(1999) 05 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : CP 114 of 1999

SKG Refractories Ltd. APPELLANT

Vs

Haryana Steel & Alloys Ltd. RESPONDENT

Date of Decision : 13-05-1999

Acts Referred:

Citation : (2000) 2 RCR(Civil) 515

Hon'ble Judges : Swatanter Kumar, J

Judgement

Swatanter Kumar, J.—This a petition under Section 433(e) (f) read with section 434(1) and 439 of the Companies Act 1956 (hereinafter referred to as the Act). M/s SKG Refractories Limited (hereinafter referred to as the petitioner Company) has prayed for winding up of M/s Haryana Steels & Alloys Limited (hereinafter referred to as the respondent Company) for respondent Company''s inability to pay its debts despite statutory notice.

2. The petitioner Company which is carrying on the business of fire bricks since 1995, at the request of the respondent Company had supplied 7500 number of chrome magesite bricks vide purchase orders dated 10.4.1998 and 10.8.1998. Copies of these purchase orders have been placed on record as Annexure P/1 and P/2. Vide Annexures P/3 and P/4, the invoices, the material was supplied in terms of the purchase order. The goods were carried through Chaudhary Goods Transport, NGP and Shree Salasar Roadways NGP. Having supplied these goods to the respondent Company, the petitioner Company was unable to recover its entire costs. Petitioner Company claims a sum of Rs. 4,00,362/ for the supply of goods. The petitioner Company, therefore, served a legal notice through their counsel dated 27.2.1999 at the registered office of the respondent Company at 48th K.M., G.T. Road, Murthal, Sonepat. The notice was served by registered post and the same has been served upon the respondent Company at its registered office.

3. Upon issuance of notice to show cause why petition be not admitted, the respondents were served by registered post. The affidavit of service dated

30.4.1999 has been filed on record alongwith acknowledgement due card. This case was passed over three times. Nobody appeared for the respondent company, thus, the arguments were heard ex parte and the orders reserved.

4. From the above narrated facts, it is clear that respondent Company had received goods supplied to them by the petitioner and despite notice they have failed to pay the price of the goods received by them. Notice as required under Section 434 of the Companies Act was duly received by them which remained unreplied. In fact, the respondent Company could hardly have a stand in face of Annexure P/8. This is FormC, declaration under Rule 12(1) of Registration & Turnover Rules, 1957 of the Sales Tax Act. In this form the respondents have clearly admitted the receipt of the goods worth Rs. 4,00,362/ and have made declaration in relation to the tax liability payable thereupon. In other words, this evidence prima facie clearly indicates the undisputed liability of the respondent Company towards the petitioner Company.

5. For the reasons aforestated, I am of the considered view that the respondent company without any bona fide reason or dispute has failed to clear its admitted debts towards the petitioner. They were obliged to pay the said amount upon receipt of the notice.

6. Consequently, this petition for winding up is ordered to be admitted. Notice of admission of the petition shall be published in Indian Express, Jansatta and The Haryana Govt. Gazette giving 14 days clear notice prior to the next date of hearing fixed before this Court for further proceedings.

List the matter for directions on 9.7.1999.