
(1986) 07 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 93 of 1982

M/s Bhiwani Packagnigs, New Delhi

APPELLANT

Vs

Stepan Chemicals Limited

RESPONDENT

Date of Decision : 11-07-1986

Acts Referred:

Companies Act, 1956 — Section 434

Citation : (1986) 07 P&H CK 0024

Hon'ble Judges : S.P. Goyal, J

Bench : Single Bench

Advocate : R.K. Chibhar, for the Appellant; G.R. Majithia, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Goyal, J.—This petition has been filed by a creditor, M/s. Bhiwani Packagings, for winding up the Respondent company. Stepan Chemicals Ltd. u/s 433(e)(f) 434 and 439 of the Companies Act (for short called the Act).

2. The Petitioner supplied goods against the purchase order issued by the Respondent from April 28 to November 22, 1979. After adjusting the amount received from the Respondent, an amount of Rs. 1,55,085.62 remained due to the Petitioner from them on December 19, 1979. The said amount having not been paid Rs. 40,306.00 were added by way of interest thereto upto March 31, 1981 and demand notice u/s 434 of the Act was served on the Respondent on May 11, 1982 for payment of the total amount of Rs. 1,95,391.62. The Respondent was further informed that if the amount was not paid, interest at the rate of 20 per cent per annum would be charged till its payment. As the Respondent failed to make the payment in spite of the statutory notice, this petition has been filed for a winding up order.

3. In the written statement filed by the Respondent, correctness of the accounts of the Petitioner was challenged and the alleged liability totally denied. However, on August 24, 1984, a Bank Draft in the amount of Rs. 1,37,918.98 was

delivered to the learned Counsel for the Petitioner which was duly accepted. As the Petitioner claimed that interest still remained unpaid, the following issue was framed on November 9, 1984.

Whether the Petitioner was entitled to any interest on the principal amount till the filing of this petition ? If so at what rate ? OPP.

Later on C.A. No. 71 of 1985 was moved for permission to frame an additional issue to the effect that Rs. 17,000/-and odd were on account of the principal as well after the above said payment. The application was allowed and the additional issue framed on September 13, 1985 to the following effect:

Whether any amount on account of principal is still due to the Petitioner ?

The Petitioner in support of these issues examined N.K. Davar, P.W.1 and closed his case after tendering in evidence several documents. The Respondent examined Arun Kumar Goel R.W.1 and Y.R. Kapur R.W.2 and closed his case.

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In support of this issue, one of the partners of the Petitioner appeared in the witness box and deposed that purchase orders, Exhibits PW1/1 P.W.1/2 and PW1/3 were recieved from the Respondent and accordingly goods were supplied and the bills Exhibits PW1/4 to PW1/17 submitted. According to these bills, goods worth Rs. 4,10,079.38 were supplied against which according to the accounts of the Petitioner, Rs. 2,54,993.76 were received leaving a balance of Rs. 1,55,085.62 due from the Respondent on December 19, 1979. The payment according to the purchase order was to be made within 30 days after the receipt of the material subject to the quality check report. It was, therefore, claimed that after the expiry of 30 days, the Respondent was liable to pay interest at the rate of 20 per cent per annum and Rs. 40,306.00 were claimed on this count upto March 31, 1981. The Respondent in the evidence produced by it has not challenged the correctness of the purchase orders or the bills mentioned above. Further, it was admitted that Rs. 1,42,885.14 were shown due in the ledger of the Respondent pertaining to the year 1979-80 which amount carried forward in the following years upto the year 1982-83 whereafter Rs. 5000/- were deducted therefrom on account of the overfilling. The oral statement of the Respondent cannot be sufficient to rebut the documentary evidence produced by the Petitioner consisting of the purchase order and the copies of the bills submitted to the Respondent particularly when the correctness of neither of the purchase orders nor of the bills has been challenged. The Petitioner has thus proved beyond any doubt that the amount of Rs. 1,55,085.62 due on account of the principal amount on the date of the filing of the petition and after the payment of Rs. 1,37,918.98, an amount of Rs. 17,156.64 still remained due to the Respondent.

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Admittedly, there was no contract between the parties entitling the Petitioner to

charge interest on the delayed payment of the price of the goods supplied. The Petitioner neither pleaded nor produced any evidence to prove usage to the effect that in the case of non-payment of the price of the goods supplied within 30 days, the Respondent was liable to pay interest. The learned Counsel for the Petitioner, however, relying on Section 61(2) of the Sale of Goods Act urged that the Court had the discretion to award interest at such rate as it thought fit on the amount of the price to the seller in a suit filed by him for the amount of price from the date of the tender of the goods or from the date on which the price was payable. The liability to pay the price of the goods stands admitted in the present except to the tune of Rs. 18,000/-. There is no averment that the goods were not found upto the mark or there was any dispute in the regard between the parties. There was thus no reason to withhold payment of the price of the goods after a period of 30 days and as such the Petitioner was entitled to claim interest according to the provisions of the said Section 61(2). The transaction being of commercial nature reasonable rate of interest chargeable would be the bank rate prevalent on the relevant time. The Petitioner added an amount of Rs. 40,306,00 on account of interest from December 20, 1979 to March 31, 1981 for the goods supplied from during the period from April 23, 1979 to December, 1979 at the rate of 20 per cent per annum. No proof has been led to show as to what was the bank rate of interest during the relevant period. But in any case it was not less than 15 per cent per annum. So, on this rate the Petitioner is entitled to claim Rs. 30,000/- and odd by way of interest upto March 31, 1981 and the issue is answered accordingly.

In view of the findings recorded above and the fact that the Respondent failed to discharge the liability even after the service of the notice u/s 434 of the Act, the Petitioner would be entitled to an order for winding up the Respondent-company. However, the learned Counsel for the Respondent urged that the Respondent company was in a very sound financial position and there was no material on the record to show that it was unable to pay its debts. As held by the Supreme Court in *M/S Madhusudan Gordhandas and Company v. Madhu Wollen Industries Private Limited* AIR 1971 S.C. 2680, where the liability is disputed, the principles on which the Courts act are that the defence is in good faith and one of substance ; that the defence is likely to succeed on point of law and that the Company adduces prima facie proof of the facts on which the defence depends. In the present case, the defence set up was of total denial which by the latter acts of the Respondent-company itself was shown to be false inasmuch as the liability to the extent of Rs. 1,37,000/- and odd was admitted and discharged by payment through bank draft in the court on August 24, 1984. The fact that the company is in a sound financial position and capable of discharging its debts, therefore, has no bearing. The Respondent-company having failed to pay its debts after due service of the notice under Sections 433, 434 and 439 of the Act was therefore, liable to be wound up. This petition is accordingly allowed and citation is ordered to be published in the Chandigarh Administration Gazette. The Tribune (English Edition) and The Tribune (Punjabi Edition), in accordance with

the rules. The case to come up for further orders on 8.8.1986.