(1999) 10 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 139 of 1997

United Construction Company APPELLANT

Vs

Piccadily Sugar and Allied Industries Ltd. RESPONDENT

Date of Decision : 26-10-1999

Acts Referred:
Companies Act, 1956 — Section 433, 434

Citation : (2001) 104 CompCas 357 : (2000) 124 PLR 646

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : Hemant Kumar, for the Appellant; M.L. Sarin and Hemant Sarin, for the Respondent

Judgement

V.S. Aggarwal, J.—M/s. United Construction Company, hereinafter described as the petitioner has filed the present company petition u/s 433 read with section 434 of the Companies Act, 1956 (for short "the Act") seeking winding up of M/s. Piccadily Sugar and Allied Industries Ltd. (for short "the respondent-company").

2. The facts alleged are the petitioner is engaged in the projects for construction. The petitioner had executed various prominent construction projects and had long dealings with the chairman-cum-managing director of the respondent-company. It had constructed the building of Piccadily Cinema of the Piccadily group of companies etc. The petitioner was granted the contract for construction of a sugar mill building at Patran, district Patiala. The petitioner raised the construction after arranging for the material and the respondent-company was to pay periodical submissions of running bills. The petitioner completed the construction of the building as per the drawings and plans submitted by the respondent-company. In all, the petitioners submitted 17 running bills from April 11, 1994, to September 8, 1995, for a total amount of Rs. 1,19,68,790.90. The respondent-company approved the payment of Rs. 99,47,970.62 after deducting certain amounts either in respect of the quantum of work or the rates applicable. Out of the total payment, a security of Rs. 4,63,216.50 was deducted. The

respondent-company had paid Rs. 88,07,224 leaving a balance of Rs. 11,40,246.62. The payment due is stated to be the debt and it is contended that the same has not been paid despite the service of notice. Hence, the present petition.

3. The respondent-company has contested the said petition. It has been alleged that it is an abuse of the process of the court. Bills annexures P-11 and P-13 were never submitted to the respondent-company but were stated to have been fraudulently created by the petitioner. It has further been asserted that the petitioner never completed the work granted to it for construction of the cold storage. The petitioner abandoned the project. Similarly, the petitioner abruptly abandoned the project at Patran in September, 1995. Rs. 25 lakhs were stated to have been given as mobilisation advance. The petitioner has not adjusted the said amount. It is denied that the amount claimed is due. The covering letters are stated to have been doctored. No bills have been attached with the petition. The covering letters annexures P-11 and P-13 were never submitted to the respondent-company and have been fraudulently created by the petitioner. In this process, the amount claimed is denied.

4. The position of law as to when a winding up order can be passed is not the subject matter of any controversy. The decision of the Supreme Court in the case of Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd., holds the place of pride in this regard wherein the principles of law were enunciated and it was held as under (p. 131) :

"Where the debt is undisputed the court will not act upon a defence that the company has the ability to pay the debt but the company chooses not to pay that particular debt (see A Company, In re [1894] 94 SJ 369: [18941 2 Ch 349 (Ch D)). Where however there is no doubt that the company owes the creditor a debt entitling him to a winding up order but the exact amount of the debt is disputed the court will make a winding up order without requiring the creditor to quantify the debt precisely. (See Tweeds Garages Ltd., In re [1962] 32 Comp Cas 795 (Ch D): [1962] Ch 406). The principles on which the court acts are first that the defence of the company is in good faith and one of substance, secondly, the defence is likely to succeed in point of law and thirdly the company adduces prima facie proof of the facts on which the defence depends."

5. This court in the case of Tata Davy Ltd. Vs. Steel Strips Ltd., had also considered the same controversy and held that if the deduction claimed cannot be held to be unjustifiable and after deducting the same, nothing is due, a petition for winding up will not be maintainable. The same view prevailed with this court in the case of Gleason Works v. Punjab Tractors Ltd. [1995] 1 Rev LR 423. The controversy again was as to if the defence was bona fide or not. It was concluded by this court as under :

"The dispute raised by the respondent-company is a bona fide dispute which can only be decided by the civil court. The dispute being contentious which needs determination of facts, the petitioner is relegated to its remedy of filing a civil suit for redressal of its grievance."

6. So was the view point in the matter of Trilok Chand Jain and Others Vs. Swastika Strips Pvt. Ltd. and Another, . This court held that the coercive method of winding up the company cannot be permitted to be utilised merely as a pressure tactic on the company or as a means for the recovery of debts due from it. In other words, the court has to see if the defence is bona fide or not.

7. Reverting back to the facts of the present case, as mentioned above, the main dispute is pertaining to two bills dated December 9, 1994, and December 18, 1994. Annexure P-1 is the statement of bills submitted an checked/passed pertaining to the petitioner and read as under :

-- Bill Date Bill submitted Bill checked/ Security Net No. amount passed amount deducted payable (Rs. p.) (Rs. p.) (Rs. p.) (Rs. p.) -- 1. 11-04-94 9,23,181.60 8,81,598.00 44,080.00 8.37,518.00 2. 3-05-94 1,48,572.00 1,47,773.00 7,389.00 1,40,384.00 3. 9-06-94 11,65,099.65 8,16,745.00 40,835.00 7,75,910.00 4. 6-08-94 14,42,792.20 10,22,476.00 51,124.00 9,71,352.00 5. 6-09-94 3,78,101.04 2,68,226.00 13,411.00 2,54,815.00 6. 12-10-94 7,08,441.02 6,48,614.00 32,680.00 6,15,934.00 7. 4-11-94 4,36,674.00 4,34,666.29 21,733.29 4,12,933.00 8. 6-12-94 13,34,856.12 9,87,692.40 49,384.62 9,38,307.78 8-A 9-12-94 27,92,445.00 27,92,445.00 1,39,622.00 26,52,823.00 9. 17-12-94 6,85,158.58 4,92,048.98 24,602.44 4,67,446.54 9-A 18-12-94 2,34,000.00 2,34,000.00 11,700.00 2,22,300.00 10. 21-01-95 4,28,390.30 2,48,278.44 12,413.92 2,35,864.52 11. 6-03-95 3,86,710.64 2,84,824.76 14,241.23 2,70,583.53 12. 16-05-95 1,61,169.60 1,28,536.00 - 1,28,536.00 13. 14-07-95 2,72,755.80 2,08,339.00 - 2,08,539.00 14. 1-09-95 4,06,743.00 2,97,832.00 - 53,375.75 ---------------------------- ------------ ------------ Total 1,19,68,790.90 99,47,470.62 4,63,216.50 94,84,254.12
-- 8. Strange enough, both the bills have been numbered as 8-A and 9-A rather than in sequence. Both the bills are stated to be forged. They pertain to covering letters annexures P-11 and P-13. Reference in this connection can well be made to one of the covering letter annexure P-11 which reads as under :

"To

The Director, Piccadily Sugar and Allied Industries Ltd., Patran (Patiala).

Sub. : Bill for road work.

Dear Sir,

Kindly find enclosed herewith a bill No. 8-A for amounting to Rs. 27,92,445 for road work for favour of approval and releasing payment thereof.

Thanking you.

DA/Bill in duplicate.

(Sd.) .... Partner, For United Construction Co."

9. Since the position in case of annexure P-13 is identical, reference need not be made regarding the same. A perusal of both annexures P-11 and P-13 reveals that they are simply covering letters but no bills are attached therewith. The petitioner is fighting, shy of appending the bills to show that the amount is due. In addition to that, it refers to some road work while the construction for which the amount claimed is some sugar factory at Patran.

10. Certain other salient facts pertaining to the bills also cannot be ignored. In all other bills, telephone numbers have been scored and new telephone numbers have been mentioned. In both the bills which are in controversy, the same has not been done. The reason pointed out is that some old letter-heads have been taken to be utilised for that purpose. Once the road work had not been assigned, the bills are not forthcoming and even in the statement of account of the petitioner they have simply been added as 8-A and 9-A. It is obvious that the defence cannot be described as mala fide. Keeping in view the nature of the controversy, it would be appropriate, if so advised, the petitioner may seek adjudication by filing a civil suit. Taking stock of totality of the facts, it cannot be held that the amount is due or that, prima facie, proof of fact is established. The defence can well be taken to be in good faith.

11. For these reasons, the petition being without merit must fail and is consequently dismissed.

12. However, by way of abundant caution, it is added that nothing said herein shall be taken as an expression of opinion on the merits of the matter if the petitioner chooses to file a civil suit.