

(1989) 12 AHC CK 0044
In the Allahabad High Court
Case No : Company Petition No. 22 of 1989

S.N. Steel Corporation	Vs	APPELLANT
Dany Dairy and Food Engineers Ltd.		RESPONDENT

Date of Decision : 07-12-1989

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (1992) 73 CompCas 357

Hon'ble Judges : A.P. Misra, J

Bench : Single Bench

Advocate : Vikash Chandra Tripathi, for the Appellant; R.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Misra, J.—The present company petition has been moved under sections 433, 434 and 439 of the Companies Act, 1956 (hereinafter referred to as "the Act"), for winding up the company, Messrs. Dany Dairy and Food Engineers Ltd.

2. I have heard learned counsel for the parties.

3. The main ground on which this petition is moved is that the company is unable to pay its debts as specified u/s 433(e) of the Act and, therefore, the company is liable to be wound up. The main contention for coming to that conclusion is based on the averments made in paragraphs 8, 9 and 10 of the petition. Paragraph 8 specifies the bills which were submitted to the company for making the payment. Paragraph 9 specifies the amounts which the company paid to the petitioner and according to paragraph 10 of the petition, after adjusting the amount of payment towards the petitioner's bill a sum of Rs. 1,40,350.36 still remains to be due to the petitioner and payable by the company. It is this amount which was the foundation for filing the present petition for winding up.

4. According to the petitioner, various letters including the letter dated December 19, 1984, and November 6, 1985, were sent along with the statement of

accounts showing the aforesaid balance which was duly received by the company but still it did not make the said payment. It is thereafter, on January 8, 1987, and February 28, 1987, through an advocate that the petitioner called upon the company to pay the said amount which was received by the company, but, according to the petitioner, in spite of the said letter, the company failed and did not make the said payment. It is not in dispute that the respondent-company, admittedly, is in receipt of the said letter, but the company disputed the amount claimed by the petitioner. In paragraph 20 of the counter-affidavit filed on behalf of the company, the averments made in paragraph 10 of the petition regarding the balance amount was denied. It was further averred that the liability of the answering respondent was only to the extent of Rs. 32,855.36 and even that was said to be time-barred. The company also annexed the statement of accounts as prepared by the chartered accountant as annexure I to the counter-affidavit. During the pendency of this petition, this court on April 28, 1989, passed an order without going into the merits of the petition that, to the extent the company admits the liability as against the petitioner, that may be paid before the company petition is listed for hearing. Learned counsel for the petitioner very fairly stated that, after the said order was passed, the company has paid the amount to the extent, according to the company, admitted to be payable to the petitioner.

5. Today, when the case was listed for hearing, learned counsel for the petitioner, on the basis of averments made in the petition, very vehemently urged that the petition is liable to be allowed as there are still amounts according to him, even after the payment of the amount by the company, due to be paid to him and for the failure of the company to pay the said amount, the company is liable to be wound up u/s 433(e) of the Act. As already stated in the counter-affidavit, learned counsel for the respondent on behalf of the company has urged that, according to the company, no amount is due to the petitioner and it has also annexed the statement of accounts as annexure 1 to the counter-affidavit. There seems to be a contest regarding the balance amount due between the company and the petitioner. Learned counsel for the petitioner urged that the company is not bona fide admitting the balance which the company is liable to pay and, therefore, even if the company does not pay the balance amount, it cannot wriggle out of the liability and the consequences mentioned u/s 433(e) of the Act. The legal position in respect of winding up under the aforesaid provision is very clear. The purpose of a winding up petition under the aforesaid provision is that if statutory notice is given to the company of the amount which is admittedly due to the person and if the company is not in a position to pay that amount, the company may be ordered to be wound up. Under the aforesaid provision, a legal presumption is drawn, if the company is not viable and not in such a position as to pay the said amount and unless the contrary is shown after notice to the company, the court orders its winding up. In the present case, after notice to the company and after a counter-affidavit being filed on behalf of the company and further in view of the fact that the company has paid the admitted

amount which, according to it, is due to the petitioner, the question of winding up of the company for not paying the balance amount cannot be justified. In the present case, the company is seriously disputing the balance amount to be payable to the petitioner while the petitioner is vehemently arguing that the amount is due to it. However, this court will not go into the disputed questions whether this amount is, admittedly, due to the petitioner or not. The question which is before this court is whether, on the facts of this case, it would fall under the provisions of Section 433(e) of the Act or not. If the balance amount is seriously disputed and payment has not been made by the company, then it will not be a case falling under the aforesaid provision. The purpose of making the petition under the aforesaid provision is not to obtain payment from the company but for winding up the company. The forum for realising the said amount is already there and it is for the petitioner if this case does not fall under the aforesaid provision to have his remedy by filing such petition or application as is permissible to it under law before the appropriate court.

6. Learned counsel for the petitioner relied on *Harinagar Sugar Mills Co. Ltd. v. M. W. Pradhan*, Court Receiver, High Court, Bombay 1966 136 Comp Cas 426 (SC). This case does not help the petitioner. In fact, on the contrary, this case itself upholds the aforesaid principle while interpreting the aforesaid provision of law. It has been held in that case that the company petition is not an alternative forum for realising the debt but equity is to be rendered between the parties. There is no doubt about it and, even in this case, keeping the aforesaid view in light, equity was done. Since, even after filing of this petition and even before considering winding up, this court, by means of an interim order, directed the company to pay to the petitioner the amount which the company, admittedly, considered to be due and the company has already made that payment. In view of this, it cannot be said that there is any principle as laid down in the aforesaid case which helps the petitioner for ordering winding up in the present case.

7. In view of the aforesaid provision and, on the facts and circumstances of the case, I do not find it to be a fit case for ordering winding up of the aforesaid company as the present petition has not made out a case for winding up of the company.

8. Accordingly, the company petition for winding up is dismissed. However, on the facts and circumstances of the case, costs on parties.