

Nitul Data System Pvt. Ltd. Vs. Arrow Electronics

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Court : Delhi

Decided On : Dec-09-1994

Reported in : [1997]88CompCas747(Delhi)

Judge : M Jagannadha Rao, C.J. and; Anil Dev Singh, J.

Acts : [Companies Act, 1956](#) - Sections 433

Appeal No. : Company Appeal No. 5 of 1994

Appellant : Nitul Data System Pvt. Ltd.

Respondent : Arrow Electronics

Advocate for Def. : Ramji Srinivasan, Adv.

Advocate for Pet/Ap. : K. Swdney, Adv

Judgement :

M. Jagannadha Rao, C.J.

1. Admitted. This company appeal is preferred by Nitul Data System (P.) Ltd. against the order of the learned single judge dated March 2, 1994 (see Arrow Electronics International Inc. v. Nitul Data System P. Ltd. [1997] 88 Comp Cas 234 (Del) passed in Company Petition No. 168 of 1991.

2. The respondent-company (incorporated in the U.S.A.) filed the company petition against the appellant for winding up on the ground that the appellant, in spite of statutory notices, failed to pay off the amounts due to the respondent-company. The learned single judge, in his order dated March 2, 1994, came to the conclusion that the contentions raised by the appellant were not tenable, that the value of goods agreed to be paid was U.S. \$ 16,992.21, that the appellant failed to pay the same and even the admitted amount of U.S. \$ 11,634.79 was not paid. therefore, the learned judge passed an order 'admitting' the company petition and directed citations to be published in the newspapers.

3. The appellant filed this appeal on March 17, 1994, and when the matter came up before a Division Bench of this court on March 18, 1994, the appellant's counsel agreed to deposit U.S. \$ 11,634.79. The court permitted the appellant to deposit the amount in Indian currency at the exchange rate prevailing on March 21, 1994. On March 22, 1994, the appellant informed the court that the amount had been deposited, notice was issued to show cause why the appeal should not be 'allowed' and the order of the learned single judge was stayed.

4. After the filing of reply and rejoinder, the appeal has come up before us now. We have heard counsel on both sides.

5. The contention of the respondent is that the appellant ought to have deposited U.S. \$ 26,167. In the appeal memorandum dated March 15, 1994, the appellant has stated at the end of ground (R) that the 'appellant is also willing to give bank guarantee to shown its bona fides'. Now that the appellant has deposited the rupee equivalent of U.S. \$ 11,634.79, and the appellant is willing to furnish a bank guarantee for the balance, i.e., (U.S. \$ 26,167 minus U.S. \$ 11,634.79), the question arises whether the impugned order 'admitting' the company petition should be given a fresh look

6. In our view, the subsequent events, namely, the deposits of the rupee equivalent of U.S. \$ 11,634.79 and the willingness of the appellant to furnish bank guarantee for the balance, as above stated, require serious consideration in the light of points raised by the appellant in the pleadings, in the memo of appeal and in the light of the affidavits and documents filed in the appeal.

7. But, we do not propose to allow the appeal straightway. We would think that in the light of the events mentioned above, a fresh look at the desirability of admitting the company petition is to be taken. The company court could, therefore, consider the matter afresh in the light of the above events. For that purpose to set aside the order and remit the matter before the learned single judge. We accordingly do so.

8. A point has been raised for the respondent that it cannot receive the monies already deposited or the monies, if any, to be deposited in future, without permission of the Reserve Bank of India. The appellant and the respondent shall, within four weeks from today, take steps to seek the permission of the Reserve bank of India for the purpose of enabling the respondent to withdraw the amounts already deposited or to be deposited in this company case and shall inform the company court about the steps so taken.

9. We accordingly set aside the order and remit the matter to the learned single judge for disposal in accordance with law. Appeal stands disposed of.

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