(1998) 02 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 73 of 1991

Maini Pipes (P) Ltd. APPELLANT

Vs

Delite Industries RESPONDENT

Date of Decision : 06-02-1998

Acts Referred:

Companies Act, 1956 — Section 446(2), 457, 458A, 468

Citation : (1999) 96 CompCas 798 : (1998) 118 PLR 681 : (1998) 2 RCR(Civil) 170

Hon'ble Judges : Swatanter Kumar, J

Bench : Single Bench

Advocate : K.D. Aggarwal, for the Appellant; Hemant Kumar, for the Respondent

Judgement

Swatanter Kumar J.—This petition u/s 446(2) read with section 468 of the Companies Act, 1956, has been filed on behalf of Maini Pipes Pvt. Ltd. in liquidation through the official liquidator attached to this court for the recovery of Rs. 19,500 together with interest at the rate of 18 per cent. per annum.

2. The petitioner-company which was incorporated under the provisions of the Companies Act, 1956, on September 14, 1979, was directed to be wound up, vide order dated August 17, 1990, passed in Company Petition No. 60 of 1988. Upon passing of the order of winding-up, the official liquidator attached to this court was ordered to be the official liquidator of the company and was directed to take over the assets, records, statutory books and other properties of the company. The managing director of the company filed statement of affairs with the official liquidator of the company and on the basis of the account books maintained by the company in normal course of its business, it was observed that the respondent-company owes a sum of Rs. 19,500 to the petitioner-company. Notice dated January 24, 1991, was issued by the official liquidator requiring the respondent-company to pay the amounts due to the company. The copies of the notice and acknowledgment due card have been placed on record, permission to the official liquidator to file and defend the proceedings on behalf

of the company u/s 457 of the Companies Act, 1956, was granted by the court vide order dated October 11, 1990, passed in Company Petition No. 82 of 1990. On these facts, the petitioner-company has claimed a sum of Rs. 19,500 together with interest at the rate of 18 per cent. per annum from the date of the last transaction, which is dated November 20, 1988. Upon notice written statement was filed on behalf of the respondent-company. Preliminary objection with regard to limitation was raised. It was stated that the alleged cash entry of Rs. 500 (five hundred rupees) on November 20, 1988, is false and has been made in the books of account only to claim extension of limitation.

3. On the merits, it was stated that the respondent industry came into being on May 9, 1985, when it obtained sales tax registration. The respondent-company had advanced a sum of Rs. 14,000 to start trial production on July 27, 1985, to its Bangalore office, but the petitioner-company failed to supply the material against the said payment in spite of requests and efforts to get the said amount of Rs. 14,000 refunded were of no consequence because the office of the petitioner-company was closed. It is averred that against advance of Rs. 14,000 the petitioner-company later on made supply of goods of Rs. 9,865 and a sum of Rs. 4,135 is due to the respondent-company from the petitioner-company. In this reply, it was prayed that the petition is liable to be rejected by this court.

4. On the basis of these rival pleadings, the court vide its order dated August 26, 1994, framed the following issues :

(1) Whether the petition is barred by limitation ? OPR.

(2) Whether the petitioner is entitled to the amount as claimed in the petition ? OPP.

(3) Whether the cash payment of Rs. 500 on November 20, 1988, was made by the respondent. If so, its effect ? OPP.

(4) Relief.

5. The official liquidator examined ex-managing director of the company H. S. Maini, as P. W.-1 and assistant from his office Y. K. Jatley, as P. W.-2. Various documents were proved on record on behalf of the petitioner-company while the respondent-company only examined Mr. Afsar Pasha, as R. W.-1.

6. Coming to the question of whether the petition is barred by time, learned counsel for the respondent submitted that the caused in favour of the company had become barred by time to the winding-up and as such even the benefit of section 458A of the Companies Act is not available to the company/official liquidator. In order to appreciate this contention it will be essential to refer to some dates. The supply of the material in question was allegedly made to the respondent-company on May 7, 1985, part payment of Rs. 14,000 was received on July 27, 1985, the petition for winding-up was presented in court on July 11, 1988, and the company was ordered to be wound up on August 17, 1990. It is true that contrary judgments taking both the views that the benefit of one year

limitation is available only if the cause was surviving at the time of winding-up petition while the other view is that there is nothing in section 458A to restrict its application and extend the period of one year only to surviving claims. In the facts of the present case, it is not necessary to go into this controversy. What really needs to be looked into is that the payment of Rs. 14,000 is not even disputed though the periods for which the payment was made is in controversy. If the case of the petitioner is believed, when the winding-up petition was presented the claim was well within the prescribed period of limitation, the winding-up order dated August 17, 1990, obviously relates back to the date of presentation of the petition which is July 11, 1988. The company would certainly be entitled to the benefit of the exclusion of period from the date of presentation of the winding-up petition till the passing of the winding-up order plus one year from the date of the order of winding-up in accordance with the provisions of section 458A of the Companies Act. As such, the petition could be filed till August 16, 1991, and the present petition has been presented on July 2, 1991.

7. It is also averred by the petitioner-company that a part payment of Rs. 500 was made on November 20, 1988. If this payment is accepted then in any case the question of limitation would not arise, though, even if this payment is not accepted. I have already held that the petition of the petitioner was in the prescribed period of the limitation as would be evident from the discussion hereinafter that the petitioner-company has been able to establish that payment of Rs. 500 was duly received. Thus, the objection raised on behalf of the respondent-company in regard to limitation is rejected.

Issues Nos. 2 and 3 :

8. As already noticed, the official liquidator examined the managing director of the company H. S. Maini, as P. W.-1 and assistant from his office as P. W.-2. In addition to this, various documents have been placed on record. P. W.-1 has clearly stated that he was the managing director of the company and has filed the statement of affairs before the official liquidator. In the statement of affairs of the company filed with the official liquidator, the amount of Rs. 19,500 has been shown to be due from the respondent-company. In this regard he has further submitted that while supporting the cause stated in the petition that the payment of Rs. 500 was received by him personally at Bangalore on November 20, 1988, the same witness has stated that the company was maintaining regular books of account and with regard to the ledger account of the respondent-company he has proved exhibits P-1/1 to P. W.-1/4, photocopy of the ledger accounts. In the detailed cross examination of this witness nothing material could come. Vide order dated March 31, 1995, cross-examination of this witness was deferred as the original record was not produced. In the further cross-examination of this witness on May 26, 1995, nothing damaging to the case of the petitioner-company was brought on record. The witness has stated to the effect averred in the petition. P. W.-2, the assistant from the office of the official liquidator had produced the records and the notice served by the official

liquidator had produced the records and the notice served by the official liquidator and acknowledgment receipt thereof as P. W.-2/1 and P. W.-2/2, the bill vide which the goods were supplied by this witness as P. W.-2/3. To rebut the case of the company, R. W.-1, the managing director of the respondent-company examined himself without the aid of any records to refute the claim of the petitioner-company. In his examination he stated that Rs. 14,000 was paid to the company though as advance for supply of the material. He admits part supply of the material. He admits part supply and stated that some amount was still due to the respondent-company while disputing the payment of Rs. 500 to the petitioner-company he admitted the receipt of the notice from the official liquidator and reply sent thereto.

9. Ledger accounts P. W.-1/1 to P. W.-1/4 clearly show that the books of account which were being maintained by the company and which were submitted by the official liquidator along with the affidavit of P. W.-1 and statement of affairs of the company shows the amount due and payable to the petitioner-company by the respondent-company. Learned counsel appearing for the respondent, on these documents, argued that the ledger entries in turn refer to transfer entries and as such these accounts cannot be taken to be the correct account books of the company. The argument is misconceived because the entire original books of account of the company were produced in court and it was for counsel cross-examining the said witness to bring such a doubt on record. Consequently, the ledger entries refer to the previous year from where the entries are carried forward, e.g., P. W.-1/1 refers to an entry of the ledger for the year 1988-89, from where the entry has been brought forward to the folio number. Similarly, exhibit P. W.-1/2 also refers to the entries of the previous year. I am unable to see any merit in this objection raised by learned counsel appearing for the respondent-company. P. W.-1/2 is the audited balance-sheet of the company in which due liability of the respondent-company, in its reply filed in this company petition in comparison to the reply given by the respondent-company to the notice served on behalf of the official liquidator. In the reply to the notice it was stated that they have not transacted with the petitioner firm and the accounts show a balance of Rs. 11,520 remaining out of the advance given for the purchase of material. While in a statement the managing director of the respondent-company, during examination as R. W.-1, has stated that out of the sum of Rs. 14,000, the petitioner firm had supplied goods to the respondent worth Rs. 9,000 and no further goods were supplied and he further stated that as per the books of account of the respondent-company a sum of Rs. 4,135 was due to the petitioner-company. This conflicting stand of the respondent-company creates a serious doubt as to the bona fides of the stand taken by the respondent-company.

10. The claim of the petitioner is supported by documentary evidence, statement of the ex-managing director and even to some extent by the statement of R. W.-1 himself. I also see no reason as to why the statement of P. W.-1 should be disbelieved in regard to the receipt of the payment of Rs. 500 especially when

this entry has been duly recorded in the books of account of the company. Things must be taken to have happened in the normal course of business unless the contrary is shown or proved in court. The respondents have failed to discharge their onus which could be sufficient in the eyes of law to refute the claim of the petitioner-company. Consequently, this petition of the petitioner-company through the official liquidator is accepted.

11. The official liquidator had served a notice dated January 24, 1991, upon the respondent-company which was admittedly received by them and replied to on February 1, 1991. However, in spite of this notice, the payment was not tendered or made to the official liquidator. The official liquidator has claimed 18 per cent. interest which is obviously the minimum market rate of interest payable on commercial transactions. As such, the official liquidator would also be entitled to the interest at the rate of 18 per cent. per annum.

12. In view of my discussion above, all the three issues i.e., issues Nos. 2 and 3 are answered in favour of the petitioner-company and against the respondent while issue No. 1, the onus of which was on the respondent-company, is also decided against the respondent-company. Consequently, the order for payment of Rs. 19,500 with interest at the rate of 18 per cent. per annum from February 1, 1991, till the date of realisation is passed against the respondent-company. However, there shall be no orders as to costs.