

**In Re: Secure Industries Ltd.**

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**Court :** Allahabad

**Decided On :** Nov-29-2005

**Reported in :** AIR2007All559; [2008]82SCL286(All)

**Judge :** Sunil Ambwani, J.

**Appellant :** In Re: Secure Industries Ltd.

**Disposition :** Petition dismissed

**Judgement :**

**Sunil Ambwani, J.**

1. Heard Sri Manish Nigam for the petitioner and Sri P.S. Agarwal holding brief of Sri. R.P. Agarwal for the respondent-company.
2. In this creditors winding up petition notice were issued on February 25, 1999. The respondent-company has filed a counter affidavit. Sri S.P. Agarwal made preliminary objection namely that the notice of demand under Section 434(1) of the Companies Act, 1956, was not served upon the respondent-company and that the petition has not been filed by a person duly authorised by the respondent-company.
3. I do not find substance in both the preliminary objections inasmuch as there is clear assertion that the notice was sent by registered post at theregistered office of

the company. There is no denial of sending the notice, and further there is no denial that the notice was not received by the respondent-company. The person filing winding up petition is the director of the petitioner-company. There is no objection in paragraph 2 to the counter-affidavit that he is not authorised by the board of directors to file winding up petition.

4. It is alleged that the petitioner-company supplied brass sheets to the respondent-company. The initial supplies made vide bill Nos. 79, 80 and 85 in August, 1996, were admitted to be received by the respondent-company. Thereafter supplies were made vide bill Nos. 97, 183, 192 and 198 for which the petitioner-company received all the dues. The business relations continued up to September 4, 1977.

5. The demand relates to the first three supplies vide bill Nos. 79, 80 and 85 for Rs. 92,757.51, Rs. 1,37,674.11 and Rs. 2,62,452.20 respectively of which the cheques given in advance were dishonoured. In the demand notice it is alleged that the payment was not made for these three initial supplies, and thus the respondent-company is liable to pay Rs. 7,17,000 including the amount covered by the supplies and the interest at 24 per cent.

6. In the counter affidavit these supplies were admitted. It is, however, stated in paragraphs 4 and 5 that these introductory supplies were not found to be as per requirement of the respondent-company and the same were taken back by the petitioner personally when the discrepancy was pointed out by the respondent-company. Sri. S.P. Agarwal states that the sales tax forms were issued for the purchaser and not for consumption of the material. There is no correspondence between the companies regarding dishonour of three cheques and that the statutory demand notice is alleged to have been send after one year of the last supply made by the petitioner-company. This conduct, according to Sri S.P. Agarwal, is not the normal course of business. In case the supplies were not taken back, the petitioner-company would have at least made the demand for the amounts under these dishonoured cheques.

7. From the averments made in the affidavits, it is difficult to believe that the supplies received by the respondent-company were taken back by the petitioner-

company. Though there is no material on record to support the averments that the petitioner personally took back these supplies, there is also a doubt on the statement of the petitioner-company as it did not raise any demand for these three dishonoured cheques and continued to supply brass sheets up to 1987.

8. The winding up is not a forum to adjudicate the disputed dues. I do not find that the defence raised by the respondent-company is mala fide or is moonshine. The petitioner may seek his remedies elsewhere.

9. The company petition is accordingly dismissed.

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