
(1965) 08 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Original No. 8 of 1964

Lakshmiji Sugar Mills Co. (Private) Ltd.	APPELLANT
Vs	
National Industrial Corporation Ltd.	RESPONDENT

Date of Decision : 02-08-1965

Acts Referred:

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

Citation : (1968) 70 PLR 517

Hon'ble Judges : Harbans Singh, J

Bench : Single Bench

Advocate : Bhagirath Das and D.R. Nanda, for the Appellant; B.R. Tuli and S.K. Tuli, for the Respondent

Final Decision : Dismissed

Judgement

Harbans Singh, J.—This is an application filed by Lakshmiji Sugar Mills (Private) Ltd. (hereinafter referred to as Lakshmiji), for winding up of the National Industrial Corporation Ltd. (hereinafter referred to as the National Industries) on the ground that the latter is unable to pay its debts.

2. It may be stated here that both the companies are interconnected. Lakshmiji was incorporated as private limited company in the State of Delhi and the directors, inter alia, were Ram Rattan, Kishori Lal, Badri Pershad, Shadi Lal, Ramji Dass and Parshotam Pershad. National Industries was incorporated in the year 1942. Amongst others Ram Rattan and Ramji Das were its promoters, Messrs. Seth Brothers (Private) Ltd. (hereinafter referred to as Seth Brothers) were the managing agents of the National Industries and Kishori Lal, Ram Rattan and Parshotam Pershad were the directors of Seth Brothers. It may be, however, stated that most of the directors in all these companies are inter-related. They have now split up into two groups, one is headed by Ram Rattan and Kishori Lal and the other by Ramji Das. Control over Lakshmiji is that of Ram Rattan's group and originally that group even controlled National Industries, During the pendency of this petition there was another petition for holding of a general

meeting of National Industries under the supervision of the court, and ultimately in the meeting which was finally held in December, 1964, for the year ending 31st March, 1964, Ramji Das's group got the control of National Industries. Originally, this application for winding up was resisted on behalf of National Industries by the shareholders and directors represented by Ramji Das's group. After the general meeting of December, 1964, the petition was also resisted on behalf of the company.

3. It would be now necessary to state the facts briefly on the basis of which this application has been made. Seth Brothers as managing agents of National Industries were entitled to receive a certain sum of money as remuneration. This amount was credited to their account, having not been received in cash for a number of years. By 30th of April, 1963, in the books of National Industries more than Rs. 2,17,000 was to the credit of Seth Brothers and to that extent National Industries were the debtors of Seth Brothers. Seth Brothers, in turn, were indebted to Lakshmiji for an amount exceeding over Rs. 8 lakhs. On 30th of April, 1963, out of the credit of Seth Brothers a sum of Rs. 2,16,122.37 nP. was transferred to Lakshmiji. As a result of this transaction Lakshmiji became the creditor of National Industries to that extent. In addition to this Lakshmiji supplied steam and electricity, etc., to the National Industries for which payment in cash or by adjustment is made from time to time. According to the balance-sheet of 1963, marked exhibit P-10, a sum of Rs. 2,35,787.89 nP. was payable by the National Industries to Lakshmiji. This included the amount transferred on April 30, 1963. Exhibit P-25 is a voucher by which the above-mentioned transfer was made by the National Industries. By this Messrs. Seth Brothers' account was debited with a sum of Rs. 2,16,122.37 nP. and a corresponding credit was given to the Ajudhia Distillery from the Bilari office in the account of Lakshmiji. It may be stated here that Lakshmiji owns two sugar mills, one at Maholi district, Sitapur, and the other at Bilari, in district Muradabad. Accounts were maintained both at Bilari and at Maholi which were ultimately consolidated at the head office of Lakshmiji at New Delhi. The corresponding voucher giving effect to this transfer by Lakshmiji is exhibit P-4- By this Bilari office was debited with the amount and Seth Brothers given credit. R.W.-I/3 is the balance-sheet ending 31st March, 1964, which was passed in the general meeting of the company held in December, 1964, as noted above and in this balance-sheet in Schedule " D " of the current liabilities and provisions payable to Lakshmiji (which is described as an associate of managing agents), the amount shown is Rs. 2,80,978-51 nP. and admittedly this amount includes rupees two lakhs odd which were transferred as stated above. On 15th of October, 1963, Lakshmiji gave a notice through its advocate calling upon the National Industries to pay a sum of Rs. 2,38,453.82 nP. due from the latter as on September 20, 1963, excluding interest, failing which it was stated that the notice should be treated as u/s 434 of the Companies Act and if the payment was not made within a period of three weeks from the receipt of that notice proceedings would be taken u/s 433 of the Act. Apparently, the National Industries sent a letter in reply. Lakshmiji considered

this matter in the meeting of the directors on 18th October, 1963, which was attended, inter alia, by Seth Ramji Das. The latter opposed the action contemplated u/s 434 of the Act and suggested that a period of two years be given to the company for the repayment. The Board, however, did not agree to the suggestion, and it was resolved that an application as stated in the notice be moved in the High Court.

4. At an earlier stage, parties took several adjournments to arrive at a mutual settlement and this was allowed because, as already stated, the persons interested, on both sides, are inter-related and it was obvious that Seth Ramji Das's group had the controlling block of shares in the National Industries and Seth Ram Rattan's party had the controlling block in Lakshmiji and it was in the interest of both the parties that the shares of the minority should be purchased by the majority group at an agreed rate in each of the two companies. However, no settlement was arrived at, and evidence was led by both the parties and large number of documents were put on the record. It is, however, not necessary to refer to all this evidence of the documents. It is admitted on behalf of the petitioner that this petition is not being moved on the general ground that the respondent-company is not solvent. In fact the evidence brought on the record shows that even after 1964, shares of National Industries were purchased by Lakshmiji. Otherwise too, the balance-sheet shows a fairly satisfactory state of affairs so far as the working of the respondent-company is concerned. This petition is moved only on the ground that the respondent-company failed on a demand being made u/s 434 of the Act to make the payment of debt exceeding Rs. 500 within the statutory period of 21 days and consequently presumption arises that the company is unable to pay its debts under Clause (e) of Section 433 of the Companies Act. The relevant Clause of Section 433 runs as follows :

"433- Circumstances in which company may be wound up by court.--A company may be wound up by the court,--...

(e) if the company is unable to pay its debts."

5. On behalf of the respondent it is not denied that a sum of Rs. 2,16,122 which was purported to be transferred by Seth Brothers from its credit account in the National Industries to Lakshmiji was in fact due to Seth Brothers. The position taken, however, is that under a certain agreement to which not only all the directors of Seth Brothers but also some of the directors of Lakshmiji were parties, Seth Brothers could not claim this amount from the National Industries till 1967, that the alleged transfer to Lakshmiji is mala fide and collusive and that the petitioner-company being an associate of the managing agents got this transfer with full knowledge that the managing agents could not enforce to recover this debt and consequently Lakshmiji is in the same position as the managing agents. It was urged that the National Industries had taken a loan from the Uttar Pradesh Financial Corporation to the extent of Rs. 4,50,000 on 16th of May, 1958, that this was repayable by instalments, the last instalment being due in the year 1967, and that in Clause 22 of the agreement entered into

with the Financial Corporation mentioned above, it provided that:

"... the company shall not during the currency of loan repay or allow to be withdrawn any amounts now deposited, or hereafter to be deposited with it by the directors, managing agents, or selling agents in their own names or in the names of their family members, by any other persons or parties so as to reduce the total amount of such deposits to less than Rs. 4,50,000,"

6. It is further not disputed that at no time the deposits in the hands of the respondent-company exceeded Rs. 4,50,000.

7. The sole question in controversy between the parties, therefore, is that according to the respondent-company, the amount which was due from the respondent to Seth Brothers could not be demanded immediately by Seth Brothers because of this agreement, as the amount to their credit must be taken to be a deposit. On the other hand according to Lakshmiji this amount could not be termed as deposit within the meaning of this Clause and that in any case Lakshmiji was not concerned with this clause and was entitled to enforce the debt.

8. It is common case between the parties that whatever amount stood to the credit of managing agents was either on account of proceeds of the redeemable shares or the managing agency fees being due to them from year to year and that the entire amount to their credit carried interest. It was, therefore, argued that the entire amount must be treated as deposit within the meaning of this agreement. It is significant that soon after the transfer of this debt of Seth Brothers by the National Industries to Lakshmiji a demand notice was given and formal proceedings initiated for winding up of this company. It is further clear that Seth Ram Rattan, who is the managing director of Lakshmiji, was himself a party to the agreement that was entered into between Seth Brothers and the Financial Corporation through himself being a director of Seth Brothers. Lakshmiji, therefore, in my opinion, cannot acquire better right than Seth Brothers would have in respect of the debt transferred. That being the case the sole point for determination is whether this debt was such as could be demanded by Seth Brothers in view of Clause 22 of the agreement with the Financial Corporation referred to above. The answer to this depends on whether it should be treated as a deposit. To my mind I see no reason why it should not be so treated. The whole transfer to me appears to have been made with a purpose, otherwise where was the difficulty in a demand being made by or on behalf of Seth Brothers of which Seth Ram Rattan was himself a director ? It was urged that at the time of the transfer, National Industries was also controlled by Seth Ram Rattan's group and that in any case the transfer voucher was merely authorised and signed by Kishori Lal who is said to be the director-in-charge and the matter for the first time came before the general meeting in which Ramjidas's party had a majority when the balance-sheet R. W. 1/3 was so passed. It is urged on behalf of the petitioner that the balance-sheet which was passed in the general meeting contained an entry about this debt due to

Lakshmiji as reproduced above and that, consequently, the shareholders of National Industries including Ramji Das's group must be treated to have approved the aforesaid transfer. I am afraid, no such interpretation can be given to passing of the balance-sheet in which the above-mentioned entry is made. Lakshmiji, as already indicated, is an associate of the managing agents and it is not denied that this debt was due to the managing agents or its associate. If the debt was of a type which the managing agents could not enforce against the respondent-company till the entire loan of Financial Corporation has been repaid, it would make no difference if the transfer is made to an associate of the managing agents, having common directors, apparently with the full knowledge of the restriction on the recovery of the debt by which Seth Brothers were bound. In any case even if there be some doubt about the question whether this debt could be recovered by Seth Brothers even prior to 1967, it cannot be said that this matter is beyond doubt and if there does exist a bona fide dispute about the quantum of the debt or qua the question whether it is immediately recoverable or not, that cannot form the foundation of a demand, refusal of which would raise a presumption as to the inability to pay the debts by the company under Sub-clause (a) of Sub-section (i) of Section 434 of the Act. This is a matter which must be got settled between the parties by filing proper proceedings for the recovery of the debt, and winding up proceedings cannot be utilised to achieve that purpose. As I have already indicated, it was not urged that the respondent-company is otherwise not sound in its financial condition. That being the case, I feel that there being a bona fide dispute with regard to the debt, no presumption could arise and, consequently, there is no reason for passing a winding up order.

9. For the reasons given above, this petition is dismissed. The parties are left to bear their own costs.