SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Poddar Projects Ltd. Vs. Krishna Metal Industries Pvt. Ltd.

Poddar Projects Ltd. Vs. Krishna Metal Industries Pvt. Ltd.

SooperKanoon Citation : sooperkanoon.com/426010

Court : Andhra Pradesh

Decided On : Jan-18-1996

Reported in : [1996]86CompCas360(AP)

Judge : S. Dasaradharama Reddy, J.

Acts : Companies Act, 1956 - Sections 433, 434(1) and 439(1)

Appeal No. : Company Petition No. 69 of 1989

Appellant : Poddar Projects Ltd.

Respondent : Krishna Metal Industries Pvt. Ltd.

Advocate for Def. : A.V. Krishna Koundinya, Adv.

Advocate for Pet/Ap. : C. Malla Reddy, Adv.

Judgement :

S. Dasaradha Rama Reddy, J.

1. In this petition, filed on December 15, 1989, under section 433(e) and (f) read with section 439(1)(b) of the Companies Act, 1956, for the winding up of the respondent-company, the petitioner alleges that in the course of business the respondent had purchased M.S. ingots and billets and other materials worth Rs. 28,14,658.50 from it during the period from July, 1984, to December, 1986, and

that the respondent is due as on November 30, 1989, in a sum of Rs. 20,74,531.83 inclusive of interest at 24 per cent. per annum. The respondent failed to pay the amount in spite of repeated reminders. The petitioner issued statutory notice under section 434(1)(a) and (c) of the Companies Act on November 11, 1989, and the company in its reply denied the liability. The respondent filed a counter denying its liability to pay any amount and averring that the petitioner has waived its claim, that in any event, the claim is barred by limitation, that in order to overcome the bar of limitation the petitioner has filed this petition and that the financial condition of the respondent-company is sound. It is also stated in the additional counter that there were differences between the families of the managing director of the petitioner-company and of the director of the respondent-company, who are related to each other, that the director of the respondent was kidnapped by the managing director of the petitioner-company on September 29, 1988, and that C.C. No. 214 of 1989 on the file of the IXth Metropolitan Magistrate, Hyderabad, was pending. It is further stated that the company petition was filed in order to wreak vengeance against the director of the respondent-company.

2. The question that arises for consideration is whether the defence of the respondent denying its liability on the ground inter alia that it is barred by time is bona fide

3. Mr. Vinod Poddar, managing director, and Mr. V. C. Jain, accounts officer, were examined as PWs 1 and 2, while Mr. Nirmal Kumar Gupta, the director of the respondent-company gave deposition as RW 1.

4. PW-1 says that as per the statement of account, exhibit A-7, sent to the respondent along with the statutory notice an amount of Rs. 20,74,531.33 is due, which claim the petitioner has never waived and that the respondent has admitted its liability by its letter dated September 13, 1986, exhibit A-5. He has also stated that the criminal case ended in acquittal. PW-2, accounts officer, says that the petitioner has not sent any debit note to the respondent for interest and that the outstanding amount relates to Bills Nos. 2, 3, 4 and 5 dated July 2, 1984 (exhibits A-11, 19, 27 and 35), for Rs. 2,56,041, Rs. 2,42,959.50, Rs. 2,32,227 and Rs. 2,45,794.50, totalling to Rs. 9,77,022. The balance represents the interest after

deducting Rs. 1,50,000 paid by the respondent from March, 1986, to December, 1986, which has been adjusted towards interest. Though there is no trade practice to charge interest on delayed payment, condition No. 9 in the bills stipulates payment of interest.

5. Mr. C. Malla Reddy, learned council for petitioner, has contented that as per the letter dated September 13, 1986 (exhibit A-5) written by the respondent, in reply to the demand made by the petitioner, the respondent has admitted its liability and requested the petitioner to accept payments at the rate of Rs. 15,000 per month as the respondent is facing some liquidity problem and acute shortage of working expense. He further submitted that as the account is mutual, current and open, the debts is not barred by limitation under article 1 of the Schedule to the Limitation Act as the last payment of Rs. 15,000 was made on December 27, 1986, while the company petition was filed on December 15, 1989. On the other hand, Mr. A. V. Krishna Koundinya, learned counsel for the respondent, submitted that even assuming that the petitioner has not waived its right to claim the amount and even assuming that the petitioner is entitled to charge interest, the claim is barred by limitation since the amounts relate to bills dated July 2, 1984. He contended that even assuming that the balance is not struck and the account is current and open, it is not mutual, as there are no mutual transactions, the petitioner figuring always as creditor only and hence article 1 of the Schedule to the Limitation Act does not apply. He further submits that the relevant article applicable is article 15, under which limitation is three years after expiring of the period of credit and as the period of credit expired by July 28, 1984, as per the hundis, exhibits A-10, A-18, A-26 and A-34, the limitation is July 28, 1987. He relies on exhibit B-1, which is the copy of the statement of account sent by the petitioner to the respondent.

6. From the statement of account, exhibit B-1, its is clear that the last supply was made by the petitioner on October 5, 1984, covered by bill No. 131 for Rs. 1,91,304.50 which has been paid by the respondent on October 11, 1984. There were no supplies by the petitioner from October 5, 1984, and, thereafter, till December 27, 1986, the respondent has been paying periodically certain amounts. The petitioner, as supplier, has always figured as creditor and the respondent as debtor. There were no counter transactions. The counter transactions referred to

in exhibit B-5 letter dated September 13, 1986, are with the Continental Projects Limited, which is associated concern of the petitioner.

7. In Raghunath and Sons P. Ltd. v. Pandam Tea Co. Ltd. [1978] 48 Comp Cas 577; [1976] Tax LR 1566 (Cal), the claim of the petitioner was that the loan was acknowledged in the balance-sheet as on December 31, 1968, sign by the directors of the debtor-company on July 26, 1970. In the balance sheet, the directors observed that they of the opinion that the amount shown as payable to the creditor-company was barred by limitation and, hence, was not confirmed. Confirming the order of the learned single judge, the Division Bench of the Calcutta High Court, held that unless the statement made in the balance-sheet as on December 31, 1986, and the director's report and treated as admissions of liability, the company petition filed on March 9, 1972, may have been barred by limitation and thus as there is bona fide dispute it is not a case for winding up. In the instant case, the question of acknowledgment in the balance-sheet does not arise as it is not the case of even the petitioner. Even assuming that exhibit A-5 is treated as acknowledgment, as it is dated September 13, 1986, the limitation will be over by September 13, 1989. The plea of the respondent that the debt is barred by time under article 15 is a substantial defence and accordingly it cannot be said that the defence is not bona fide. The other decision in C.P. No. 58 of 1989, dated November 19, 1992, an unreported judgment of Justice S. Parvatha Rao, relied on by counsel for the respondent, does not help him. In that case the company petition filed by the petitioner's sister-concern Continental Projects Limited against the respondent herein was dismissed at the admission stage on the ground that the claim was, prima facie, barred by time. There, the transactions ended on March 12, 1985, and the company petition was filed on March 10, 1989. As it was dismissed at the stage of admission and as there are no details about the nature of accounts, this decisions is not of much help.

8. Mr. C. Malla Reddy, learned counsel for the petitioner, relies on three decisions, i.e., Pandam Tea Co. Ltd., In re [1975] 45 Comp Cas 67 (Cal), Synthetic Wire Industries Pvt. Ltd., In re [1984] 56 Comp Cas 461 (Cal) and Northern India Iron and Steel v. Haryana Ispat [1990] 68 Comp Cas 42 (P&H;).

9. In Pandam Tea Co. Ltd., In re [1975] 45 Comp Cas 67 (Cal), the debtor-company admitted the liability in its balance-sheet year after year attracting section 18 of the Limitation Act. In those circumstances it was found by the learned single judge of the Calcutta High Court that denial of the liability, prima facie, is neither bona fide nor reasonable and that the winding up petition cannot be rejected at the stage of admission. This decision is distinguishable as in the present case there is no acknowledgment of liability in the balance-sheet, and the question whether the debt is time barred under article 15 or within time under article 1 is debatable.

10. The next decision is Synthetic Wire Industries Pvt. Ltd., In re [1984] 56 Comp Cas 461 (Cal). This is also a case of admission of a winding up petition and in view of the loan being recorded in the minutes of the meeting of the board of directors and the letter from the company to the creditor stating that due to paucity of funds the repayment could not be made and assuring that the loan would be paid before a particular date, it was held by the Calcutta High Court that there was acknowledgment of the debt and that the defence of the company denying the granting of the loan and taking the inconsistent plea that the amount due to the creditor had been paid, was not bona fide. In this case there is no inconsistent stand and the respondent has been contending that the debt is barred by limitation ever since its reply to the statutory notice, exhibit A-8. Thus, this decision is distinguished.

11. The last decision relied on by learned counsel for the petitioner is Northern India Iron and Steel v. Haryana Ispat [1990] 68 Comp Cas 42 (P&H;). There, again the facts were different. The creditor filed an earlier petition for winding up and in view of the compromise the petition was dismissed with permission to the petitioner to file a fresh petition, if the debtor-company did not pay the debt under the terms of the compromise. Some amounts were paid, leaving a balance of Rs. 2,25,000. As this was not paid the creditor filed another petition for winding up, enclosing the statement of accounts. The debtor-company disputed the quantum of debt in the written statement contending that the creditor has supplied defective material and that the creditor was liable to pay certain amount to the sister-concern of the debtor. In those circumstances, the learned single judge of the Punjab and Haryana High Court held that the petitioner had led prima facie proof

that the amount claimed in the petition was due from the company. In view of the fact that the correctness of the statement was not doubted in the written statement and in view of the non-denial of the liability in the reply to the statutory notice and failure by the company to produce extracts of its ledger and balance-sheet to corroborate its assertion in the written statement, the court held that the company's defence was not one of substance but only an afterthought and that the dispute is not bona fide. Here, the respondent raised plea of limitation which is debatable and which cannot be rejected as being not bona fide. This decision also does not help the petitioner.

12. It has been held by the Supreme Court in Madhusudan Gordandas and Co. v. Madhu Woollen Industries Pvt. Ltd., : [1972]2SCR201 as follows (page 2604) :

'Two rules are well settled. First if the debt is bona fide disputed and the defence is a substantial one, the court will not wind-up the company... 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] 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] Ch 406; [1962] 32 Comp Cas 795). 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.'

13. This was reiterated in a recent case Pradeshiya Industrial and Investment Corporation of U.P. v. North India Petrochemicals Ltd. [1994] 79 Comp Cas 335 (SC), where the petition for winding up was not admitted since the relationship of creditor and debtor did not exist and the same was the subject-matter of arbitration which was pending adjudication and the defence raised was a substantial one.

14. Applying the principle laid down by the Supreme Court in the above two cases. I hold that the petitioner cannot seek the relief of winding up since there is a prima

facie case in the plea of the respondent that the debt is barred by limitation. It is, however, made clear that whatever is stated in this judgment about the debt being barred by limitation is only a prima facie view and it is open to the petitioner to recover the amount claimed in the appropriate forum, if permitted by law. The company petition is accordingly dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com