

(1994) 03 DEL CK 0023

In the Delhi High Court

Case No : C.P. 68 of 1993

R.P. Bansal, Proprietor M/s. Bansal and Company

APPELLANT

Vs

M/s. Shagun Steels Pvt. Ltd.

RESPONDENT

Date of Decision : 08-03-1994

Acts Referred:

Citation : (1994) 03 DEL CK 0023

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : Sanjay Chaubay, for the Appellant; Valmiki Mehta, for the Respondent

Judgement

1. This petition has been brought u/s 433 of the Indian Companies Act seeking winding up order against the respondent-company.

2. The case set up in the petition, in brief, is that the petitioner has been receiving supplies of goods from the respondent-company in account and on March 31, 1992, there was a credit balance of Rs. 1,94,579/- in the books of accounts maintained by the petitioner and the said amount has not been paid by the company despite service of statutory notice dated February 1, 1993.

3. Show-cause notice was issued to the respondent-company and the reply has been filed. It is mentioned in the reply that there has been a running account between the parties and in fact, the balance due from the petitioner-company was Rs. 8,80,644/- after adjusting Rs. 5,00,000/- received vide cheque dated June 9, 1992, the balance amount due was Rs. 3,80,644/- and the petitioner had issued a cheque again dated June 13, 1992 in the sum of Rs. 4,00,000/- to clear the balance but the said cheque was bounced and a notice was issued to the petitioner dated August 14, 1992 and thereafter a criminal complaint has been filed against the petitioner which is pending in the Court of Sh. Narinder Kumar, Metropolitan Magistrate, New Delhi, and the next date in the case is March 16, 1994 and the petitioner is yet to appear in that case.

4. It is significant to mention at this stage that along with the petition, no copy of the statement of account was filed by the petitioner although in the petition itself it was asserted that the petitioner is maintaining the books of accounts and it is only on the basis of the balance struck in the books of accounts of the petitioner that the amount of Rupees 1,94,579/- was due from the respondent-company to the petitioner in respect of which a statutory notice was issued.

5. The respondent-company has filed a copy of the statement of account of the year 1991-92 in respect of which there has been raised a dispute by the petitioner in rejoinder that two debit entries existing in the said statement of account of February 12 and February 14, which were to the effect that a bill in the sum of Rs. 2,47,350/- and bill in the sum of Rs. 2,70,515/- were raised but the goods have not been received by the petitioner in respect of these two entries. The other entries in this statement of account are not in challenge. The case of the petitioner is that, in fact, a cheque in the sum of Rs. 5,00,000/- was issued in account which was to cover some supplies yet to be made by the respondent-company. On the other hand, the dispute raised by the respondent-company is that this cheque of Rs. 5,00,000/- was given to clear some balance amount due from the petitioner which was to the tune of Rs. 8,80,644/-.

6. The respondent-company has placed on record the documents to show that when these two disputed bills were raised even the excise duty has been paid and gate passes from the Excise Officer had been obtained. Counsel for the petitioner, on the other hand, has argued that there is no proof furnished by the respondent that in fact the goods pertaining to these two entries had been received by the petitioner. He has argued that challans are prepared in triplicate by the respondent-company and along with the goods a copy of the challan and the bill are sent to the petitioner and while receiving the goods the signatures of some authorised person on behalf of the petitioner are usually obtained on such challans and as no such challan has been filed on the record to show that such goods had been received by the petitioner, it should be inferred that these entries have been fabricated in the account books of the respondent-company and so there exists no genuine or bona fide dispute in respect of the amount claimed by the petitioner in the petition. I am afraid that these contentions have no merit.

7. It is the admitted case that there was no dispute between the parties till atleast March, 1992. So, there could arise no occasion for the respondent-company to fabricate those two entries in the account books. Counsel for the respondent has pointed out that at no point of time any signatures had been obtained on any challan from the petitioner or from its authorised person for making supplies of the goods. It is pointed out that the goods are of very bulky and heavy nature and they are supplied to the petitioner in good faith as the respondent-company have been dealing with the petitioner since long and there has been no occasion even earlier to take any signatures of the petitioner on the said challans while making delivery of the goods to the petitioner. The question

which arises for consideration before me is whether the disputes raised by the respondent-company are genuine disputes or not?

8. In the present case the petitioner has not cared to file the statement of account maintained by the petitioner along with the petition. The claim of the petitioner was based on a balance struck at the end of the closing year and so, it was necessary that the petitioner should have filed a copy of his account books along with the petition. It is only when the respondent had filed the reply and filed the statement of account that the petitioner for the first time in the rejoinder came up with the plea that these two debit entries pertaining to the said two bills are fabricated. Prima facie, it appears that these two entries could not have been fabricated by the respondent-company when even excise duty has been paid in respect of these two entries in February, 1992 when the bills were prepared. It is also quite clear that the petitioner has given statutory notice only after the respondent-company had served a notice on the petitioner in respect of dishonouring of the cheque of Rs. 4,00,000/-. It is yet to be made clear by the petitioner that in what circumstances a cheque of Rs. 4,00,000/- was issued by the petitioner to the respondent-company when according to the petitioner, there was a balance due from the respondent-company. As far as the present winding-up petition is concerned.

9. I am of the considered view that the respondent has raised a bona fide dispute and in fact it is the respondent-company who has given a notice to the petitioner in respect of the dishonouring of the cheque of Rupees 4,00,000/- and filed a criminal complaint that the petitioner has, as a counter-blast, chosen to serve a statutory notice for winding-up on the respondent-company.

10. Counsel for the petitioner has made reference to Smt. Madan Debi Kundalia v. Alpine Dairy Ltd. (1983) 54 Com Cas 41 : 1981 TLR 2550 where on peculiar facts appearing in that case, the Calcutta High Court had held that in a petition for the winding-up of a company by the creditor who had supplied goods, the defense of the company being not bona fide regarding the plea that the goods supplied were defective, the company court can order winding-up if prima facie comes to the conclusion that the documents presented by the company are not genuine documents. In the present case, prima facie, I have come to the conclusion that the debit entries raised in the account books of the company are not fabricated. So, nothing said in this judgment would apply to the facts of the present case.

11. Another judgment relied upon by counsel for the petitioner is Paramount Enterprises v. Reechem Pvt. Ltd. (1985) 57 Comp Cas 200 : 1983 TLR 2450. In the said case, the only dispute was regarding the quantum of the amount paid as advance. On facts the Andhra Pradesh High Court came to the conclusion that the defense raised by the company was not bona fide and thus, it was held that the winding-up order could be made in such a case. Again, this case is not applicable to the facts of the present case.

12. The learned counsel for the respondent on the other hand, has relied upon *I.T.C. Ltd. v. Fomento Resorts and Hotels Ltd.* (1991) 70 Comp Cas 459, where it was laid down by the Bombay High Court that it is well settled that a winding up petition should not be allowed to be resorted to as a means to recover debts from a company and it was also held that the claim in a winding-up petition should not be a running claim, but one which is crystallised. It was emphasized in that case that if the debt is disputed and the dispute is bona fide and genuine, no winding-up order can be made.

13. The next case relied upon by the learned counsel for the respondent is *Manjulabai v. Jayant Vitamins Ltd.* (1991) 71 Comp Cas 443, where it was laid down by the Madhya Pradesh High Court that when a creditor comes forward with a prayer for winding up a company on the ground of nonpayment of dues, then the creditor has to establish that the debt owed by the company is clear, valid in law, unimpeachable and cannot be disputed. In the said case even before a statutory notice was issued by the creditor, the company had already raised a claim against the said creditor-petitioner and the Court came to the conclusion that genuine and bona fide dispute stands raised by the company and thus, recourse to winding-up order cannot be had.

14. In view of the above discussion, I come to the conclusion that in the present case, a bona fide and genuine dispute has been raised by the respondent-company and thus the petitioner is not entitled to the winding-up order on the ground of inability of the respondent to pay any debt to the petitioner. Petition is dismissed with costs. Counsel fee for Rs. 1,000/-.

15. Petition dismissed.