
(2009) 10 KAR CK 0019
In the Karnataka High Court
Case No : COP No. 92 of 2004

Oil and Natural Gas Corporation Ltd. Employees Contributory
Provident Fund Trust

APPELLANT

Vs

HMT Limited

RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Companies Act, 1956 — Section 433 (a), 433 (f), 617

Citation : (2009) 10 KAR CK 0019

Hon'ble Judges : B.V. Nagarathna, J

Bench : Single Bench

Advocate : Basavaprabhu S. Patil, for the Appellant; Joshua Samuel, for
Cariappa and Co., for the Respondent

Final Decision : Dismissed

Judgement

B.V. Nagarathna, J.—This petition is filed by a Trust called "Oil & Natural Gas Corporation Limited Employees Contributory Provident Fund Trust" seeking winding up of the respondent company under the provisions of Section 433(a) & (f) of the Act.

2. This petition is filed pursuant to the liberty reserved in Company Petition No. 248/2000 to the petitioner herein to initiate fresh proceedings against the respondent company in the event the respondent failing to pay any of the installments as stated in the compromise petition filed in Company Petition No. 248/2000.

3. According to the petitioner, the respondent company is a Public Limited Company having its registered office at IIMT House, Bellary Road having an authorized capital of Rs. 135,00,00,000/- divided into 13,50,000 equity shares of Rs. 10/- each. The issued, subscribed and paid up capital of the company is Rs. 120,04,03,400/- divided into 12,60,43,340 equity shares of Rs. 10/- each. The main objects, of the respondent company are to carry out the business of

mechanical engineering, manufacture of all types of implements and machinery and to trade in machinery implements, hardware of all kinds.

4. According to the petitioner the erstwhile Oil & Natural Gas Commission had established a fund under the Employees Provident Fund Provisions Act, 1952 and the name of the said fund was changed to Oil & Natural Gas Corporation Limited employees (Contributory Provident Fund Trust with effect from 1.2.1994. The petitioner had invested a sum of Rs. 1,00,00,000/- with the respondent company in 10.50% IIMT (Taxable) unsecured, redeemable bonds on 29.7.1994. Since the respondent failed to comply with the terms of the bond, statutory legal notice dated 8.7.2000 was sent to the respondent company stating that it was liable to pay a sum of Rs. 1,41,25,000/- in respect of the bonds. Although the respondent admitted the liability, it failed to discharge its debt and consequently, the petition for winding up, in Company Petition No. 248/2000 was filed in which, after the appearance of the respondent company, a compromise was arrived at and the company petition was disposed of in terms of the compromise on 26.7.2001.

5. Subsequently, the respondent company in compliance with the terms of the compromise had allotted fresh secured bonds for Rs. 1,10,00,000/-. However, it defaulted in the payment of interest on fresh secured bond for the said amount in terms of Clause (vii) of the compromise petition. That the respondent company is liable to pay "half-yearly interest every year till the date of maturity on the said amount at the rate of 10% to the petitioner which it has failed to pay. In the meanwhile the respondent company issued a memorandum of private placement for allotment of secured, non-convertible, redeemable bonds of the face value of Rs. 10,00,000/- each pursuant to which, the petitioner company further invested a sum of Rs. 15,00,00,000/ in the bonds and the respondent company issued a letter for allotment dated 1.8.2001 in respect of which amount the respondent company is liable to pay at the rate of 12% p.a., till the date of maturity to the petitioner. According to the petitioner since the respondent company has failed to make payment of installments of interest on the secured bonds allotted for Rs. 1,10,00,000/- and also on secured bonds allotted for Rs. 15,00,00,000/-, a statutory notice was issued by the petitioner on 21.12.2004 under the Companies Act seeking payment of interest of Rs. 27,50,000/- calculated up to 31.1.2004 in respect of 10% secured bonds of Rs. 1,10,00,000/- and also interest on the said interest, in terms of Clause (i) of the compromise petition, the petitions demanded payment of Rs. 4,79,51,460/- comprising of unpaid interest of Rs. 4,35,45,205/- and towards interest at 12% p.a on unpaid interest at Rs. 44,06,254/- as on 31.1.2004 and a total sum of Rs. 5,09,99,966/- as on 31.1.2004 was demanded as per statutory notice produced as Annexure-F and the acknowledgment of it is at Annexure-G to the petition.

6. The respondent company admitted its default in payment of interest in terms of the letters of allotment on account of financial constraints and stated that they were making efforts to pay the overdue interest on the bonds by its reply dated 10/23.3.2004 produced at Annexure-II. According to the petitioner the bond

dated 1.6.2001 having matured on 1.6.2004 the respondent company was due to return the said amount of Rs. 1,10,00,000/- and a consolidated sum of Rs. 6,44,27,834/- was due as on 14.6.2004 as stated in Annexure-J.

7. The petitioner has further stated in the company petition that the respondent company is in financial distress has incurred loss continuously for the last ten years and is unable to meet its current obligations and hence has become commercially insolvent and therefore, is liable to be wound up as also on just and equitable grounds.

8. In response to the company petition, the respondent company filed its affidavit stating that the petition is not maintainable as the amount claimed is not a debt and therefore would not attract the provisions of the Companies Act. Further that the petitioner being a Trust formed by and under the Corporation owned by Government of India as per circular dated 31.12.1991 issued by the Government of India, disputes between one Government Department and another and a government department under public enterprise must be considered by the Cabinet Secretariat as stated by the Hon'ble Supreme Court in the decision reported in JT 1991 (4) SC 158 and the same has not been done in the instant case by the petitioner. According to the respondent it is a Government of India company with 98% of the shares held by the President of India and all Directors in-charge of the day-to-day affairs and management of the company are appointed by the President of India; that the respondent, company and its subsidiary has annual turnover of over 400 crores and over 10,000 employees for whom monthly salary of Rs. 15 crores is being paid and there is no question of the company being unable to pay its debts and nor as the petitioner shown just and equitable grounds for the company to be wound up. The petition contains disputed questions of facts which required to be adjudicated by the detailed evidence and for this reason also the company petition is liable to be dismissed. It is also stated by the respondent that the effect of winding up putting an end to the business of the company resulting in the loss of employment to several thousands of employees and loss of production which would affect the larger interest of the society and that discretion cannot be exercised in favour of the petitioner in the instant case.

9. As far as the outstanding payments are concerned, the respondent stated that in respect of bonds for a sum of Rs. 1,10,00,000/- along with interest, a sum of Rs. 1,19,80,233 had been paid to the petitioner by Demand Draft bearing No. 244480 dated 5.4.2005 and with regard to the other bonds bearing folio No. 76001 the same would mature on 1.8.2006 and with regard to the interest portion a sum of Rs. 2,39,91,781/- was paid by a demand draft bearing No. 244479 dated 5.4.2005 as part payment towards petitioner's claim of interest. According to the respondent company Provident Fund Trust of different companies who had invested in it had got their dues settled before this court and also other Provident Fund entities had not approached any court. That a sum of Rs. 1,25,00,000/- of bond holders had been settled under a scheme and

therefore, the respondent company stated that the company petition ought to be dismissed. By a further affidavit the respondent company gave the calculation with regard to the amounts paid by it subsequent to the filing of the company petition.

10. In response to the said further affidavit, the petitioner filed its objections stating that the amount of Rs. 3,59,78,014/- made by the respondent company is only towards part discharge of the respondents liability against the aforesaid bonds and that a balance of Rs. 5,34,50,700/- was due as on 31.3.2005 and interest after that date and maturity amount was also to be added. There is outstanding amounts to be paid in respect of bond bearing folio No. 70007 (10% IIMT bond 2004) as well as folio No. 76001 (12% IIMT bond) which was to mature on 1.6.2006 and that whatever amounts have been paid has not been as per the contractual obligations and that the further affidavit is misleading and incorrect.

11. By an order dated 28.1.2005 this court after hearing both sides admitted the company petition and directed the publication of the petition by way of advertisement in the "Hindu" newspaper on or before 22.2.2005 fixing the date of hearing on 22.3.2005. Advertisement of the said petition was taken out on 20.2.2005. Thereafter at the instance of the respondent company on 22.3.2005 time was granted for making of payments and in compliance of the order dated 22.3.2005 two demand drafts dated 5.4.2005 for Rs. 3,59,78,014/- were paid. Thereafter the matter was adjourned from time to time at the instance of the respondent company for settlement of the dues but since the same did not happen, the matter was posted for evidence by order dated 23.6.2006 and thereafter posted for arguments.

12. I have heard Sri. Basava Prabhu S. Patil learned senior Counsel, with Smt. Nalini Venkatesh, learned Counsel for the petitioner and Sri. Joshua Samuel for M/s Cariappa and Company, learned Counsel for the respondent company.

13. Before considering the submission of the respective Counsel on merits, it is necessary to consider the submission of the Counsel for the respondent company on the maintainability of the company petition.

14. A point raised by the Counsel for the respondent is that the respondent company is a government company within the meaning of Section 617 of the Companies Act. Though the respondent is a company incorporated under the Provisions of the said Act, it is nevertheless a government company controlled by the Central Government and though the petitioner need not make the Central Government a party, the company court has to notify the Central Government before an order of winding up can be made.

15. Counsel for the respondent has taken me through the Memorandum and Articles of Association of the respondent company and also through the provisions of Industries Development & Regulation Act 1951 as well as the Government of India (Allocation of Business) Rules. He has also relied upon the

decision of the Apex Court in the case of 1992 (61) ELT 3 (SC) which deals with disputes between Public Sector Undertaking and Union of India to contend that the matter has to be referred to the government for resolution of the dispute. He has also stated that since the respondent company is a "State" within the meaning of Article 12 of the Constitution, it cannot be placed on the same footing as a public company or a private company as defined u/s 3 of the Companies Act and has also gone to the extent of submitting that a petition u/s 433(e) of the Act is not maintainable in respect of a government company, as defined u/s 617 of the Companies Act.

16. Though the said contentions of the Counsel for the respondent shall be considered and answered, Counsel for the respondent company ought to have realized that these contentions are outside the scope of the specific jurisdiction of the company court dealing with the Companies Act and other allied acts. In the instant case, Counsel for the respondent has mainly focused on the maintainability of the petition and the requirement of ordering notice on the Central Government rather than submitting on the merits of the case. This court would have been better assisted if the learned Counsel for the respondent had also submitted in detail on the merits of ordering winding up of the respondent company rather than raising wholly irrelevant contentions.

17. At the outset it has to be stated that Article 12 of the Constitution of India is in the context of enforcement of fundamental rights whereas the present petition is filed under the provisions of the Companies Act and therefore, while the government company can come within the scope of Article 12 of the Constitution, the same cannot be taken into consideration while dealing with the winding up of a government company. Section 617 of the Companies Act defines a government company. It can be either under the jurisdiction of the State Government or under the Central Government. Since the respondent company is one coming under the jurisdiction of the Central Government and it is expected to act in accordance with the guidelines and policies and instructions of the Central Government, in my view, it is not necessary that notice should be issued to the Central Government before passing an order of winding up, for the simple reason that the Central Government would not take a stand different from what the respondent company would take and vice-versa.

18. It is also a settled position that the respondent company is incorporated under the provisions of the Companies Act and therefore, the existence of the company as well as its winding up would necessarily come within the purview of the said Act and not under any other Act as such. There is no exception carved in respect of the companies incorporated u/s 617 of the Act in the matter of its winding, up.

19. Section 617 of the Companies Act defines a Government Company wherein 51% or more of the shares are held by the Central and or any State Government and the said company becomes a Government Company and special provisions as to government companies La Goa, Daman and Diu and dammu and Kashmir

are made u/s 620B and 620C of the Act but there is no provision excluding the applicability of the provisions regarding winding up vis-a-vis Government Companies, in fact in the case of *Maruthi Udyog Ltd. v. Hindustan Photo Film Manufacturing Co. Ltd.* (2001)103 Com Cas 960 Mad, a Government Company was ordered to be wound up because of its inability to pay its debts, symbolised by the fact that it failed to honour the statutory notice. The court said that a substantial Government shareholding does not by itself afford security to creditors since the company failed to produce any details of its financial position. This created a presumption of bad financial condition which was raised and an order of winding up was passed. Therefore, the contention of the Counsel for the respondent that Government Company within the meaning of Section 617 of the Act falls outside the purview of winding up proceedings enunciated under the Companies Act u/s 433 read with Section 434 and other provisions is rejected.

20. Under the circumstances, a petition u/s 433(e) of the Act for winding up of government company is maintainable and further it is not necessary to issue notice to the Central Government or the State Government as the case may be, while exercising jurisdiction in the matter of winding up of a government company. As already stated, Article 12 of the Constitution of India has no relevance with regard to the winding up of a government company.

21. In 1992 (61) ELT 3 (SC) the dispute was between & public sector undertaking of the Central Government and the Excise Department and in that context the Supreme Court stated that Public Sector undertakings of Central Government and the Union of India should not fight their litigations in court by spending money on court proceedings and wasting public time and instead it would be resolved at the level of the government itself. But in *Canara Bank and Others Vs. National Thermal Power Corpn. and Another*, the dispute was between transfer of bonds of NTPC, a Government of India Enterprise and a nationalised bank which was the trustee of a mutual fund. The Apex Court held that the trustee of a mutual fund was not a Government undertaking and it was not a case of dispute between two government undertakings and therefore, the direction of the high court to resolve the matter by the high powered committee in terms of ONGC's case was held to be not proper. In the instant case also the petitioner is not a department of the Union of India or a public sector undertaking. It is a trust comprising of the employees of Oil and Natural Gas Corporation Ltd. And hence, the decision in ONGC case is not applicable rather the decision in NTPC's case is applicable and therefore the submission of the Counsel for the respondent that the matter has to be considered at the level of the Central Government and not by way of a Company petition, is rejected.

22. Similarly, reliance is placed on the Government of India (Allocation of Business) Rules to show that the respondent company comes under the Department of Heavy Industries of the Central Government has no bearing and are wholly irrelevant on the question of maintainability of the petition as also on the requirement of issuing notice to the Central Government Therefore, all

contentions with regard to the maintainability of this company petition are rejected.

23. Having held that the company petition is maintainable the next question that has to be considered is as to whether the petitioner has made out a case for winding up of the respondent company.

24. According to the learned Senior Counsel for the petitioner, there is no denial of liability on the part of the respondent company, but it is not in a position to pay the outstanding dues to the petitioner and also several other entities, the company has lost its commercial morality and it has become insolvent and it is a fit case where discretion must be exercised u/s 433(e) read with Section 434(a) & (c) and Section 433(f) in favour of the petitioner and the respondent company ought to be wound up. It is also just and equitable to wind up the respondent company on account of the successive losses that it has sustained and the huge amount of money that it is liable to pay to various persons and entities.

25. Per contra, Counsel for the respondent company has stated that at the time of filing of the company petition, the bonds had not matured and that after the filing of the company petition Rs. 3,59,78,014/- have been paid by the respondent company to the petitioner and that the company has made profits in the years 2003-04 up to the year 2006-07 and only on account of delay in the payment of the dues in respect of the petitioner herein, it cannot be said that a case for winding up has been made out by the petitioner and therefore, the petition ought to be dismissed.

26. The decisions referred to at the bar have been considered. From the citations cited at the bar, it becomes clear that the remedy u/s 433(e) of the Companies Act is not a matter of right and it is the discretion of the Company Court which has to be exercised in accordance with law before passing an order of winding up in an appropriate case. Inability to pay debts has to be judged from various facts and circumstances" and ipso facto cannot be construed as an appropriate case for winding up. It is necessary for the company court to consider the financial state, strength and substratum of the company and mere disability or inability to pay debts would not constitute a ground empowering the court to wind up the company. On the other hand, if the company is an on going concern having regular business and employment of hundreds of employees, the court cannot, remain oblivious to this aspect, as the effect of winding up would be putting an end to the business or industry or entrepreneurship and in turn insulting the loss of employment to several employees and loss of production and effect on the larger interest of the society. In other words, since winding up of a company is nothing but a commercial death or insolvency, the court has to take into consideration the entire status and position of the company in the market and not only temporary inability or possibility to make payment of debts. The court would also consider in the interest of justice to give the company some time to come out of the momentary financial crisis or any other temporary difficulty as winding up is a measure of last resort. Vide, *Tata Iron and Steel Co. Ltd. v. Micro*

Forge (India) Limited. reported in (2001) 104 Comp Cas 533, It is pertinent to note that after the advertisement of the company petition, no person has filed any affidavit in support of or opposing the petition.

27. PW.1 has filed his affidavit by way of examination-in-chief re-iterating the contents of the company petition and also the terms of the compromise Sled in the previous round of litigation and the compliance by respondent company of Clause (vii) of the compromise petition. That a sum of Rs. 5.09,99,960/- was due as on 31.1.2004 and that the bond dated 1.0.2001 was matured on 1.6.2004 and the amount of Ra. 1,10,00,000/- was also to be paid to the petitioner; that the respondent company is in distress, has suffered losses and has become commercially insolvent and therefore deserves to be wound up. PW. 1 has also admitted that during the pendency of the company petition, a sum of Rs. 3,59,78,014/- was paid by the respondent and the same has been accepted on 31.3.2005. Out of the said amount, a sum of Rs. 1,19,86,233/- is with regard to IIMT 10% bonds and Rs. 2,39,91,781 is on IIMT 12% bonds, but there are further liabilities to be met by the respondent and in the absence of payment of the same, it is a case of usability to pay the admitted liability. PW. 1 has produced Ex.P1 to P8 in support of his deposition.

28. In the cross-examination, FW.1 has admitted that in the legal notice issued by the petitioner company to the respondent the amount represents interest on interest. By order dated 6.7.2007 the matter was posted for arguments after PW. 1 was cross-examined and no evidence has been let in the respondent.

29. From the material on record, it is evident that the petitioner which is a Provident Fund Trust had invested in the respondent, company initially a sum of Rs. 1 crore in 16.50% HMT (Taxable, unsecured, redeemable bond) on 29.7.21994 and that on account of the default committed by the respondent company on the said bonds, a statutory notice was sent and thereafter winding up petition in Company Petition 248/2000 was filed in which a compromise was entered into between the parties and by order dated 26.7.2001 the said company petition was disposed of with a liberty to re-initiate fresh proceedings in the event of respondent defaulting in the payments as stated in the compromise petition. Since there being default in the payment of interest as per Clause (vii) of the compromise petition, the present company petition was filed hi the year 2004.

30. However, subsequent to the compromise entered into between the pasties arid before the filing of the present petition, in response to the invitation of the respondent company, a sum of Rs. 15 crones was invested by the petitioner in bonds issued by the respondent company. On the said sum, interest at the rate of 12% p.a was to be paid till the date of maturity. However, subsequent to the filing of the company petition PW.1 has admitted that a sum of Rs. 3,59,78,014/-, has been paid. Ex.P2 is the compromise petition filed in Company Petition No. 248/2000 under which for default in payment of any installment of interest on the fresh secured bond allotted for Rs. 1,10,00,000/- and for default

in repayment of the principle amount and interest payable thereon, the petitioner was at liberty to initiate fresh proceeding against the respondent company. Ex.P3 is the letter of allotment as per Clause (vii) of the compromise petition while Ex.P4 is dated 1.8.2001 subsequent to the compromise petition where allotment of 12% p.a (taxable) IIMT secured non-convertible bond for a period of five years was issued in favour of the petition Trust by the respondent company.

31. Therefore, what is significant is to note that despite the earlier winding up petition being filed by the petitioner which resulted in a compromise, the petitioner company has made further and higher investment in the respondent to a tune of Rs. 15,00,00,000/- subsequent to the disposal of the earlier company petition by way of a compromise. Ex.P7 is the letter dated 10/23.3.2004 by the respondent company stating that it has approached the government for approval to raise funds through government guaranteed bonds so as to mobilise funds for making payments. Ex.P8 is the calculation regarding the amount due by the respondent company. On consideration of Ex.P7, it is evident that the respondent company was seeking to mobilise funds for payment of the petitioner dues after getting approval from the Central Government. In fact even during the pendency of the company petition, a sum of Rs. 3,59,78,014/- has been paid and accepted by the petitioner, faking note of these facts, I am of the view that this is act a fit case where discretion has to be exercised in favour of the petitioner by winding up the respondent company as this is not a case where the respondent company is unable to pay its debts.

32. It is also necessary to note that the respondent company is a public sector undertaking which employs more than 3000 personnel having a net worth much more than its liabilities and therefore causing advertisement of the petition would not only affect the production and business of the company, but would cause impairment to its reputation since the respondent company has the potential to earn profits in view of the revival plan submitted by it to the Central v3overnment winch is evident from the deposition of PW.1. It is also necessary to bear in mind the fact that a petition for winding up with a view to enforcing payment of a disputed debt is an abuse of the process of the court. It cannot be gain said that an order admitting a winding up petition and resultant order for inviting claims from the respective patties by public notice, is in many cases from commercial point of view, the business point of view, from the marketability point of view and also taking into consideration the interest of the work force not less injurious than an order of winding up. However, in the instant case there has been no support or opposition to the advertisement of this petition.

33. The circumstances in which winding up is refused even where debt is proved and inability to pay established are well recognized and constitute exceptions. Though it is often said that once the petitioning creditor shows the existence of debt and inability; of the company to pay the debt, there is no general, indefinite, discretionary jurisdiction to refuse winding up. On the other hand, it has to be kept in mind that despite a presumption of commercial insolvency

against a respondent company there is scope for exercise of discretion to refuse winding up under exceptional circumstances, such as where a debt is bonafide disputed by the company or the company has paid or tendered the petitioner's payment of debts. In the instant case, the petitioner has accepted a portion of the outstanding dues after the filing of this petition.

34. As far as Section 434 of the Act is concerned which deals with a just and equitable ground for winding up of the company is concerned, it has to be observed that the words just and equitable are of wide ambit and can only be explained by illustrations. Though the just and equitable clauses can be pressed into service for winding up of a company where substratum of the company has gone or where the company is formed for the purpose of fraud or where full investigation is necessary or where there is a complete deadlock in the management of the company on account of internal strife, none of the above situations exist in the instant case and neither has the petitioner made out a case on this ground. On the other hand, what is of significance is that the respondent is a company in the realm of public sector coming under the Ministry of Heavy Industries, Government of India supported by the Central Government and having a huge work force and was one of the top public sector companies once upon a time. Though presently the company, is in a difficult financial situation, would not mean that it is just and equitable to wind up the said company.

35. On the other hand in the case of *Virgin Records (I) (P) Limited v. Milestone Music Distribution (P) Limited* reported in (2001) 6 Comp.L.J 161 (Bom), it has been stated that extra ordinary remedy u/s 433 and 434 of the Companies Act is to be sparingly resorted to and not as a general provision under the general civil law. In the said case since the petitioner company itself had not stated about its debt recoverable from the respondent company and it had not averred in the petition that the respondent company had become commercially insolvent and that it was unable to pay its debt and the respondent has seriously disputed the whole claim for which evidence was required and since the Companies Act is not the remedy for recovery of debts of huge nature, it was held that the company court can exercise its discretion to grant relief to bonafide and genuine creditors by issuing just and equitable orders against defaulting debtor companies only under extra ordinary circumstances and not as an ordinary civil remedy for recovery of debts which are disputed and are not admitted.

36. In the case of *American Express Bank Limited v. Core Health Care Limited* reported in (2000) 6 Comp.L.J. 98 (Guj.), it has been stated that it is at every stage of the proceeding from the time of issuing notice to the company until the winding up order is made, the court has to consider the material placed before it about the desirability of making the particular order to proceed with the matter. If from the material disclosed in the petition and reply to the notice a prima facie case of existence of a bonafide and reasonable dispute is spelt out, the court would be justified in dismissing the petition in limine at the threshold. Even after

notice has been issued to the respondent company, before admitting the petition, the court has to consider the question whether the case is made out for not making a winding up order or to proceed further, notwithstanding the acknowledgment of debt to the petitioner and the court must agree to advertise the public notice thereof, sending a word about the winding up to all concerned inviting objections and then alone consider the matter of making an order for winding up or not, even though the court on existing material is satisfied that it will not be just and equitable to order for winding up. The court must in each case therefore, exercise whether in the circumstances of the case it would be in the interest of justice to wind up the company. In both the above decisions the company petition was dismissed.

37. Similarly in the case of Astha Textile Co. Limited, Hyderabad v. Indo Rama Synthetics (I) Limited., Dhar (MP) reported in (2004)1 Comp.L.J. 481 (MP) it has been held that a remedy of winding up of any company under the Companies Act, 1956, is a discretionary remedy and it is for the court to decide as to whether a strong prima facie case on facts is made out for admission of the winding up petition against any company and if it is of the opinion that some other remedy is available for the petitioner for realization of the dues than pursuing the remedy of winding up, then the court is empowered to dismiss the petition. Since the winding up order is the death of any company whose existence comes to an end on passing of such an order, courts have to be very cautious in their approach as no creditor can take advantage of the fact for filing a petition for winding up only because the debtor happens to be a company.

38. For the aforesaid reasons, the company petition is dismissed. Parties to bear their own costs.