

(1998) 01 GUJ CK 0028
In the Gujarat High Court

Case No : C.P. No's. 282 of 1996 and 146 of 1997

Mehta Integrated Finance Limited

APPELLANT

Vs

Ronak Prints Private Limited

RESPONDENT

Date of Decision : 28-01-1998

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (1999) 98 CompCas 791

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Judgement

S.D. Pandit, J.—Mehta Integrated Finance Ltd., a company incorporated under the Companies Act, 1956, has filed the present petition u/s

433 of the Companies Act, 1956, seeking an order of winding up of Ronak Prints Pvt. Ltd., a company incorporated under the Companies Act, 1956.

2. The company in question, namely, Ronak Prints (P) Ltd., had entered into an agreement with the petitioner on 22 January, 1993. As per the

said agreement, the company in question took possession of a motor vehicle - Maruti van bearing Engine No. 783073, chassis No. 918609. The

agreement between the parties was in the nature of a lease and the company in question had agreed to pay the price of the vehicle of Rs. 1,32,000

in eight instalments. The first instalment was payable on 22.1.1993 and the last instalment was payable on 22.10.1994. It is an admitted fact that

five instalments payable upto 22.4.1994 were paid by the company in question. It seems that, after the payment of 5th instalment, the vehicle in

question had met with an accident and the said vehicle was given for repairs to Cargo Motors (Guj) Ltd. and it seems that the said vehicle is lying

there even today.

3. The present petitioner issued a statutory notice to the company and in the said statutory notice, dated 26.12.1996 arrears of three instalments

amounting to Rs. 63,658 and future interest was claimed. The company in question did not pay the amount as per the said statutory notice, and

therefore, the present petition is filed.

4. The company in question was served with a notice of this petition and the company in question appeared before this court and filed an affidavit-

in-reply disputing the claim of the petitioner. In the said affidavit-in-reply, it has been mentioned that the claim of the petitioner that they have not

paid three instalments in question and that they had paid five instalments as per the agreement between the parties is not disputed or denied. But it

is contended in the affidavit-in-reply that, in 1994, one bank had locked and sealed the factory premises of the respondent and therefore the

respondent had financial difficulties as his factory was not working and at that time the present petitioner before this, court had approached the

respondent company and there were negotiations and settlement between the parties. As per the said settlement, the respondent had agreed to

give up payment of the five instalments paid by them and the petitioner before this court had agreed that they would take the vehicle from Cargo

Motors Ltd. on making payment of repairing charges. Accordingly, the settlement between the parties regarding liability of the respondent to pay

the three instalments in question was finally settled. According to the respondent, in view of the settlement between the parties on the date of the

statutory notice, the respondent was not owing any amount to the petitioner and thus there is no admitted debt between the parties.

5. Therefore, the only question to be considered by me is as to whether there is a bona fide and reasonable dispute about the debt in question and

my finding on the said point is in the affirmative for the reasons stated hereinabove. The respondent has produced along with the affidavit-in-reply a

copy of the letter addressed by the respondent on 13.9.1996 to the Police Inspector of Navrangpura Police Station. Along with the said copy of

letter, two postal acknowledgment receipts showing that the copy of the said letter was endorsed to the said Police Inspector as well as to the

present petitioner - are produced. In this letter addressed to the Police Inspector

of Navrang-pura Police Station, it has been clearly mentioned the stand which the company in question has taken in this petition. It has been specifically mentioned in this letter-cum-statement addressed to the Police Inspector on 13.9.1996 that there, were negotiations and settlement between the director of the company - Mehta Integrated Finance Ltd. and the managing director of the company in question and, as per the said negotiations and the talk, the company in question was to give up the payment of five instalments made up by them and the petitioner before this court had agreed to take the vehicle directly from the garage after making payment of the repairing charges. It is very pertinent to note that neither in the statutory notice nor in the petition is there any reference of the petitioner, in this petition, approaching the police. It is also very pertinent to note that, though the last instalment was payable on 22.10.1994, no notice demanding the payment was issued to the respondent before issuing the statutory notice. In spite of this specific contention by the respondent that negotiations and settlement had taken place between the director of the petitioner company and the managing director of the respondent, no affidavit of the director of the petitioner company has been filed denying the same. Therefore, this conduct of the petitioner in not making any reference of their approaching the police in September 1996, not making any demand of the amount till December, 1996 and not filing affidavit of the director of the petitioner company denying the stand taken by the petitioner right from September 1996 makes it very difficult to accept the mere denial by the petitioner of the stand taken by the respondent. No doubt, the petitioner has produced today one notice issued on 6.1.1998. The notice is issued on 6.1.1998 by Cargo Motors Ltd. The said notice is addressed to the present petitioner as well as to one Ashokbhai Kedia. In the said notice it has been claimed by Cargo Motors Ltd. that the vehicle in question was given for repairs to them by Ashokbhai Kedia. There is no dispute that said Ashokbhai Kedia is the Managing Director of the company in question. In my opinion, this letter seems to have been procured by the present petitioner to defeat the claim of the respondent. If at all Mehta Integrated Finance Ltd. is not concerned with the vehicle and if the vehicle was given for repairs by Ashokbhai Kedia, there was no necessity to address this letter to Mehta

Integrated Finance Ltd. Here also, this notice is coming two years after filing of the petition. Admittedly, the vehicle in question was given for repairs prior to 1996. It is not at all probable that the garage will keep mum for two years and all of a sudden issue such a letter. Therefore, in the circumstances, merely because of said letter of Cargo Motors Ltd., I am unable to hold that the claim made by the respondent is dishonest, unreasonable and improbable. In my opinion, the stand taken by the respondent is consistent, and particularly so when the petitioner has not come before the court with clean hands by not making any reference to their approaching to the police and not filing affidavit of the director of the company in spite of the specific stand taken by the company in question that negotiations and settlement had taken place between the director of the petitioner company and the managing director of the company in question. Therefore, in the circumstances, I hold that the debt is disputed and as such, this winding up petition will have to be rejected. I, accordingly, reject the same with no order as to costs.

6. The observations made by me in the judgment are only for the purpose of deciding this petition. They are not final and conclusive. I have made the observations only for the purpose of considering the question as to whether the defence raised by the defendant for disputing the debt is prima facie an honest and reasonable one or not.