
(1997) 12 DEL CK 0049

In the Delhi High Court

Case No : Civil Petition No. 104 of 1992 and Civil Appeal No. 16 of 1996

Rishi Pal Gupta

APPELLANT

Vs

S.J. Knitting and Finishing Mills (P) Ltd.

RESPONDENT

Date of Decision : 02-12-1997

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (1998) 44 DRJ 451

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Judgement

M.K. Sharma, J.

(1) This is a petition filed by the petitioner u/s 433 read with Section 434 of the Companies Act, praying for winding up of the respondent Company on the ground of its inability to pay the dues of the petitioner amounting to Rs.6,89,870,76.

(2) The aforesaid petition was admitted to hearing by an order dated 10th April, 1997 and citation was directed to be published in daily issues of Statesman (English), Dainik Veer Arjun (Hindi) and Delhi GAZETTE. The petitioner has placed on record copies of the said two newspapers and the Delhi Gazette indicating publication of the citation and an affidavit regarding publication has also been filed. The petitioner in support of his contention that the Respondent Company has admitted its liability to the extent of the amount claimed in the petition, examined one Shri R.C. Meena, Senior Technical Assistant of the office of Registrar of Companies. In his statement he has stated that a notice was issued on 17th September, 1991 to the respondent Company by the Registrar of Companies in pursuance of a complaint filed by the present petitioner. It was also deposed that in pursuance of the said notice a reply was sent by the respondent Company dated 22nd November, 1991 which was signed by Shri Subhash Sahni, Director of the respondent Company. A photocopy of the list of creditors as admitted by the respondent is also placed on record marked as Exb."X-1".

(3) My attention has been drawn to the said Exb. "X-1" which gives details of the balance sheet of the respondent Company as on 31st March, 1990. Under the list of sundry creditors the name of the petitioner company appears at page 3 of the said Exb. "X-1" wherein an amount of Rs.8,89,870,76 has been shown due and payable to the petitioner. The said entry by the respondent in their balance sheet in the list of sundry creditors as on 31st March, 1990, in my considered opinion, is an admission of the respondent that the said amount is due and payable to the petitioner. The said amount which is due and payable to the petitioner by the respondent having not been paid, the respondent is admittedly indebted to the petitioner and the respondent having failed to pay the said amount, I am of the considered opinion, that it is unable to pay its debt. In that view of the matter, I am satisfied that the requirement of Sections 433, 434 and 439 are satisfied in the present case and the present Company is required to be wound up which I hereby do.

(4) In view of the fact that the Company has been wound up under this order. I appoint the Official Liquidator attached to this Court as the Provisional Liquidator of the respondent Company. The Official Liquidator shall take over into his custody and possession, the assets and records of the respondent Company immediately. Let necessary communication be also sent to the Registrar of Companies. Notice in the prescribed form of making the order be published in the newspaper, i.e., Statesman (English) and Dainik Veer Arjun (Hindi).

(5) A copy of this order be sent to the Official Liquidator forthwith. Registry is directed to draw up notification and formal order as prescribed under the Rules.

(6) In terms of the aforesaid order, the petition as also the application stand disposed of.