
(1989) 05 P&H CK 0096
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 122 of 1987

State Trading Corporation of India Ltd.	APPELLANT
Vs	
Punjab Tanneries Ltd.	RESPONDENT

Date of Decision : 19-05-1989

Acts Referred:

Companies Act, 1956 — Section 433, 434(1)

Citation : (1989) 66 CompCas 634 : (1990) 98 PLR 67

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : R.K. Joshi, for the Appellant; Vinod Sharma, for the Respondent

Final Decision : Dismissed

Judgement

G.R. Majithia, J.—This is a creditor's petition u/s 439, read with Sections 433(e) and 434 of the Companies Act, 1956, (for short "the Act ").

2. The averments in the petition briefly are as follows: The respondent is indebted to the petitioner-company in the sum of Rs. 17,49,865-90. It is also liable to pay interest at the rate of 22.75 per cent. per annum. A notice u/s 434 of the Act was served upon the respondent but despite service, the liability was not discharged.

3. The respondent, after service, filed a written statement, inter alia, pleading that the petitioner-company had filed Suit No. 2009 of 1987 titled as State Trading Corporation of India v. Punjab Tanneries Ltd. on the same cause of action on which the present petition is based, in the Delhi High Court. The respondent has also made a counter-claim in the suit. The petitioner-company having availed of the alternative remedy, this court may decline to proceed with the petition.

4. Learned counsel for the petitioner strongly contended that in view of the admitted notice of demand and the non-payment of the debt, the company should be deemed to be unable to pay its debt u/s 434(1)(a) of the Act and this entitles the petitioner to an order for winding up the company. I am afraid the

submission of learned counsel is not well-founded. The apex court in *Harinagar Sugar Mills Co. Ltd. v. M.W. Pradhan* [1966] 36 Comp Cas 426 (SC), quoted with approval the following passage from *Palmer's Company Precedents*, Part II, 1960 edition, page 25 :

"A winding-up petition is a perfectly proper remedy for enforcing payment of a just debt. It is the mode of execution which the court gives to a creditor against a company unable to pay its debts."

5. The Supreme Court, however, proceeded to observe (at page 430) :

" It is true that a winding-up order is not a normal alternative in the case of a company to the ordinary procedure for the realisation of the debts due to it"; but none the less it is a form of equitable execution. Propriety does not affect the power but only its exercise.

Thus, it is clear that although a winding-up petition is an appropriate remedy and a mode of execution against a company unable to pay its debt, it is not an alternative to the ordinary procedure for the realization of the debt due from the company. It is also manifest that the power to wind up exists, but its exercise is governed by considerations of propriety. In *The Aluminium Corporation of India Ltd. and Another Vs. Lakshmi Ratan Cotton Mills Co. Ltd. and Others*, , which arose on a creditor's petition to wind up the respondent company, it was held thus (headnote of AIR):

" The fact that the company is unable to pay its debts, does not necessarily entitle the court to order winding-up of the company as the discretion to pass such an order, even in the case of the inability of a company to pay its debts is, by Section 433, vested in the court."

6. That being the legal position, I cannot accept the particular contention that the petitioner is absolutely entitled to an order of winding-up the company *ex debito justitiae* on the mere plea that the debt was not paid. The petitioner has already resorted to a civil suit for recovery of the disputed debt. The machinery for winding up will not be allowed merely as a means for realising a debt due from the company.

7. This petition is accordingly dismissed.