok Ltd.* [1984] 55 Comp Cas 552 (P & H) that the creditors who had not served any statutory notice were not entitled to continue the petition. No contrary authority has been brought to my notice by learned counsel for the petitioners. On the question of limitation, learned counsel for the respondent submitted that the deposit was for a term of six months bearing interest at the rate of 12% per annum. The limitation to effect recovery will start after the expiry of six months and not from the date when the payment is made. In support of his submission, he relied on *Kashinath Sankarappa Wani Vs. New Akot Cotton Ginning and ; Pressing Co., Ltd.*, and more particularly on the following observations made therein (p. 438) :

" The only question which arises for our consideration in this appeal is whether the appellant's suit was barred by limitation. The appellant, in the first instance, relied upon the deposit receipt which was passed by the company in his favour on January 15, 1940. This receipt (exhibit P. 1) evidenced a deposit of Rs. 79,519-12-9 for 12 months from August 1, 1939, to July 31, 1940, and the amount at the foot thereof became due and payable by the respondent to him on July 31, 1940. The appellant, however, sought to extend the commencement of the period of limitation to May 17, 1941, on the ground that the monies, the subject-matter of that deposit receipt, were payable to him on demand, that such demand was made by him on May 17, 1941, and that, therefore, that was

the date for the commencement of the period of limitation. No express agreement in this behalf could be proved by him nor could an agreement be implied from the course of dealings between him and the company for the period of 25 years during which the dealings continued between the parties. As a matter of fact, such an agreement, either express or implied was negatived by the very terms of the deposit receipt which, apart from mentioning that the monies were received by the company as deposit for 12 months from August 1, 1939, to July 31, 1940, contained, on the reverse, a note that interest would cease on the due date. This was sufficient to establish that the amount shown as due at the foot of the deposit receipt became due and payable on the due date mentioned therein and that there was no question of the amount being payable at any time thereafter on demand being made in this behalf by the creditor."

6. The ratio of the above authority is fully applicable to the facts of the instant case. The claim is prima facie barred by time. The respondent-company has succeeded in proving that their defence is in good faith and likely to succeed in point of law.

7. The petition is, accordingly, dismissed. The petitioners can enforce the remedy by way of a suit.