courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 19/08/2026

(1993) 01 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 20 of 1990

The National Industrial Development Corporation Ltd. APPELLANT

Vs

Sehgal Papers Limited RESPONDENT

Date of Decision : 27-01-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Companies Act, 1956 — Section 433, 446(1)

Citation : (1993) 103 PLR 658

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Plaintiff-Corporation through one of its Principal Officers has filed the present suit for recovery of Rs. 8,56,775.80 Ps with future interest at the rate of 20 per cent per annum from Messers Sehgal Papers Limited (now in liquidation and hereinafter referred to as ''the company'') on account'' of fee for consultancy services rendered to the company.

2. The undisputed facts are that the company engaged the services of the plaintiff as consultants and engineers on a remuneration/fee of Rs. 1800,000/- for setting up a paper mill complex at Dharuhera in the state of Haryana for the manufacture of quality products of high standard such as writing and printing papers, carbonless copying paper etc. An agreement was duly executed between the plaintiff and the company in this regard on March 30, 1977. Apart from the professional fee/remuneration, the plaintiff was entitled to be reimbursed in regard to the out of pocket expenses incurred by its officers and engineers in connection with the assignment. The consultancy services under the contract were to be rendered for a period of four years with effect from June, 1975. As the company could not complete its project within the said period, the plaintiff was requested to continue its association with assistance for the project for another year ending June, 1980 on the same terms and conditions but for an

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-national-industrial-development-...

additional fee of Rs 3,00,000/-. A separate supplemental agreement was executed between the parties on May 2, 1980. Plaintiff admits that for the consultancy services rendered to the Company a sum of Rs. 15,55,000/- was received by it from the Company as remuneration payable to it under the contract. It is claimed that a sum of Rs 2,4 5,000/- was still outstanding from the Company in regard to the services rendered under the original contract and that nothing was paid to it for the services rendered for one year under the supplemental agreement. Thus, a total amount of Rs 5,45,000/- is said to be due to the plaintiff as remuneration under the contracts Besides remuneration, a sum of Rs. 39,831/- is also stated to be outstanding against the company as reimbursement of the out of pocket expenses incurred by the officers of the plaintiff and payable by the Company in terms of the agreements. A sum of Rs. 1,52,053/- is also claimed as interest to the outstanding amounts upto March 31,1982 and another sum of Rs. 1,19,690.45 Ps. as interest for the period ending March 31, 1983. It is alleged that despite several requested and demands made on the Company the latter failed to pay the amounts due from it and hence, the present suit.

3. The suit was instituted in the High Court at Delhi on April 23, 1983. The Company was ordered to be wound up by this Court on April 8, 1983 and on an application for permission u/s 446 of the Companies Act, 1956 (hereinafter referred to as ''the Act") to continue with the suit in Delhi High Court, the learned Company Judge granted permission to the plaintiff to prosecute the suit but the file of the case was ordered to be transferred to this court for disposal On receipt of the records from the Delhi High Court the suit was registered as Company Petition No. 20 of 1990.

4. In the written statement filed by the official Liquidator a number of preliminary objections were raised. It was stated that in the absence of records it was not possible for the Official Liquidator to file a reply on behalf of the Company It was also averred that since the plaintiff was seeking to recover an amount due to if in regard to the consultancy services rendered, it had to file its claim before the liquidator in accordance with the procedure laid down in Rules 147 to .79 of the Companies (Court) Rules, (for short, ''the Rules'') and as such, the suit was not maintainable. It was further alleged that this Court had no jurisdiction to entertain the suit in view of the provisions of Sections 125 and 528 of the Act read with the aforementioned Rules. On merits, it was pleaded that as per the statement of affairs submitted by the ex-management of the Company u/s 454 of the Act, a sum of Rs. 2,81,946.55 Ps only was due to the plaintiff.

5. Pleadings of the parties gave rise to the following two issues which were framed on July 27, 1990:-

1. Whether petitioner is entitled to recover Rs. 8,56,775.80

2. If issue No. 1 is proved, is the petitioner entitled to charge interest on the said amount ? If yes, at what rate ? Thereafter, two more issues were framed on

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-national-industrial-development-…

September 7, 1990 which were treated as preliminary issues and these are as under: -

1. Whether the petition is not maintainable as per provisions of Sections 125 and 528 of the Companies Act read with Rules 147 to 179 of the Companies Court Rules as the petitioner is not secured firm (it should read as secured creditor) ?

2. Whether this Court has no jurisdiction to try and entertain the present petition in view of the above said provisions ?

6. Arguments on the two preliminary issues were heard by M. S. Liberhan, J. who disposed of the same as per his order dated October 10, 1991 deciding both of them against the Official Liquidator and holding that the present suit was maintainable Consequently, the same was ordered to be tried on merits in accordance with law.

7. Parties have led their evidence-oral and documentary in regard to the issues on merits and after hearing their counsel, I proceed to dispose them of.

Issue No. 1

Exhibit PW/1 is the agreement dated March 30 1977 executed between the parties The execution of this agreement is admitted and it is also not disputed that the plaintiff was entitled to receive Rs. 18,00,000/- as remuneration from the Company for the consultancy service which it rendered for a period of four years with effect from June, 1975. Execution of the supplemental agreement on May 2, 1980 which is Exhibit PW /2 is also admitted. Plaintiff was entitled to receive another sum of Rs. 3,00,000/- for the services which it rendered for another one year upto June, 1980 Plaintiff admits that a sum of Rs. 15,55,000/- had already been received by it before the filing of suit. Shri. C.L. Sehgal who was Chief Consultant of the plaintiff during the relevant time appeared as PW 1 and while providing the execution of the two agreements has stated that the plaintiff had performed its part of the contract in as much as the consultancy services had been rendered for the full period of five years under the aforesaid contracts He has further stated that the full amount due to the plaintiff under the contracts had not been received from the Company. Shri M. M. Sehgal who was a promoter Director of the Company has appeared as RW1 and while admitting the execution of the two agreements has stated that as far as he could recollect the agreements were not fully complied with by the plaintiff in respect to the various jobs assigned to it This statement is believed by the fact that when the plaintiff after having done the work assigned to it made demands on the company for the payment or balance amount under the agreements, it was never the case of the Company that some part of the job assigned to it had not been completed or was left unfinished. On the contrary, we have on the record letter dated February 23, 1981. Exhibit PW1/6 written by the then France Director of the Company to the plaintiff, the relevant part of which reads as under:-

"It was pointed out to us that in respect of the contract which was to be

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-national-industrial-development-…

completed by June 30, 979, a sum of Rs. 18 lacs was to be paid and in respect of the second contract to be completed by the end of June, 1980, a sum of Rs. 3 lacs was to be paid. Out of the two sums of Rs. 18 lacs and Rs. 3 lacs, Rs. 2.35 lacs out of the first sum and the whole sum of Rs. 3 lacs of the second sum, in all aggregating to Rs. 5.85 lacs remained still to be paid by the company On behalf of the Company, we assure you that in a period of 6-8 weeks from today, if the financial institutions are in a position to release capital funds for completion of the project, a sum of Rs. 2.85 lacs would be paid immediately. If sufficient funds are available depending upon completion of the remaining items of work the balance of Rs. 3.00 lacs would also be paid."

9. This letter which was written much before the Company went into liquidation is a clear admission on its part and according to the Company, a sum of Rs. 5.85 lacs was due to the plaintiff under the two contracts. There are some other letters as well written by the Company admitting part of the claim now made by the plaintiff. As per the practice that was being followed by the parties, the plaintiff was submitting its bills from time to time to Company which, in turn, was making payment in accordance therewith and as admitted by the plaintiff, a sum of Rs. 15,55,000/- stood paid to it before the suit was instituted. The plaintiff was also sending bills regarding interest on the amounts due to it as according to clause 103 of the agreement Exhibit PW/1, all sums due from the Company had to be paid on the due dates and any sum remaining unpaid after 30 days from the due dale was to bear interest thereafter at the rate of 2 per cent per annum above the then current bank rate. Exhibit RW1/23 is one such bill which was sent to the Company and this bill is for a sum of Rs. 1,5 2,053 85 Ps., the details of which have been mentioned in the schedule attached thereto.

10. On going through the entire evidence on the record and hearing counsel for the parties, I hold that a sum of Rs 5.85 lacs was due to the plaintiff from the Company in February, 1981 under the two contracts, which amount includes the out of pocket expenses incurred by the officers of the plaintiff which the plaintiff was entitled to be reimbursed Issue No. 1 is accordingly decided in favour of the plaintiff and against the Company.

Issue No 2.

As regards interest, no specific provision of law was brought to my notice under which the plaintiff could claim interest at the rate agreed upon in the contract. Counsel for the Official Liquidator, however, contended that the Company being insolvent should not be burdened with any interest on the amount found due from it under the contracts. Again, no reference was made to any provision of law in this regard and counsel for the parties were agreed that the award of interest was in the discretion of the Court. Keeping in view the facts and circumstances of the present case including the fact that the plaintiff is an unsecured creditor, I think it would be reasonable to award interest on the amount found due to the plaintiff at the rate of 6 per cent per annum with effect from February 23, 1981 till the commencement of the winding up proceedings

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-national-industrial-development-…

i.e. the date of presentation of the petition for winding up. Accordingly, I hold that the plaintiff will be entitled to interest at the rate of 6 per cent per annum on Rs. 5.85 lacs as found due to it under issue No. 1. The interest shall be calculated with effect from February 23, 1981 till April 29, 1981, the date of presentation of winding up petition. Issue No. 2 is accordingly decided in favour of the plaintiff and against the Company.

11. It would be relevant to mention at this stage that counsel for the official Liquidator vehemently contended that this court should refrain from passing a decree in favour of the plaintiff even though an amount of Rs. 5 85 lacs has been found due to it. It was urged that this Court should only determine the amount that is due to the plaintiff so that it stands in the queue with all other unsecured creditors. Learned counsel apprehends that in case a decree is passed the plaintiff would execute the same against the Company which may deprive the other secured and preferential creditors of their rights against the Company. This apprehension, to my mind, is not well founded. As and when the decree is sought to be executed, leave of this Court will have to be obtained and it will be open to the Liquidator to then urge that the decree holder is only one of the unsecured creditors and can not, therefore, be allowed preference over the secured creditors.

12. In view of my findings on issues Nos. 1 & 2, a decree for the recovery of Rs. 5.85 lacs is passed in favour of the plaintiff and against the Company, which amount will carry interest at the rate of 6 per cent per annum with effect from February 23, 1981 till April 29, 1981, the date of presentation of the winding up petition in this Court. Decree sheet be prepared accordingly. Parties are left to bear their own costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/the-national-industrial-development-…