(2012) 02 DEL CK 0060

In the Delhi High Court

Case No : Co. Petition 63 of 2001

M/s. Rajesh and Co. APPELLANT

Vs

M/s. Ravissant Pvt. Ltd. RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6
Companies Act, 1956 — Section 433, 434, 439

Citation : (2012) 171 CompCas 30 : (2013) 3 CompLJ 192 : (2012) 187 DLT 713

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Sunil K. Mittal with Mr. Kshitij Mittal and Mr. Pranav Rishi, for the Appellant; Vinay Bhasin and Mr. H.L. Raina, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—Present winding up petition has been filed u/s 433(e) read with Sections 434 and 439 of the Companies Act, 1956 stating that the respondent-company is unable to pay its debt allegedly amounting to `17,26,952/-.

2. The facts as stated in the present petition are that the petitioner-firm had supplied fabric to the respondent-company on regular basis from 1996 onwards and as per the reconciliation of accounts for the period from 1st April, 1997 to 31st March, 1998, a sum of `17,26,952 was due and payable by the respondent-company, which the respondent-company had failed to pay, hence this petition.

3. Mr. Sunil K. Mittal, learned counsel for the petitioner had drawn attention of this Court to respondent''s letter dated 26th March, 1998 at page 48 of the paper book wherein the respondent-company had admitted the amount of `17,26,952/- as due and payable by it as on that date.

4. Mr. Mittal further submitted that the case set up by the respondent in reply to the statutory winding up notice that the said amount though not denied, but was rather adjusted against the alleged claims of the respondent''s sister concern,

namely, M/s. Indian Handicrafts, was unauthorised, illegal and un-sustainable in law.

5. Mr. Vinay Bhasin, learned senior counsel for the respondent stated that the petitioner had not disclosed all facts, which were material for the present case. He contended that the transactions had actually been executed between four parties, namely, M/s. Rajesh & Co., its sister concern M/s. RMP Fabrics, M/s. Ravissant Pvt. Ltd. and its sister concern M/s. Indian Handicrafts. He stated that M/s. Indian Handicrafts had also been purchasing textile fabric from the petitioner and that at times petitioner originally used to raise the bills on M/s. Indian Handicrafts but subsequently, petitioner raised the same bills on the respondent-company as some of the fabric which was supplied to the M/s. Indian Handicrafts was used by the respondent-company.

6. Mr. Bhasin referred to petitioner''s own ledger to show that payments received from respondent''s sister concern, namely, M/s. Indian Handicrafts had been adjusted by the petitioner in the accounts of the respondent-company. Therefore, he submitted that in order to ascertain as to whether any amount was due and payable, a consolidated account of all the four parties had to be taken into consideration.

7. Mr. Bhasin submitted that the letter dated 26th March, 1998 relied upon by the petitioner was merely a reconciliation of accounts as it was based on bills which had been received from warehouse. He stated that the debit notes against defective supplies were raised by the company after the fabric had been checked and at that stage the Account Department did not have said debit notes. According to him, many defects of fabric became visible only after the said fabric had been processed, i.e., dyed. He stated that the supplier was liable to compensate not only the cost of the cloth but also processing charges.

8. He pointed out that the respondent''s sister concern namely, M/s. Indian Handicrafts had issued two debit notes dated 30th June, 1998 to the account of the petitioner. While debit note No. 46 dated 30th June, 1998 for `29,14,719/- had been raised by the respondent-company towards airfreight charges for shipment sent to various customers on account of late and defective delivery received from the petitioner, debit note No. 45 dated 30th June, 1998 for `8,01,754.88 had been raised on account of return of rejected goods.

9. Mr. Bhasin pointed out that petitioner and its sister concern, M/s. RMP Fabrics had also filed civil suits against respondent-company and its sister concern before this Court. In fact, the petitioner had filed an application in CS (OS) No. 582/2001 titled as "M/s. RMP Fabrics Vs. Indian Handicrafts & Ors." under Order XII Rule 6 of Code of Civil Procedure, 1908 (for short ''CPC'') seeking a decree on the basis of an admission made by the respondent in its letter dated 26th March, 1998. Mr. Bhasin stated that said application was dismissed by this Court on 3rd January, 2003 on the ground that respondent had set up a positive defence which denied the petitioner''s entitlement to claim relief.

10. Mr. Bhasin lastly contended that if the consolidated account of all the four companies/firms were taken into consideration along with aforesaid debit notes, then no amount was due and payable to petitioner by the respondent or its sister concern M/s. Indian Handicrafts. According to him, on the contrary it was the respondent-company and its sister concern who were entitled to recover `4,95,218.15 from the petitioner.

11. Though the petitioner has not filed any rejoinder-affidavit, but Mr. Mittal during the rejoinder-arguments submitted that the debit notes raised by the respondent were frivolous and had been created subsequently to avoid liability. He contended that in the past though the respondent had raised debit notes, but none had been raised on the ground of damages or delay. He alleged that the said debit notes were an afterthought on the respondent-company''s part.

12. Having heard the parties and having perused the papers, this Court is of the opinion that it would be appropriate to first examine the submission of the respondent-company that the petitioner-firm as well as its sister concern, M/s. RMP Fabrics and the respondent-company as well as its sister concern, M/s. Indian Handicrafts used to have transactions mutually exchanged with each other from time to time and there should be consolidated reconciliation of accounts of all these four concerns.

13. This Court finds credence in the arguments of the respondent-company that respondent-company and its sister concern were acting as one economic entity. This Court takes note of the respondent''s ledger account maintained by the petitioner itself for the period from 1st April, 1997 to 31st March, 1998 wherein three credit entries dated 24th April, 1997, 30th April, 1997 and 19th June, 1997 are in the name of Indian Handicrafts, the sister concern of the respondent-company. This Court further finds that certain bills were first raised by the petitioner on Indian Handicrafts which were later transferred and also raised on the respondent-company with the same bill number, amount and date.

14. In fact, this Court in Pankaj Aluminium Industries Pvt. Ltd. Vs. M/s. Bharat Aluminium Company Ltd. 2011 4 AD (Del) 212 after relying upon DHN Food Distributors Ltd. and Others v. London Borough of Tower Hamlets (1976) 3 ALL ER 462 at Page 467 has recognised the doctrine of single economic entity. In DHN Food Distributors Ltd. (Supra), it was held as under:-

.....We all know that in many respects a group of companies are treated together for the purpose of general accounts, balance sheet and profit and loss account. They are treated as one concern. Professor Gower in his book on company law says : "there is evidence of a general tendency to ignore the separate legal entities of various companies within a group, and to look instead at the economic entity of the whole group". This is especially the case when a parent company owns all the shares of the subsidiaries, so much so that it can control every movement of the subsidiaries. These subsidiaries are bound hand and foot to the parent company and must do just what the parent company says. A striking instance is the decision of the House of Lords in Harold Hold worth & Co. (Wakefield) Ltd. v. Caddies. So here. This group is virtually the same as a partnership in which all the three companies are partners. They should not be treated separately so as to be defeated on a technical point. They should not be deprived of the compensation which should justly be payable for disturbance. The three companies should, for present purposes, be treated as one, and the parent company, DHN, should be treated as that one. So that DHN are entitled to claim compensation accordingly. It was not necessary for them to go through a conveyancing device to get it.

15. For a winding up petition to be allowed, the petitioner is required to show that the alleged admission is clear and unambiguous. In the present case, the respondent-company has not denied the letter dated 26th March, 1998 but at the same time has set up the defence that subsequent to the abovesaid letter, two debit notes dated 30th June, 1998 had been issued by the sister concern of the respondent-company. In fact, in the recovery suit filed by the petitioner''s sister concern, petitioner''s application under Order XII Rule 6 of CPC was dismissed for a similar reason. The relevant portion of the said order dated 3rd January, 2003 is reproduced hereinbelow:

13. Reverting back to the facts of the case, as already observed, although there appears to be no denial to the letter dated 26th March, 1998, however the defendant has clearly set up its case in the written statement, and in the reply by way of a stand to the effect that in view of the debit notes dated 30th June, 1998, the plaintiff is not entitled to any sum of money. Even if the letter dated 26March, 1998 is deemed to be correct, then the debit notes, as pleaded, are of subsequent dates and if defendant is liable to prove this factum, the plaintiff"s case has to fail. Even otherwise, in the facts of the case, it is apparent that the alleged admission is not there. The pleadings clearly reflect the stand of the defendants whereby they have in unequivocal terms, and by setting up a positive defence, denied the entitlement of the plaintiff to the suit amount.

16. It is pertinent to mention that the aforesaid order has attained finality inasmuch as the same was not challenged either by the petitioner or its sister concern.

17. Moreover, the jurisdiction of Company Court is summary in nature and the issues of inter-se transactions between the parties and the veracity of the debit notes cannot be examined in the present case as it involves disputed questions of fact and would require evidence to be led. Certainly, the defence set out by the respondent in its reply to the statutory notice cannot be said to be a moonshine or sham. In fact, the Supreme Court in IBA Health (I) Pvt. Ltd. Vs. Info-Drive Systems Sdn. Bhd., has held that "the Company Court is expected to ascertain that the company''s refusal is supported by a reasonable cause or a bona fide dispute in which the dispute can only be adjudicated by a trial in a civil court." (Refer ''para 31'')

18. Consequently, the present petition is dismissed, but without any order as to costs. Needless to say, the civil court would decide the case on merits without being influenced by any observations made by this Court.