(1995) 01 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 69 of 1989

M/s. Hada Steel Products Limited APPELLANT

Vs

M/s. Emjay Engineering Enterprises RESPONDENT

Date of Decision : 24-01-1995

Acts Referred:

Companies Act, 1956 — Section 446(2), 468
Evidence Act, 1872 — Section 114

Citation : AIR 1995 P&H 327 : (1998) 93 CompCas 722 : (1995) 111 PLR 254

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : Ahmad Chibber, for the Appellant; A.C. Jain, for the Respondent

Judgement

1. This is a claim petition filed by the Official Liquidator on behalf of M/s. Hada Steei Products Limited (now in liquidation) and hereinafter called

the Company under S. 446(2) read with S. 468 of the Companies Act, 1956 (for short, the Act) for the recovery of Rs. 1,14,298.81 ps. along

with interest at the rate of 12% per annum from 15-6-1987 till the date of payment.

2. It is common case of the parties that the Company before it went into liquidation was supplying mechanical and engineering goods to M/s.

Emjay Engineering Enterprises, Bombay-respondent herein. The Company was ordered to be wound up on 14-5-1987 and the Official Liquidator

attached to this Court was appointed its liquidator. On receipt of records from the ex-Directors of the Company, the Official Liquidator found that

a sum of Rs. 1,14,298.81 ps. was due to the Company from the respondent being the unpaid price of the goods supplied by the former to the

latter. The Official Liquidator served a registered notice on the respondent calling upon it to pay the amount. The respondent sent its reply denying

its liability to pay any amount and also pointed out to the Official Liquidator that the statement of account on which he was placing reliance was not

correct and that it contained a number of clerical/arithmetical errors. It was also brought to his notice that as per that statement of account only a

sum of Rs. 3398.56 ps. was due from the Company to the respondent. In the replication filed by the Official Liquidator, it was stated that the

Company had maintained two accounts in its books in the name of the respondent and those accounts were described as an old account and a

new account. It was clarified that the statement of account which was annexed as Annexure-P1 with the petition pertained to the new account and

the entries prior to those referred to therein were contained in the old account a copy of which was attached as Annexure-P2 with the replication.

According to the Official Liquidator, in terms of both these accounts, a sum of Rs. 1,14,298.81 ps. was due to the Company from the respondent.

It is on the basis of this record of accounts that the present petition has been filed for the recovery of the amount.

3. Pleadings of the parties gave rise to the following issues :--

1. Whether the petitioner company is entitled to recover an amount of Rs, 1,14,298.81 ps. together with interest at the rate of 12% per annum on

account of goods supplied to the respondent as claimed in the petition? OPP

2. Relief.

4. In support of his claim for the recovery of the aforesaid amount, the Official Liquidator has produced ten invoices on the record through which

the goods are said to have been sent by the Company to the respondent. These invoices are Ex.PW2/1 to PW2/10 and the total price of the

goods mentioned in all these invoices comes to Rs. 98,976.20 ps. Further, ledger account as maintained by the Company in its books of account

in the name of the respondent has also been produced and these are Exs.PW2/11-A, PW2/12, PW2/13, PW2/13-A, PW2/14,and PW2/14-A.

Besides this, the Official Liquidator produced and assistant from his office who appeared as PW1 and on the basis of the records of the Company

he stated that a sum of Rs. 1,14,298.81 ps. was due to the Company from the respondent for which a notice has been sent and in spite of that the

amount had not been paid. Shri M. L. Chomal who was the Chief Accountant of the Company appeared as PW2. He proved the ten invoices and

also the ledger account referred to above. He admitted that the goods were sent to the respondent through the bank and payment was also made

through the bank. He also admitted in his cross-examination that the payments against some of the aforesaid invoices had been received and the

same stand reflected in the books of the Company. The respondent, on the other hand, has admitted invoices Exs.PW2/1 to PW2/9 and it has also

admitted receipt of goods mentioned therein. The case of the respondent is that payment of the amounts mentioned in these invoices has been

made to the Company through the bank and that the same stand reflected in the statement of accounts produced by the Company. The respondent

has, however, denied the receipt of goods through invoice Ex. PW2/10 and the firm stand taken by it is that the goods mentioned therein were

never received and, therefore, the question of making any payment did not arise.

5. The sole question to be determined in this case is as to whether the goods were received by the respondent and whether payments of those

goods was made to the Company. The respondent has admitted the receipt of goods as per invoices Exs.PW2/1 to PW2/9. A perusal of the

statement of accounts produced by the Company makes it quite clear that the price of these goods was paid to the Company and the same stands

reflected in that statement. In this view of the matter, it has to be held that the goods received by the respondent in terms of the aforesaid invoices

have been paid for and no amount was due to the Company from the respondent. As regards the goods said to have been sent to the respondent

through invoice Exhibit PW 2/10, the receipt of the same has been denied by it. There is not even an iota of evidence on the record to show that

the goods mentioned in this invoice (Exhibit PW 2/10) were ever received by the respondent. The liability for the payment of those goods is sought

to be fastened on the respondent solely on the basis of entries in the books of account which have been produced on the record. It is settled

principle of law that no person can be charged with liability merely on the basis of entries in the books of account even where such books of

account are kept in regular course of business. There has to be further evidence to prove the receipt of goods by the person who is sought to be

made liable for payment. Besides, a mere look at the statement of account produced by the Official Liquidator shows that the same is not correct

as it contains a large number of arithmetical/clerical errors. In the absence of any evidence to show that goods mentioned in Exhibit PW 2/10 were

ever received by the respondent, it cannot be made liable for their payment.

6. For the reasons mentioned above, issue No. I is decided against the Company and in favour of the respondent and consequently, this claim

petition is dismissed leaving the parties to bear their own costs.

7. Petition dismissed.

