
(1990) 09 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 144 of 1987

Smt. Keerat Kaur and Others

APPELLANT

Vs

Patiala Exhibition Private Ltd.

RESPONDENT

Date of Decision : 06-09-1990

Acts Referred:

Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 433, 443

Citation : (1991) 70 CompCas 728 : (1992) 1 ILR (P&H) 107

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : N.K. Sodhi, Nipun Mittal and S.K. Hira, for the Appellant; J.S. Narang, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—Smt. Keerat Kaur and others have filed this petition for winding up of the respondent-company on the following pleas :

2. They own 169 shares out of 280. The company is indebted to them to the following extent:

Sl. No.

Name of the petitioner

Amount of debt (Rs.)

1.

Smt. Keerat Kaur, wife of Sh. Hari Dhan Singh

2,79,050.05

2.

Sh. Hari Dhan Singh

48,041.72

3.

Smt. Praveen Kaur, daughter of S. Hari Dhan Singh

17,000.00

4.

Smt. Gobind Kaur, daughter of Sh. Hari Dhan Singh

16,960.00

3. All these loans were advanced to the company in the year 1978 and find mention in its account books and the balance-sheet as on June 30, 1985. (A photo copy of the audited balance-sheet duly signed by the managing director and other directors is annexure P-1 to the petition). It had also been approved in the annual general meeting of the company held in the year 1985. These amounts, of course, form part of the total amounts of Rs. 8,37,421,32 and Rs. 1,20,960 shown payable to sundry creditors and unsecured creditors respectively. Even in the books of account for the subsequent years, these are duly mentioned. Though the petitioners were in dire need of money during the years 1986-1987, yet on account of the poor financial position of the company, the petitioners accommodated the company for some time. Ultimately, the petitioners' mukhtiar-e-aam (general-attorney), Shri Brij Mohan Handa, addressed a letter to the managing director of the company indicating that they cannot wait any further for the repayment of these loans and the company should arrange to make the payments at the earliest. Copy of this letter is annexure P-4. The managing director, Shri Jujhar Singh, replied to this letter on August 19, 1987, expressing the inability of the company to repay these amounts. Copy of this reply is annexure P-5. Thereafter, a notice (dated November 2, 1987) u/s 434 of the Companies Act was personally delivered to the managing director of the company by hand on November 3, 1987, stating that in case the latter failed to make the repayment in question within a period of three weeks from the date of the delivery of the notice, it would be presumed that the company was unable to pay its debts and appropriate proceedings for its winding up would be initiated. Copy of this notice is annexure P-6 to the petition. Despite the service of this notice, the company has failed to make the payment. As a matter of fact, it never responded to the notice. By that time, one of the creditors of the company, i.e., the Punjab and Sind Bank, had even filed a suit in the Court of Sub-Judge I Class, Patiala, for the recovery of Rs. 44,50,000 with interest from the company and its guarantors. That suit is still pending. According to the petitioners, the total claim thus due to them is Rs. 3,61,051.77, i.e., the principal amount and the interest thereon at the rate of 18 per cent. per annum.

4. Though the respondent-company has been sued through Shri Jujhar Singh as its managing director, yet a detailed reply to the petitioner has been filed by Shri

Pushpinder Singh Dhillon claiming himself to be the managing director of the company. Besides raising the legal plea that the petition is not supported by a duly sworn affidavit, as per the requirement of Rule 21 of the Companies (Court) Rules, 1959, it is highlighted therein that up to December 31, 1985, Hari Dhan Singh, petitioner himself, was the managing director of the company and he was not maintaining any proper accounts. He maintained these in the manner he liked. The management, during its tenure, had adopted a methodology to syphon off the money of the company and its profits under various heads like festival account, establishment expenses, travelling allowances, etc. He deliberately created a situation that the company appeared to be running in loss and unable to meet its day-to-day expenses. He even chose to make a mention of the self-created loans in the account books of the company. Shri Jujhar Singh through whom the company has been sued presently is none other than the son of Hari Dhan Singh, petitioner. The present petition is only a collusive petition to suit the interests of Shri Hari Dhan Singh and his family members. Hari Dhan Singh and his group including Jujhar Singh had removed the books of account before the present management took over the affairs of the company with effect from June 30, 1985. Since the books of account and other documents were taken away by Hari Dhan Singh and Jujhar Singh before the present management took over, the latter may not be able to expose the various acts of omission and commission indulged in by the earlier management. The amounts now being claimed are only fictitious entries and are not supported by any vouchers, etc. The claim of interest on the alleged principal amounts is not even supported by the entries made by Hari Dhan Singh in favour of his family members. As per the said entries, no agreement for payment of any interest on the said amounts exists. It is obviously wrong on the part of the petitioners to contend that subsequent to June 30, 1985, no balance-sheet, etc., of the company has been prepared. On the contrary, the audited accounts and the balance-sheet of the company were passed in their annual general meeting held on December 31, 1987. The amounts can, by no "stretch of imagination, be taken to be due to the petitioners merely on the basis of self-created evidence. The alleged issuance and service of notice u/s 434 of the Companies Act on Jujhar Singh personally is only a cooked up affair and has been pleaded with a view to maintain this collusive petition. The whole effort of the petitioners is to oust the validly elected board of directors, i.e., the present management and to take over the affairs of the company.

5. Further, petitioners Nos. 1 and 2, i.e., Smt. Keerat Kaur and Shri Hari Dhan Singh, have wrongly claimed themselves to be the directors of the company. They ceased to be so with effect from December 31, 1987, and this fact is supported by the entries in form No. 32 which was filed by Shri Hari Dhan Singh under his signature with the Registrar of Companies. It is also denied that any letter dated August 3, 1987, as alleged in the petition, was ever received by the company or that the reply to the same was sent by the managing director on August 19, 1987. As a matter of fact, Jujhar Singh remained the managing

director of the company only up to December 29, 1986, when, in the annual general meeting held on that day, Shri Pushpinder Singh Dhillon was duly elected as the managing director of the company. The letters including the alleged notice u/s 434 of the Companies Act are only cooked up material. The present management, within a period of two years of its taking over the affairs of the company have already paid off approximately Rs. 2 lakhs to its sundry creditors. As a matter of fact, it was Hari Dhan Singh who instigated the Punjab and Sind Bank to file the suit referred to above. This is more than evident from the fact that, during the pendency of the suit, the bank filed an application for appointment of a receiver on November 26, 1987. Shri Hari Dhan Singh, petitioner No. 2, on his own, put in appearance on behalf of the company without service of any formal notice on him and filed a reply to the said application on the very next day, i.e., November 28, 1987, and straightaway conceding the claim of the bank for the appointment of a receiver suggested that he himself should be appointed the receiver. Copy of his reply is annexure R-1 to the written statement. However, the court, suspecting the bona fides of Hari Dhan Singh, did not appoint him as the receiver. Sh. Hari Dhan Singh having failed to secure the management of the company in this manner, has filed this collusive petition along with his family members suing the company through his own son, i.e., Jujhar Singh. He even got the provisional liquidator appointed by concealing the material facts from the court. The petition is, thus, nothing but abuse of the process of court.

6. Besides the above noted reply filed by Pushpinder Singh Dhillon, Jujhar Singh too has filed a reply to this petition. By and large, he has admitted the claim of the petitioners except that they are entitled to the payment of any interest on the amounts claimed by them. In other words, he has admitted all the material allegations made by the petitioners except a few which do not harm their interest in any manner.

7. In her replication, Smt. Keerat Kaur, besides controverting the factual stand taken by Pushpinder Singh, has reiterated the main assertions in her petition. What is specifically highlighted therein, however, is that Pushpinder Singh never became the managing director of the company and it was Jujhar Singh who continued to be so till the affairs of the company were taken over by the provisional liquidator on December 18, 1987.

8. Learned counsel for the petitioners and Jujhar Singh, while urging for the winding up of the company in the light of the above noted factual pleas, have raised one principal contention that Pushpinder Singh has no locus standi in the matter and his stand, by way of his written statement, deserves to be discarded altogether. Though this objection has not been raised by the petitioners or Jujhar Singh anywhere, including the replication filed by Smt. Keerat Kaur, yet I permitted them to address their arguments taking it to be a strictly legal proposition going to the root of the case. It has been so urged by learned counsel in the light of certain observations made by a learned single judge of the

Delhi High Court in *Bipla Chemical Industries v. Keshariy a. Investment Ltd.* [1977] 47 Comp Cas 211 . It is ruled therein that while the company whose winding up is sought may be allowed to show cause against the admission of the petition for winding up, there is no rule which envisages that anyone other than the company may be heard to oppose the admission of the petition. Creditors inclined to oppose the winding up are not entitled to be heard at the stage of the admission of the petition for winding up as their interests are not, in any manner, affected or prejudiced by the mere admission of the petition. Having analysed the judgment, I find that the said opinion was expressed in the light of the facts of that case. It was a case where some of the creditors of the company had filed a petition for its winding up and the said petition was sought to be opposed by another set of creditors right at the stage of admission. The stand of the respondent-creditors was that it was not in the interest of the general body of creditors of the company that it should be wound up. No such situation arises in the instant case. It is not a matter of dispute that Pushpinder Singh and others who belong to his group are shareholders or members of the company. Therefore, they form a part of the company itself. No doubt, it is true that the company, on account of its incorporation, is entirely an entity separate from that of its shareholders and members, yet this distinction does not appear to make any difference in the instant case where the "controlling interest" is in issue. This is more so when as per the stand of Pushpinder Singh, a fraud is intended to be prevented. While examining the proposition as to who are the persons entitled to be heard in a winding up petition, the Supreme Court, in the context of Section 443 of the Companies Act, has expressed its opinion in *National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others*,) that even the workmen employed by the company have the right to be heard by the court, not as creditors of the company for dues outstanding but because they are likely to be deprived of the means of livelihood if the company is wound up. By a majority decision, the court held that since the right to apply for winding up is a creature of the statute and is available only to those mentioned in the statute, the workers cannot prefer a winding-up petition against the company. However, it does not follow as a necessary consequence that the workers have no right to appear and be heard in support or opposition to the winding up petition. The court further held that since there was nothing in the Companies Act expressly prohibiting workers from being heard in a winding up proceeding, the workers would be entitled to be heard though as interveners and not as parties. Therefore, it is apparent that the court has enough discretion to hear any other person, i.e., other than the parties who may be interested in the winding up on public grounds or otherwise. The objection of learned counsel, however, is that this discretion is not vested in the court at the stage of the admission of the petition and may be there once the petition is published. This again does not appear to contain any merit. In *National Conduits (P) Ltd. Vs. S.S. Arora*,), their Lordships of the Supreme Court after analysing the various provisions of the Act, have enunciated the law in the following words (at p. 788) :

"When a petition is filed before the High Court for winding up of a company under the order of the court, the High Court, (i) may issue notice to the company to show-cause why the petition should not be admitted ; (ii) may admit the petition and fix a date for hearing, and issue a notice to the company before giving directions about advertisement of the petition ; or (iii) may admit the petition, fix the date of hearing of the petition, and order that the petition be advertised and direct that the petition be served upon persons specified in the order. A petition for winding up cannot be placed for hearing before the court, unless the petition is advertised; that is clear from the terms of Rule 24(2). But that is not to say that as soon as the petition is admitted, it must be advertised. In answer to a notice to show-cause why a petition for winding up be not admitted, the company may show cause and contend that the filing of the petition amounts to an abuse of the process of the court. If the petition is admitted, it is still open to the company to move the court that in the interest of justice or to prevent abuse of the process of court, the petition be not advertised. Such an application may be made where the court has issued notice under the last clause of Rule 96, and even when there is an unconditional admission of the petition for winding up. The power to entertain such an application of the company is inherent in the court and Rule 9 of the Companies (Court) Rules, 1959, which reads :

"Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court."

reiterates that power In A. Company, In re [1894] 2 Ch 349, it was held that if the petition is not presented in good faith and for the legitimate purpose of obtaining a winding up order, but for some other purpose, such as putting pressure on the company, the court will restrain the advertisement of the petition and stay all further proceedings upon it."

9. The stage the instant petition has reached is, as stated by their Lordships, at (i) above. I, therefore, see no logic or rationale in the contention of the learned counsel for the petitioners and Jujhar Singh that Pushpinder Singh and other shareholders who, as already pointed out, are members of the company have no right to be heard at this stage, i.e., the admission of the petition. Therefore, I repel the above noted stand of learned counsel.

10. Now, the merits.

11. Having examined the respective pleas of the parties, I find that the contention of Pushpinder Singh that the present proceedings are not only collusive but also amount to abuse of the process of the court, deserve to prevail. It is abundantly clear from the above-noted statement of facts that the affairs of the company have all through primarily been run by Hari Dhan Singh and Jujhar Singh as per their own showing. Their reply to the notice sent by Jujhar Singh (annexure P-5) and the receipt of the notice u/s 434 of the Act by

him by hand on November 3, 1987, only appear to be a cooked up affair. Similarly, the existence of the entries of loan amounts, even if they are there, are self-serving piece of evidence supporting the claim of the petitioners. The effort made by Hari Dhan Singh to get himself appointed as a receiver during the pendency of the suit between the Punjab and Sind Bank and the company also indicates that he was too eager to get hold of the affairs of the company one way or the other. Lastly, it is not in dispute that, on April 6, 1989, a compromise (photocopy on record) was arrived at between the two sets of shareholders, i.e., one headed by Hari Dhan Singh and another by Smt. Surjit Kaur (including Pushpinder Singh) whereby the former agreed to the following condition :

"The deposits, if any, made by the group of shareholders headed by Hari Dhan Singh shall be paid to the extent of 50 per cent. and it shall be accepted by the said group in full and final settlement."

12. In the face of this, it appears difficult to accept the genuineness of the abovesaid loan transactions. If the petitioners had actually advanced the abovenoted amounts to the company by way of loan, it is difficult to appreciate as to why they should be accepting 50 per cent. of their value in full and final settlement of their dues.

13. I am, therefore, of the view that the petition, besides lacking bona fides, appears to have been filed for purposes of putting pressure on the company with a view to control its affairs and this clearly amounts to misuse of the process of the court. Thus, the petition is dismissed but with no order as to costs. However, the petitioners, if so advised, may seek their relief through a civil court of competent jurisdiction.