
(2008) 03 AP CK 0001

In the Andhra Pradesh High Court

Case No : Company Petition No. 200 of 2004

Walnut Packaging Private Limited

APPELLANT

Vs

The Sirpur Paper Mills Limited and Another

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Companies Act, 1956 — Section 3, 372(14), 4(1), 4(2), 4(3)
Limitation Act, 1963 — Section 18

Citation : (2009) 4 ALD 7 : (2009) 1 APLJ 155 : (2008) 144 CompCas 454 :
(2008) 4 CompLJ 360 : (2009) 90 SCL 39

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

Bench : Single Bench

Advocate : M. Ravindranath Reddy, for the Appellant; Vedula Srinivas, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—Petitioner (hereafter called, Walnut) is a private limited company running a small scale industry. Its core business is manufacturing and marketing pre- printed cartons of paper board and notebooks. It also provides customised services to other enterprises. Second respondent (hereafter called, subsidiary company) is a public company set up for manufacturing and marketing of various educational, commercial, computer stationery products. First respondent (hereafter called, holding company) is a public limited company engaged in the business of manufacturing and marketing of pulp and paper of all kinds, paper articles and pulp material. Second respondent is wholly owned subsidiary of first respondent. During the period from 31.1.2001 to 29.5.2001, Walnut statedly processed products of subsidiary and raised invoices for an amount of Rs. 4,80,951/- towards processing/service charges. The business deal consists of subsidiary supplying material and Walnut processing material to required specifications and charge for the same. An amount of Rs. 1,54,755/- was paid leaving alleged balance of Rs. 3,26,197/-. Walnut again issued a legal notice dated 17.9.2001 u/s 434 of the Companies Act, 1956 (the Act, for brevity),

demanding payment of balance amount with interest at 35% per annum within 21 days. In reply thereto subsidiary company requested Walnut to return balance material. Request for return of unprocessed pulp board was refused claiming lien for non-payment.

2. In May 2002, there was mediation between Walnut and subsidiary company before an Advocate of second respondent. It was agreed that subsidiary company would pay Walnut after return of pulp board. Petitioner returned material on 04.6.2002, but amount was not paid. In 2003 Walnut issued notice dated 08.4.2003 u/s 434 of the Act demanding Rs. 6,51,362/- including interest. There was no response. Walnut then contacted Senior Vice President (Corporate Planning) of holding company. At his instance, a General Manager (GM) negotiated with Director of Walnut between 19.12.2003 and 18.1.2004. GM allegedly agreed to pay principal amount as per books of accounts of subsidiary company. In 2004, Walnut addressed letter dated 20.1.2004 to subsidiary company requesting to release principal amount as per latter's books of accounts. There was no expected response. Subsidiary company went back and asked Walnut to accept amount as per books of accounts towards full and final settlement.

3. In the meanwhile, holding company allegedly transferred an amount of Rs. 77.74 lakhs during 2001-2002 and 2002-2003 from accounts of subsidiary to itself without making payments to small scale units like Walnut. It is also stated that holding company had been regularly declaring dividends to its members deliberately withholding payments to small scale units. As subsidiary company failed to pay alleged admitted amount, Walnut got issued yet another statutory notice dated 23.7.2004. This notice was issued to holding company as well as subsidiary company on the allegation that holding company is also liable to pay dues of subsidiary company. Walnut demanded a sum of Rs. 8,18,081/-. There was no demand to holding company, but it was called upon to take appropriate steps in getting the amounts paid to Walnut within time. It is also informed that failure would entail recovery from holding company by piercing corporate veil of subsidiary company and filing a petition u/s 433 of the Act against holding company seeking winding it up. The said notice was issued without prejudice to right of Walnut to proceed for recovery under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993.

4. Subsidiary company as well as holding company sent separate reply notices. In their reply dated 20.8.2004, holding company demurred liability to pay debt of subsidiary company and informed that dragging holding company into the dispute between subsidiary company and Walnut is uncalled for and legally untenable. Subsidiary company in their reply dated 17.8.2004 alleged that statutory notice is bordering on extraneous considerations such as lifting of corporate veil of subsidiary company to rope in holding company, tracing corporate history of other subsidiary companies and also threatening to invoke IDP Act as well as claim Rs. 1.00 lakh towards alleged harassment and charges

relating to the issue. They informed Walnut that the amount claimed by petitioner is disputed that it is not a simple debt and that the allegation that subsidiary is not able to pay its debt is not correct. After receiving reply notices, present company petition was filed on 26.11.2004 seeking winding up of holding company and subsidiary company.

5. Learned Counsel for petitioner submits that debt transaction between Walnut and subsidiary company involves ascertained admitted amount and when once subsidiary company failed to pay amount within three weeks after service of notice u/s 434(1)(a) of the Act, subsidiary company is liable to be wound up u/s 433(e) of the Act. He has taken this Court through correspondence between Walnut and subsidiary company as well as annual reports of subsidiary company for the years 2000-2001 to 2003-2004 to substantiate submission that it is admitted liability. Secondly he submits that directors and employees of subsidiary are also directors and employees of holding company. An amount of Rs. 1.5 crores was extended as a loan by holding company to subsidiary company, who later appropriated cash reserves of Rs. 1.5 crores without paying dues of Walnut. He would urge that subsidiary as an extended arm/department of holding company rendering it liable for the debt of subsidiary company. As holding company also failed to discharge the debt after receiving notice dated 23.7.2004, it has to be wound up, as it is also responsible to pay debts of subsidiary company. Learned Counsel also points out that both the companies operate two different facets of same business of manufacturing paper, paper pulp, pulp board and other paper products and never treated as separate entities by general public, that financial and managerial services are provided by holding companies, that subsidiary company does not enjoy corporate autonomy and holding company used it to defraud creditors so as to escape legal obligations to pay the debt. Subsidiary company is a group company without any independent existence and both companies have community interest and identity as a single economic entity. He would contend that for all purposes, it is the holding company, which is liable to discharge the debt of subsidiary company. He placed reliance on various decisions in support of plea to lift veil and also in support of plea that subsidiary company has acknowledged liability to pay ascertained debt.

6. Learned Counsel for respondents vehemently opposed the admission of company petition. He submits that company petition for winding up is not bona fide and is filed to pressurise respondents to pay amount, liability of which is disputed bona fide. After taking this Court through replies sent by subsidiary company between Walnut and subsidiary company during 2001, 2002, 2003 and 2004, learned Counsel submits that when there is a bona fide dispute regarding payment of money claimed by Walnut, company petition would not lie. Secondly he submits that the amount shown in annual reports of subsidiary company from 2001-2002 to 2003-2004, does not amount to acknowledgement or admission of ascertained sum. With regard to fastening liability to holding company, learned Counsel submits that alleged commonness in business of two companies does not warrant assumption of corporate identity and principle of lifting corporate veil

has no application when subsidiary company allegedly failed to pay its debt. He also placed reliance on quite a few judgments, in support of his contentions.

7. Two questions would arise for consideration: (i) Whether petitioner has made out a case u/s 433(e) of the Act for ordering publication of petition?; and (ii) Whether first respondent - holding company; is liable to discharge debt of second respondent - subsidiary company; and if the answer is in the affirmative, whether holding company is also liable to be wound up upon failure of subsidiary company to discharge debt?

8. In Re Point (i):

Chapter II of the Act contains provisions for winding up by the Court. A company which is entitled to pay a debt exceeding Rs. 500/- is liable to be wound up. Reading Section 433(e) and Section 434(1)(a) of the Act together, if a company, within three weeks after receiving a notice of demand for payment, fails to pay the debt, it is deemed to be entitled to pay its debt. An order of winding up declaring company insolvent amounts to killing a juristic person. Therefore in all cases of inability to pay debt, the Court does not order winding up. The norm is to infuse new life into a company whose life is ebbing out and avoid euthanasia. A company is not mere association of people to increase net worth of their capital. It has economic, human and public concerns not only to members but also to the society at large including work force toiling to increase wealth. These and other aspects have necessitated Indian Courts to evolve tests to be applied while considering creditor's petition for winding up.

9. In *Madhusudan Gordhandas and Co. Vs. Madhu Wollen Industries Pvt. Ltd.*, , the Supreme Court considered Section 433(e) of the Act. It ruled that, "if the debt is bona fide disputed and the defence is substantial one, the Court will not wind up the company". According to Apex Court, "the principles on which the Court acts are: first, that the defence of the company is in good faith and of substance; secondly, the defence is likely to succeed in point of law; and thirdly, the company adduces prima facie facts on which the defence depends". Though these basic tenets remained imbedded in Indian Corporate Law, other principles emerged, some of which are referred to by learned Counsel for respondents. The main test however to be applied in consideration of creditor's winding up petition is whether the debt is bona fide disputed by alleged defaulting company. With this testing tool the dispute at hand needs to be approached.

10. Holding company is producer of paper, paper pulp, pulp board and variety of paper products. Second respondent is itself subsidiary set up as measure of forward integration to produce value added products which require certain inputs like printing of notebook covers etc. Subsidiary company supplied pulp board etc., for conversion and engaged services of Walnut for doing these works. For a period of four months during February to March 2001, Walnut completed works and sent invoices for an amount of Rs. 4,80,951/-. An amount of Rs. 1.00 lakh was paid and balance was not paid. There was some correspondence between

subsidiary company and Walnut. There was difference of opinion with regard to percentage of wastage to be allowed. Subsidiary company addressed a letter on 14.9.2001 agreeing to provide 2.25% wastage (as against 4.5% requested by Walnut) on normal board and 4.5% wastage for defective board. After allowing this, Walnut was requested to return the material valued at Rs. 59,945/- (19.89 reams). Admittedly Walnut did not return material and claimed lien over it. Immediately, Walnut sent notice u/s 434 of the Act. Brewing of dispute commenced with this. After issue of notice, admittedly, there was unsuccessful mediation and parleys between parties for an agreed settlement in vain.

11. Walnut returned material but still money was not coming. At one stage, Walnut was asked to accept the payment as per subsidiary company's books of accounts for which Walnut agreed. But matter was not given quietus. At that stage, Walnut having come to know that holding company allegedly took away cash reserves of subsidiary company, got issued notice dated 23.7.2004 to both respondents. Subsidiary company replied stating that:

Coming to the issue in a nutshell we draw your attention to our letter dated 10th October 2001, which has been acknowledged vide para 4 of your notice. As per the letter and also as per para 8 of your notice the amount due to M/s.Walnut Packagings Pvt. Limited was stated to be Rs. 2,24,369.40 as on the date i.e., 10th October 2001. This amount was not disputed by your client and also it is categorically stated in the letter that there is an abnormal delay for the conversion of the titles and the execution of the order has already been delayed beyond stipulated time thereby the company has incurred heavy loss and in the process the season was also over. The industry is seasonal, when once the season is over the material has to be carried to the next season, in the process the material will become substandard thereby the company will not be in a position either to use or sell them. We have made it clear that even this Rs. 2.24 lakhs was absolutely disputed on account of delay in the execution which resulted in substandard quality thereby inability to sell the product.

12. However on sympathetic considerations the company has deputed one of the senior executives to sort out the matter to settle this amount of Rs. 2.24 lakhs after arriving at a discount mutually for the bad quality and delayed supplies and the matter rested there.

13. We further reiterate that even this amount is disputed and the Company's inability to pay will not arise and there is no default on the part of the Company to any one of the creditors much less your client.

14. After receiving the reply notice, company petition is filed. A perusal of correspondence during 2001, 2002, 2003 and 2004 and very fact that issue was kept pending by subsidiary company for four years would show that subsidiary company is bona fide disputing claim of Walnut. The matter was disputed on three grounds, namely, (i) asking for return of unused material; (ii) with regard to percentage of wastage to be allowed; and (iii) as per books of accounts of

subsidiary company Rs. 2.24 lakhs was due to Walnut, but due to delay in execution of works by Walnut, it resulted in substandard quality thereby redeeming material unfit for sale. In such background, these aspects would give rise to a question of bona fide dispute especially when for over four years, parties were at loggerheads for payment of money and were negotiating with each other for different sums for settling the account. Therefore, plea of respondents that subsidiary company did not pay amount disputing claim made by Walnut, has force and has to be countenanced by this Court.

15. Whether the dispute regarding ascertained debt is bona fide dispute or not, depends on the facts and circumstances of each case. Again each case requires consideration of number of factors and not even a single factor can be ignored. There are number of factors in this case as enumerated herein above, which would certainly have potency of long drawn dispute. It is not a case of acknowledgement or admission of debt by subsidiary company without anything else.

16. In *Softsule (P) Ltd. Re* (1977) 47 Comp Cas 438 (Bom) , Bombay High Court laid down the principles as below. Firstly, it is well settled that a winding-up petition is not legitimate means of seeking to enforce payment of a debt which is bona fide disputed by the company. If the debt is not disputed on some substantial ground, the court/Tribunal may decide it on the petition and make the order. Secondly, if the debt is bona fide disputed, there cannot be "neglect to pay" within the meaning of Section 433(1)(a) of the Companies Act, 1956. If there is no neglect, the deeming provision does not come into play and the winding up on the ground that the company is unable to pay its debts is not substantiated. Thirdly, a debt about the liability to pay which at the time of the service of the insolvency notice, there is a bona fide dispute, is not "due" within the meaning of Section 434(1)(a) and non-payment of the amount of such a bona fide disputed debt cannot be termed as "neglect to pay" the same so as to incur the liability u/s 433(e) read with Section 434(1)(a) of the Companies Act, 1956. Fourthly, one of the considerations in order to determine whether the company is able to pay its debts or not is whether the company is able to meet its liabilities as and when they accrue due. Whether it is commercially solvent means that the company should be in a position to meet its liabilities as and when they arise.

17. In *Tube Investments of India Ltd v. Rim and Accessories (P) Ltd* (1990) 3 Comp LJ 322 (Mad), the following principles are laid down.

(i) If there is a dispute as regards the payment of the sum towards principal however small that sum may be, a petition for winding up is not maintainable and the necessary forum for determination of such a dispute existing between parties is a Civil Court;

(ii) The existence of a dispute with regard to payment of interest cannot at all be construed as existence of a bona fide dispute relegating the parties to a Civil

Court and in such an eventuality, the Company Court itself is competent to decide such a dispute in the winding up proceedings; and

(iii) If there is no bona fide dispute with regard to the sum payable towards the principal, it is open to the creditor to resort to both the remedies of filing a civil suit as well as filing a petition for winding up of the company.

18. In *Mediquip Systems Pvt. Ltd. Vs. Proxima Medical System GMBH*, , Supreme Court quoted with approval principles laid down in *Softsule* (supra) and principles laid down by Madras High Court in *Tube Investments* (supra). The Supreme Court held that, "a debt under (this) Section 433 of the Act must be determined or a definite sum of money payable immediately or at a future date and that inability referred to in the expression "unable to pay its dues" in Section 433(e) of the Act should be taken in the commercial sense and that the machinery for winding up will not be allowed to be utilized merely as a means for realizing debts due from a company". It was also observed that if there is prima facie dispute as to the debt, company petition for winding up u/s 433 of the Act would not lie.

19. The holding company in the annual reports for 2000-2001 to 2003-2004 attached the balance sheet of subsidiary company. In the balance sheet for 2002-2003, an amount of Rs. 2,24,369/- is shown to be due to Walnut. Whether such mention in the balance sheet amounts to acknowledgment of debt. Learned Counsel in his reply arguments placed reliance on a dozen decisions, to contend that showing the amount due in balance sheet of company constitutes acknowledgement of debt as provided u/s 18 of Limitation Act, 1963. It is settled principle that only unqualified acknowledgment of liability, triggers commencement of fresh period of limitation and if the acknowledgment is conditional or subject to some event occurring, the same cannot be unconditional acknowledgment. Whether mentioning of monies owed to small scale industrial undertaking in the balance sheet amounts to unconditional acknowledgment of debt?

20. In *Vijayalakshmi v. Hari Hara Ginning & Pressing* (1999) 96 Comp Cas 723 ap, a Division Bench of this Court considered the above question. It was held that, "it is a well established law that for giving an acknowledgment, a person has to be conscious of his act to the knowledge of the other person. Merely showing a debt in a balance sheet cannot, prima facie, as presently advised, be termed to be an acknowledgment in terms of the Indian Limitation Act. The acknowledgment as envisaged by the Limitation Act categorically had to be with the intention of accepting the debt with the object of extending the limitation for recovery, which is not the case herein." As there is a binding judgment of this Court, it is not necessary for this Court sitting Single to consider other High Courts' judgments relied by learned Counsel for Walnut in support of the contention that the mention of amount owed to Walnut in the balance sheet amounts to acknowledgment of debt. When the very debt is disputed in a bona fide manner, mentioning in balance sheet does not amount to acceptance or

admitting debt.

21. Learned Counsel also relied on various decisions to contend that the dispute raised by second respondent in this petition, is not bona fide and that there is ascertained undisputed amount, which was not paid by subsidiary company after receiving notice u/s 434 of the Act. Here again one should remember that in a creditor's petition for winding up, respondent company need not elaborately substantiate their plea of bona fide dispute. Even if respondent shows that there is prima facie bona fide dispute with reference to exercise of rights under the contract for supply of goods and services, it would be sufficient for rejection of winding up petition. It is also well settled that procedure for winding up should not be allowed to be adopted for recovery of monies, which can otherwise be recovered by way of a suit. If creditor files a winding up petition only to pressurise respondent to discharge even a disputed debt, company Court should be slow in admitting such petition.

22. The chronology of events referred to hereinabove in brief would show that Walnut gave three notices - in 2001, 2003 and 2004 - even while exploring possibilities to get money by way of mediation and negotiations. Walnut even went to extent of retaining unused material informing second respondent that material would be returned only on payment of amount. All these practices were intended only to bring pressure on second respondent. Ultimately when second respondent failed to pay disputed debt, petitioner issued final notice on 23.7.2004 to holding company and subsidiary company on the premise that the holding company is also liable to discharge alleged debt of subsidiary company. This attitude of Walnut certainly amounts to pressurising debtor to part with money. Therefore this Court is of considered opinion that this is not a fit case to admit and order publication of petition. In Re Point (ii): As per Section 3 of the Act, the expression inter alia "company" means a company formed and registered under the Act. Section 4(1) of the Act contains meanings of "holding company" and "subsidiary", which read as under. 4. Meaning of "holding company" and "subsidiary".- (1) For purposes of this Act, a company shall, subject to the provisions of Sub-section (3), be deemed to be a subsidiary of another if, but only if,-

(a) that other controls the composition of its Board of directors; or

(b) that other -

(i) where the first-mentioned company is an existing company in respect of which the holders of preference shares issued before the commencement of this Act have the same voting rights in all respects as the holders of equity shares, exercises or controls more than half of the total voting power of such company;

(ii) where the first-mentioned company is any other company, holds more than half in nominal value of its equity share capital; or

(c) the first-mentioned company is a subsidiary of any company which is that

other's subsidiary.

23. Section 4(2) of the Act incorporates a fiction and lays down that the company's board of directors shall be deemed to be controlled by holding company if the latter without consent of others, can appoint or remove majority of board of directors. Section 4(3) of the Act presupposes the financial dominance of holding company over subsidiary. Thus if a company controls managerial and financial aspects of another company, it is a holding company. A company has no absolute right to purchase shares of another company, but in the case of a subsidiary, a holding company can freely invest in the shares of subsidiary in view of Section 372(14)(d) of the Act. A holding company also controls various activities of subsidiary company indirectly through its officers who are appointed as directors of subsidiary company. Though a holding company and subsidiary company are two separate entities incorporated separately and remain different and distinct juristic persons, still for all purposes it is holding company, which ordinarily controls affairs of subsidiary company notwithstanding the corporate autonomy every company enjoys. A caveat has to be entered here. A subsidiary is not an agent of holding company nor an extended branch or department of holding company. Both may be group companies with "enterprise unity" but are deemed to have "corporate diversity". A subsidiary is also accountable to its shareholders, creditors and all those who deal with it. A subsidiary is also under an obligation to comply with all legal requirements. Thus in law there is corporate diversity between holding company and subsidiary company.

24. In *Yella Constructions Limited Vs. East Coast Railway and Others*, , referring to the definition as given in *Words and Phrases Permanent Edition* (West Publishing Company - third reprint 1989), this Court explained the principle as under.

25. In Volume 32A of *Words and Phrases* (West Publishing Company - third reprint 1989 p.84) the term "piercing the corporate veil" is described as, "the Court's unwillingness to permit corporate presence and action to divert judicial course of applying law to ascertain facts." When this principle is invoked, it is permissible to show that the individual hiding behind the corporation is liable to discharge the obligations ignoring the concept of corporation as a separate entity. Generally, an incorporated company is liable as a juristic person. It is different from its shareholders and directors of the Board of Company. The acts of malfeasance and misfeasance and acts of misdemeanor by the shareholders and directors of a corporation (company), do not bind the company as such. However so as to apply law to ascertain facts, judicial process can ignore juristic personality of the company and haul-up the directors and in certain cases even shareholders to discharge the legal obligations. When the corporate veil is lifted/pierced, it only means that the Court is assuming that the corporate entity of a concern is a sham to perpetuate the fraud, to avoid liability, to avoid effect of statute and to avoid obligations under an agreement. But enter a caveat; almost

always the incorporated company cannot be equated into shareholders/directors and it is only occasionally the corporate veil of the company is pierced "in order to find out the substance only where it is permitted by the statute or in exceptional cases of fraud".

26. Even though holding company and subsidiary company are two separate and juristic persons, lifting the veil, holding company can be held responsible on behalf of subsidiary only in four situations. These are: (i) Where statute itself contemplates lifting the veil; (ii) Where fraud or improper conduct is to be prevented; (iii) Where a taxing statute or benefiting tax is sought to be evaded; and (iv) Where group companies are inextricably connected as to be part of one concern (see *Life Insurance Corporation of India v. Escorts Limited* (1986) 1 Comp L.J. 91 (SC) : AIR 1986 SCC 1370). When subsidiary company is allegedly unable to pay the debt, can the holding company be wound up u/s 433(e) read with 434(1)(a) of the Act? Learned Counsel for Walnut is not able to place any authority or precedent for such a proposition.

27. In *Kapila Hingorani Vs. State of Bihar*, , the Supreme Court reiterated that, "corporate veil...can be pierced when corporate personality is found to be opposed to justice, convenience and interest of the revenue or workmen or against public interest". In *Singer India Ltd. Vs. Chander Mohan Chadha and Others*, , the Supreme Court while dealing with subject laid down that, "it is not open to the company to ask for unveiling its own cloak and examine as to who are the directors and shareholders who are in reality controlling the affairs of the company". By reading these two judgments, it becomes clear that an iota of right or obligation related to public good is essential for ignoring the corporate principle and resort to extreme device of lifting/piercing corporate veil. The principle is not available when ordering winding up of holding company for alleged default by its subsidiary.

28. Decision of this Court in *Krishi Foundry Employees' Union v. Krishi Engines* (2003) 5 Comp L.J. 94 (AP) is brought to the notice of this Court. Therein arose question as to whether the workmen of a subsidiary company which became sick, can claim "overriding preferential payment" of their dues from out of liquidation funds of holding company ordered to be wound up, piercing corporate veil. This Court referred to the following passage from *Palmer's Company Law*, 24th Edn., 1987, as under.

...The legal principle is clear. In principle, "the separate legal existence of the constituent companies of the group has to be respected".... The rule in *Aaron Salomon v. Salomon & Co. Ltd.* (1987) AC 22 thus prevails;

...That is particularly so when the creditors of the holding company are different from those of the subsidiary, as will normally be the case. However, the holding company is liable for a debt of the subsidiary if it has guaranteed that debt or if it can be established, as a matter of fact, that the subsidiary has acted in a particular transaction as an agent of the holding company or that there has been

an abuse of the corporate form.

29. After referring to other decisions on the subject, Krishi Engines (*supra*) did not accept the plea of workmen of subsidiary that holding company is liable for their dues. Relevant observations are as under.

30. In Company Law, separate legal entity of incorporated body has to be maintained for reasons more than one. Nonetheless, the lifting of corporate veil or piercing the corporate veil is permissible if public interest requires. This is also subject to considerations of permissibility as per the statute. If the company uses other concerns, a firm, society or association, only to facilitate evasion of legal obligations like payment of direct or indirect taxes or denial of statutory benefits to workmen, the court has to disregard the separate legal entity of the company. In such an event, the question before the court is one of company law, and the corporate personality of the company is of secondary importance. The important test is whether the method adopted for evasion of legal obligations would subvert public interest.

31. Applying these principles to the facts of the case on hand, it is no doubt true that undisputedly, the subsidiary company was supplying its produce to the holding company. That, however, is not crucial. To start with, subsidiary was incorporated as private limited company and later converted as public limited company and made a subsidiary of the holding company. Boards of directors were different. It is not disputed that the employees of the subsidiary company were recruited by the subsidiary company and there was no employment policy in the holding company to take employees from subsidiary either by transfer or deputation from the holding company. The stray cases where some employees were sent to holding company is not crucial unless there was any common cadre of service in both holding company and subsidiary company. Nothing is pleaded or proved that holding company stood guarantee for any of the loans raised by subsidiary company. It is not denied that secured creditors of the holding company and subsidiary company are different. Financial investments were different. Therefore, while deciding the question whether workmen and employees of the subsidiary company can be treated as such of holding company, it is not permissible to pierce the corporate veil of subsidiary company.

32. Learned Counsel for Walnut has brought to the notice of this Court almost all precedents on the subject (piercing corporate veil). Unless and until it is shown that holding company is held responsible or guaranteed payments due by subsidiary company, it cannot be held responsible for discharging alleged debt to Walnut. Various factors pointed out by petitioner in its notice dated 23.7.2004 in support of the plea of corporate unity between holding and subsidiary company, are of no relevance while considering controversy in this case. When admittedly Walnut was engaged by subsidiary company, which had supplied material, when admittedly unused material was sent back to subsidiary company, when admittedly first two notices were issued to subsidiary company, mere issue of final notice u/s 434 of the Act to holding company, cannot and should not lead to

an inference that it is liable to pay the debt of subsidiary company. The principle of lifting veil cannot be applied for ordering winding up of a holding company when creditor is unable to receive money from subsidiary company.

33. Learned Counsel for respondent raised a submission that one company petition would not lie for winding up of two incorporated companies. This Court does not feel compelled to decide the said question in this case. The same is left open to be decided in appropriate case.

34. In the result, for the above reasons, the company petition is dismissed.