
(2002) 05 JH CK 0056
In the Jharkhand High Court
Case No : LPA No. 89 of 1996 (R)

Steel City Compto Aids Private Ltd.

APPELLANT

Vs

Tehmul Burjorji Bugli and Others

RESPONDENT

Date of Decision : 02-05-2002

Acts Referred:

Companies (Court) Rules, 1959 — Rule 6, 9
Companies Act, 1956 — Section 433, 434, 439

Citation : (2002) 50 BLJR 1296

Hon'ble Judges : M.Y. Eqbal, J; Hari Shankar Prasad, J

Bench : Division Bench

Advocate : Asim banerjee and S.L. Agrawal, for the Appellant; N.K. Prasad M.S. Mittal and Suresh Prasad, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This appeal under Rules 6 and 9 of the Companies (Court) Rules, 1959 read with Clause 10 of the Letters Patent is directed against the Judgment and order dated 27.9.95 passed in Company petition No. 1/92R whereby the learned Single Judge allowed the petition and ordered that the company-respondent No. 1 be wound up and further directed the Registrar and the official liquidator of the Company to proceed in terms of Section 454 of the Companies Act.

2. Petitioners-respondent Nos. 1 and 2 filed a company petition purported to be under Sections 433, 434 and 439 of the Companies Act, 1956 for winding up the appellant-Company and for appointment of official liquidator for the purpose of liquidating the company and for taking possession of the assets of the company and further for a direction restraining respondent No. 3. Bihar State Financial Corporation to auction the appellant-Company unless the Corporation exonerates the petitioners-respondent Nos, 1 and 2 from all liabilities and guarantees executed by them.

3. Petitioners-respondents" case, inter alia, was that they are the share holders

of the appellant-Company which was incorporated with an authorised capital of Rs. 10 lacs which was divided into equity shares of Rs. 100 each. It was alleged that the promoter and Directors were Sri G.P. Agrawal having 10 shares. Smt. Veena Agrawal having 10 shares and the petitioner, Sri I.E. Bugli. having 10 shares. They accordingly invested money proportionately. It appears that for running the company, loan was taken from the respondent-Bihar State Financial Corporation which was to be repaid by the Company at the tune of Rs. 27.06,844.00 paise. For the said term loan all the three promoter Directors gave personal guarantees. Additionally similar guarantees were given in cash credit arrangements with Canara Bank to a limit of Rs. 12 lacs. It was alleged that Mr. G.P. Agrawal without having any proper information to the petitioners was calling meetings and also sacked the statutory auditors of the Company and appointed another company for the audit purpose. It was further alleged that Mr. G.P. Agrawal also brought in some of his friends in the affairs of the Company on the plea of overcoming certain pressing over dues of the BSFC, without the knowledge of the petitioners. It was further alleged that Mr. Agrawal resorted to dubious method and attempted to throw out the petitioners as Directors of the Company and changed the completely appointment of petitioner No. 2. M.T. Bugli as Director of the Company. The petitioners further alleged in the company petition that Mr. G.P. Agrawal made certain allotment of shares to some persons who were all Agrawals and his kith and kin.

4. Bihar State Financial Corporation appeared and filed counter affidavit seriously opposing the application for winding up the Company on the ground that the said petition was not maintainable inasmuch as it was the private dispute inter se the partners. It was further stated that the outstanding balance in the account of the Company as on 31.8.93 was Rs. 61,529,18/- in one account and Rs. 44,50,538.95 in the second account and the petitioners and other Directors had given personal guarantees and they cannot deny the liability and take action to wind up the Company.

5. The learned Single Judge, in the impugned order, has mentioned that despite all attempts taken by the Court the appellant-Company did not appear and file counter affidavit. The learned Single Judge, therefore, allowed the petition. The relevant portion of the order reads as under:--

"There is good case as shown by the petitioners in this petition for the purpose of winding up the company and hence the petition filed by the petitioners is hereby allowed and it is ordered that the company-respondent No. 1 be wound up. The Registrar shall forthwith intimate the official liquidator and the Registrar of the Company at Patna. in terms of Section 445 of the Companies Act. The petitioners shall file a certified copy of the order with the Registrar within 13 days from today. The official liquidator shall forthwith take up the administration of the Company. The statement as required u/s 454 of the Companies Act shall be submitted within the time limit therein to the official liquidator. The petitioners shall deposit a sum of Rs. 2500/- within four weeks next from the date of this

order to be paid to the official liquidator. The official liquidator must see that in the process of satisfying the claims of different persons including the BSFC to whom the Company is indebted that the petitioners' interest should also be protected in the process so that their share amount may be paid from the assets of the Company if the same is required to be sold for the purpose of payment of loan by the BSFC."

6. From perusal of the impugned judgment and order it appears that the learned Single Judge has not recorded reasons for allowing the petition although maintainability of the petition was seriously challenged by Bihar State Financial Corporation, In our opinion, even for passing an ex-parte order in the absence of the appellant-company, the learned Single Judge ought to have recorded reasons as to whether a case of winding up of the company under Sections 433, 434 and 439 of the Companies Act, is made out or not. On this sole ground alone the impugned judgment cannot be sustained in law.

7. This appeal is therefore, allowed. The impugned judgment and order is set aside and the matter is remitted back to the learned Single Judge for hearing the matter afresh and for passing a fresh judgment in accordance with law.