

(1993) 04 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Company Petition No. 4 of 1983

Shivalik Chit Fund and Machine Tools (P) Ltd.	APPELLANT
Vs	
Agricultural Industries and Others	RESPONDENT

Date of Decision : 05-04-1993

Acts Referred:

Companies Act, 1956 — Section 428, 568

Citation : AIR 1996 HP 83 : (1997) 89 CompCas 62

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : A.K. Goel, for the Appellant; Anup Chitkara and H.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—Ravinder Kumar, who was appointed as liquidator by the creditors of the petitioner-company, under the creditors voluntary winding up provisions, by virtue of an order passed on 27th March, 1981 in Company Application No. I of 1981, was authorised to institute or defend any suit, prosecution or any other legal proceedings, civil or criminal on behalf of the petitioner-company.

2. By moving this application under Ss. 512 and 518 read with Ss. 467 and 468 of the Companies Act, 1956 (Act No. 1 of 1956), (hereinafter to be called as "the Act"), read with Rule 9 of the Companies (Court) Rules, 1959, the voluntary liquidator has prayed that petitioner's claim for Rs. 1,68,405/- be allowed with costs and decree be passed in favour of the petitioner against the respondents with interest etc. It is alleged that respondent No. 1 took a loan of Rs. 3,76,000 from the petitioner-company on different dates by executing promissory notes and other loan documents. The loan was payable on demand. A sum of Rs. 2,99,655/- was paid by way of adjustment and Rs. 16,000/- were paid in cash and by cheques till 13th December, 1980. After adjusting the payments received a sum of Rs. 60,345/- remained to be paid and thus adding up interest thereafter

it is prayed that decree be passed against the respondents in this petition.

3. Respondents 1 and 2 filed their written statement and opposed the petition by contending that the claim was barred by limitation and otherwise also the petition is not maintainable.

4. When the petition came up for arguments, on 28th March, 1994, learned counsel for respondents 1 and 2 raised an objection as regards the maintainability of the petition, on the basis of the averments made in the petition. It was contended that the status of the respondents is alleged to be that of a debtor of the company, for which remedy of the petitioner, through its liquidator was only to institute a suit and that the same could have been filed within the period of limitation. Petition for directions before the Company Judge is neither competent, nor maintainable. Adjournment was sought by the learned counsel for the petitioner thereafter. Today, I have heard the learned counsel for the parties and also gone through the record of the petition. Learned counsel for the petitioner has, by placing reliance on a decision of Punjab and Haryana High Court in *Bareja Knipping Fasteners Ltd. v. Kochar Brothers* (1989) 66 Comp Cas 709 (P&H), has urged that directions can be issued against the respondents for making the payment.

5. I am afraid that the submissions made by the learned counsel for the petitioner cannot be accepted and no help can be derived from the decision cited by him. The question whether such a petition by a company or a liquidator will or will not be maintainable against a debtor of a company was neither the subject matter of an issue in the said decision nor the same was decided. No such objection as regards the maintainability was raised and there is nothing stated in the decision that such a petition is competent or not.

6. Section 512 of the Act, enumerates the powers and duties of the liquidator in voluntary winding up. It authorises the voluntary liquidator to exercise, with the sanction of the court, or a committee of the inspection and if there is no such committee on a meeting of the creditors, any of the powers given by Clauses (a) to (d) of Sub-section (1) of Section 457 of the Act to a liquidator in a winding up by the court. Section 457(a) of the Act says that a liquidator in a winding up by the court shall have powers, with the sanction of the court to institute or defend any suit, prosecution or other legal proceedings civil or criminal in the name and on behalf of the company.

7. In so far as Shri Ravinder Kumar, voluntary liquidator is concerned, this court by virtue of an order passed on 27th March, 1981 in Company Application 1 of 1981 has already authorised and empowered him to institute or defend any suit, prosecution or other legal proceedings, civil or criminal in the name and on behalf of the company. The question, which in substance is required to be decided is as to whether by filing a company petition, directions can be sought against a debtor to pay the amount, which according to the petitioner is due and payable, which is seriously in dispute by the respondents. Learned counsel for

the petitioner has made a reference to Section 468 of the Act and urged that the amount due from respondents is the property of the company and the court will be empowered to issue directions under this provision. This submission made also deserves rejection. Section 468 of the Act reads as under:

"The Court may, at any time after making a winding-up order, require any contributory for the time being on the list of contributories, and any trustees, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the liquidator, any money, property or books and papers, in his custody or under his control to which the company is prima facie entitled."

8. The aforementioned provision empowered the Court, after making an order of winding up, requiring any contributory, a trustee, a receiver, banker, agent or other officer of the company to pay, deliver surrender to the liquidator any money, property, books and papers in his custody and control to the company. In nut-shell, the order, which the court can pass directing delivery of money, property, etc. to the liquidator, can only be against the persons enumerated (in Section 468. Debtor is not one of the persons mentioned in Section 468, who may be asked to deliver, surrender or transfer any money or property to the company through the Liquidator. "Contributory" has been defined in Section 428 of the Act and a debtor of the company cannot be considered to be the contributory. Prior to the coming into force of the Act, it was Companies Act, 1913, which was in force. Section 158 was the equivalent provision in 1913 Act to Section 428 of the Act, which defines "contributory."

9. In *Lakshmi Flour Mills Co.* In the matter of AIR 1926 AC 101, a question, which had directly arisen, was as to whether, a debtor of a Company is a contributory or is not a contributory within the meaning of Section 158 of the 1913 Act. It was held that a mere debtor of a company in liquidation is not a contributory of the company within the ambit of Section 158.

10. Section 468 of the Act corresponds to Section 185 of 1913 A ct. The question which had arisen before the Allahabad High Court in *Official Liquidators Electric Supply Co. Ltd. Vs. Siemens (India) Ltd.*, was that whether Section 185 or any other provisions of the Company Act, 1913 empowers the company court to pass orders against persons, other than those mentioned in Section 185 to direct payment to the liquidator. It was held that:

"..... the jurisdiction of the ordinary courts to pass decrees arising out of the disputed claims can be ousted only by specific provisions of law. Section 185, Companies Act, empowers the court exercising jurisdiction under the Act, to require contributories and certain agents and officers of the company to deliver any money, property or documents in their hands to the liquidator. It does not give the court any power to pass orders against persons other than those mentioned in the Section. Section 188 of the Act says that the court may order any contributory, purchaser or other person from whom money is due to the

company to pay the same into the account of the official liquidator in any Scheduled Bank instead of to the official liquidator and any such order may be enforced in the same manner as if it had directed payment to the official liquidator. It seems to me that the provisions of this section are intended to give the court power merely to direct payment into a bank instead of to the official liquidator himself and are not intended to give to the court wider powers for payment into a bank than for payment to the official liquidator. It follows that this section does not give the court power to direct payment from any persons other those motioned in Section 185 of the Act."

11. In *Sree Bank Ltd. v. P.C. Banerji* ILR 1951 Cal 396, also, after referring to the provisions of the 1913 Act, it was held that there is no provision in the Act, which permits the Liquidator of a company to recover the debts from the debtors of such company by a summary proceedings such as an application to the company Judge. It was held that the liquidator has to institute a suit for the recovery of debts.

12. On the bare reading of the provisions of Section 468 of the Act and in view of the aforementioned decisions, the instant petition in which prayer made is to direct the respondents as debtors of the company to pay its dues, which are seriously under dispute, is neither competent nor maintainable. There is also no need in this petition to again authorise the petitioner to institute or defend suits and other legal proceedings since such authorisation has already been given ty virtue of an order passed on 27th March, 1981 in Company Application No. 1 of 1981.

13. Consequently, it is held that the petition is not maintainable and is liable to be rejected.