(1990) 08 P&H CK 0053

In the Punjab And Haryana At Chandigarh

Case No : Company Application No. 88 of 1990 in Company Petition No. 39 of 1990

Tirlok Chand Jain and Others — APPELLANT

Vs

Swastika Strips (P.) Ltd. and Others — RESPONDENT

Date of Decision : 18-08-1990

Acts Referred:

Arbitration Act, 1940 — Section 34
Companies Act, 1956 — Section 433, 434, 439

Citation : (1991) 1 ILR (P&H) 509 : (1990) 98 PLR 655

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : L.M. Suri and Hemant Kumar Gupta, for the Appellant; N.K. Sodhi and S.K. Hira Ji, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—The short but interesting question of law that arises in this case is : whether, in a petition under Sections 433, 434, 439, 582 and 583 of the Companies Act, 1956, filed for the winding up of the company, a prayer made u/s 34 of the Arbitration Act, 1940, for referring the matter to the arbitrator can at all be granted. The following facts furnish the backdrop of the controversy raised.

2. The petitioners along with others were the members of a private firm and on March 16, 1989, the respondent-company was also inducted as one of the partners in the firm and a new partnership deed was executed on that very day. As per mutual agreement between the partners, a profit and loss account for the period ending March 15, 1989, was prepared and it was duly credited/debited to the individual accounts of the partners. Thereafter, on March 31, 1989, the company and ten others who were the members of the partnership concern decided mutually to dissolve the firm. The balance-sheet as also the profit and loss account of the firm were prepared. It was agreed between the partners that the company would take over all the assets, and liabilities as a going concern as

per the balance-sheet drawn as on March 31, 1989. It was further agreed that the company which was described as a continuing partner in the deed of dissolution would pay to the outgoing partners the amounts standing to their credit in their respective accounts as per the balance-sheet drawn up as oh March 31, 1989. One of the important conditions, i.e., No. 15 of the partnership deed dated March 16, 1989, was as follows :

"That any dispute or differences which may arise amongst the partners or their representatives with regard to the construction, meaning and effect of this deed or any part thereof or regarding the accounts, profits and losses of the business, or the rights and liabilities of the partners under the deed of dissolution or winding up of the business or any other matter relating to the firm shall be referred to arbitration."

3. Since the company which had taken over the business of the firm failed to honour its commitments, Trilok Chand Jain and others filed Company Petition No. 39 of 1990 with a prayer that the company be wound up in terms of Section 433/434 of the Companies Act as the same had been rendered insolvent arid was unable to pay its debts and other financial liabilities. This company application has been filed by the respondents for the enforcement of the above referred clause No. 15 of the partnership deed dated March 16, 1989, with a prayer that the matter be referred to arbitration and proceedings in Company Petition No. 39 of 1990 be stayed for the time being. This prayer of the respondents is sought to be resisted on a wide variety of grounds including the one that the application u/s 34 of the Arbitration Act is not at all maintainable.

4. Having heard learned counsel for the parties at some length, I find a lot of merit in the stand of the petitioners.

5. A bare reading of Clause 15 of the partnership deed dated March 16, 1989, clearly indicates that it has no relevance to the relief prayed for in Company Petition No. 39 of 1990, i.e., for the winding of the respondent-company. It is beyond dispute that proceedings u/s 433/434 read with Section 439 of the Companies Act are in a completely different jurisdiction than the one under which remedy or relief can be sought by way of arbitration. It is fallacious to conceive that the proceedings for winding up under the above-noted Sections of the Companies Act, in any way, are the proceedings for the recovery of any amount. On the contrary, the above-noted provisions, record or codify the circumstances/ grounds on which a company can be ordered to be wound up by the court. So, none of the disputes referred to in the above-noted Clause 15 of the partnership agreement can be co-related to the relief in Company Petition No. 39 of 1990. For this conclusion of mine, I seek support from the following earlier pronouncements of this court as well as the other High Courts: (i) Salaq Ram v. New Suraj Finance and Chit Fund Co. Pvt. Ltd. (Company Application No. 8 of 1979 in Company Petition No. 147 of 1978 -- decided on July 12, 1979), (ii) Maruti Ltd. v. B. G. Shirke and Co. P. Ltd. [1981] 51 Comp Cas 11 ; [1981] PLR 732 , (iii) In Re: Thakur Paper Mills Ltd.; In Re: Kailash Chand Jain,) and (iv)

Hind Mercantile Corporation P. Ltd. Vs. J.H. Rayner and Co. Ltd.,). No judgment taking a contrary view has been brought to my notice by learned counsel for the applicants.

6. In the light of the above discussion, this Company Application No. 88 of 1990 is dismissed but with no order as to costs.

