
(1983) 02 P&H CK 0056

In the Punjab And Haryana At Chandigarh

Case No : Company Application No. 169 of 1982 in Company Petition No. 75 of 1982

State Bank of India

APPELLANT

Vs

Depro Foods Ltd.

RESPONDENT

Date of Decision : 09-02-1983

Acts Referred:

Companies Act, 1956 — Section 446

Citation : (1985) 57 CompCas 562

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : R.K. Chhibbar and Vijay Jhanji, for the Appellant; A.C. Jain, for the official liquidator, for the Respondent

Judgement

Rajendra Nath Mittal, J.—Briefly, the facts are that the petitioner filed Suit No. 960 of 1979 (State Bank of India v. Depro Foods Ltd.) for the recovery of an amount of Rs. 70,26,642.23 against the respondent-company in the High Court of Delhi on July 9, 1979. After the institution of the suit, this court ordered the respondent-company to be wound up in C.P. No. 234 of 1977, vide order dated August 21, 1980, and the official liquidator was appointed as its liquidator.

2. The official liquidator filed an application (C.P. No. 240 of 1980) that Suit No. 960 of 1979 be transferred to this court for a decision. The petitioner moved another application (C.A. No. 154 of 1980) praying that it should be allowed to continue the suit in the Delhi High Court and in case the suit is transferred to this court, it should be allowed to prosecute the same. Both the applications came up before me and I accepted C.P. No. 240 of 1980 and transferred the case to this court, vide order dated September 3, 1981. I also partly allowed C.A. No. 154 of 1980 and allowed the petitioner to prosecute the suit. In view of the aforesaid orders, the suit was transferred to this court and was numbered as C.P. No. 69 of 1982.

3. One of the claims in that case (C.P. No. 69 of 1982) is in respect of the

payment of seven instalments which had fallen due as guarantee amount, by the petitioner to M/s. Techno Export of Sofia (Bulgaria) from whom necessary plant and equipment were imported by respondent No. 1 for setting up a dehydration factory at Rai, District Sonapat.

4. After transfer of the suit, the petitioner filed another petition (C.P. No. 75 of 1982) for the recovery of Rs. 2,08,616"90 in respect of the four instalments paid by it to M/s. Techno Export of Sofia (Bulgaria) which had become due after the filing of the earlier suit. The petition is against M/s. Depro Foods Ltd. and directors, who became guarantors for the payment of the loan. Defendants Nos. 3 and 5 also mortgaged their properties by deposit of title deeds to the petitioner. Consequently, it is prayed that the petitioner be granted permission to commence the proceedings against the respondents.

5. It is provided in Section 446 of the Companies Act that no suit can be commenced against a company which has been ordered to be wound up, except with the leave of the court. The leave can be granted after taking into consideration the facts and circumstances of each case. In the present case, as already stated, the claim of the petitioner is not only against respondent No. 1 but also against the directors who became guarantors for repayment of loan. Two of the respondents even mortgaged their properties with the petitioner. It is well settled that where the claim is made against other persons along with the company, the court should generally grant permission to sue (See *Purushottam and Co. v. Provisional Liquidator, Subhodaya Publications Ltd.* [1955] 25 Comp Cas 49 (Mad)). In the case on hand, the other additional circumstance to grant leave is that another claim petition between the said parties regarding a similar claim is pending in this court and the points of law and fact in both the cases are the same.

6. After taking into consideration all the aforesaid circumstances, I grant the requisite permission.