

Hotline Teletubes and Components Ltd. Vs. A.S. Impex Ltd.

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SooperKanoon Citation : sooperkanoon.com/695590

Court : Delhi

Decided On : Jul-07-2003

Reported in : IV(2004)BC49; (2004)1CompLJ412(Del); 105(2003)DLT762; 2003(69)DRJ654; (2003)135PLR35; [2004]4SCL590(Delhi)

Judge : Mukundakam Sharma, J.

Acts : Companies Act - Sections 146(2), 433, 434 and 439; Monopolies and Restrictive Trade Practices Act - Sections 12B

Appeal No. : Company Petition No. 408/2001

Appellant : Hotline Teletubes and Components Ltd.

Respondent : A.S. Impex Ltd.

Advocate for Def. : Anil Sharma and ; Sanjeev Saraswat, Adv.

Advocate for Pet/Ap. : S.K. Makkar, Adv

Judgement :

Mukundakam Sharma, J.

1. The petitioner has filed the present company petition praying for orders of winding up of the respondent company on the ground that the respondent company is indebted to the petitioner and that it is unable to pay its debts and that

it has become commercially insolvent.

2. Briefly stated, the facts of the case are that the respondent purchased Cathode Ray, Tubes (picture tubes for TV sets) from the petitioner. Against the supplies made by the petitioner a sum of Rs. 1,22,45,996.27p was due and payable by the respondent as per the reconciled balance as on 17.3.2000. The respondent gave a balance confirmation vide confirmation note dated 17.3.2000 and the said confirmation dated 17.3.2000 is placed with the documents filed by the petitioner. therefore, in terms of the balance confirmation note given by the respondent debt to the aforesaid extent is admitted by the respondent.

3. After the respondent gave the confirmation note dated 17.3.2000, the petitioner supplied further material from time to time for the total invoice value of Rs. 84,91,600/-. As against the previous outstanding balance amount of a sum of Rs. 1,22,45,996/- and against further supplies made, the respondent made various payments to the petitioner totaling to a sum of Rs. 82,01,196/-. It is also stated that these payments were made during the period between 18.3.2001 to 24.10.2001. There could be no dispute to the aforesaid position and the same is established from the records placed.

4. It is alleged that as the aforesaid outstanding amount had become substantial the petitioner refused to supply any further material with effect from September 2000 unless past dues were cleared. On the assurance of the respondent that past dues would be cleared, the petitioner resumed supplies on 12.11.2000. However, supplies with effect from November 2000 were made only against the letter of credit. The petitioner endorsed the balance confirmation of outstanding amount as on 24.10.2001. As per the said statement a sum of Rs. 1,24,74,195/- was due and payable as on 24.10.2001. The aforesaid balance confirmation is placed on record. The respondent also issued various post dated cheques for the outstanding amount and all the aforesaid cheques when presented to the bank for encashment were dishonoured and returned with various remarks of the bank such as 'exceeds arrangement', 'not arranged for' and 'payment stopped by the drawer'. Photocopies of all the aforesaid cheques along with return memos have also been placed on record by the petitioner.

5. Statutory notice under Section 433 of the Companies Act was sent to the respondent on 30.10.2001. The said notice was received back from the post office with the remarks 'addressee left'. Another copy of the notice was dispatched to the respondent through registered A.D. post on 6.11.2001. Same also received back unserved with similar remarks. With the aforesaid statement and allegations, the present petition was filed in this Court. The respondent filed a reply to the company petition raising various defenses to the aforesaid claims of the petitioner. One of the grounds that is raised is that the statutory notice under Section 433 is not served on the respondent in terms of the provisions of Section 433 and 434 of the Companies Act and, therefore, the present proceeding is not maintainable. The respondent has also claimed that it has a counter claim against the petitioner on account of over charging for which the respondent has already filed a compensation application under Section 12B of the Monopolies and Restrictive Trade Practices Act before the MRTP Commission against four manufacturers of picture tubes including the petitioner alleging that these four manufacturers including the petitioner had formed a cartel and had caused wrongful loss to the respondent by selling the picture tubes at a higher price. Another defense that is raised is that the petitioner has also filed a summary suit for recovery of the amount claimed against the respondent in which the respondent has already filed an application praying for leave to defend and, therefore, there is a serious dispute regarding liability of the respondent and a bona fide dispute having been raised by the respondent the winding up petition cannot be allowed.

6. I have considered the rival submissions of the counsel appearing for the parties in support of the aforesaid contentions which are raised in their pleadings. The following facts, however, emerge and are proved from the pleadings of the parties and submissions of their counsel. It is not disputed that the petitioner made supplies for the aforesaid amount as stated in the petition. That the respondent issued a balance confirmation note dated 17.3.2000 and again on 24.10.2001 which is not disputed and cannot be so done in view of the fact that the said balance confirmation is duly signed and stamped by the respondent. The registered office of the respondent company was situated at B-3/31, Azad Apartments, Aurobindo Marg, New Delhi - 110 016. The registered notices were sent by the petitioner to the aforesaid address on 30.10.2001 and on 6.11.2001 as

indicated from the records placed on record. The case of the respondent is, however, that the same is not the registered office of the respondent company as the respondent shifted its office to 57, Kalu Sarai, Hauz Khas, New Delhi with effect from 11.10.2001. The said fact of change of the address of the registered office of the respondent was, however, brought to the notice and filed with the Registrar of Companies by the respondent only on 7.11.2001 when it submitted the statutory form No. 18. It is also apparent on the face of the records that the cheques were issued by the respondent as against the outstanding balance which were dishonoured by the bank on their presentation.

7. The first objection that is raised is with regard to the maintainability of the company petition on the ground that the statutory notice as required under the provisions of the Companies Act was not served on the respondent company. The documents placed on record, however indicate that the petitioner sent the statutory notices to the respondent at the address at which the registered office of the respondent was located. But in the meantime the respondent changed the address of its registered office. therefore, the statutory notices sent by the petitioner were not served on the respondent company. It is stated by the counsel appearing for the respondent that the respondent gets 30 days' time to take steps for intimating the change of address of its registered office to the Registrar of Companies. Section 146(2) of the Companies Act provides for 30 days' time to a company to inform the Registrar of the Companies to submit the statutory form intimating change of the address of the registered office of the company. The registered office of the respondent company was changed with effect from 11.10.2001 and on 7.11.2001, i.e. within 30 days, the respondent company filed form No. 18 with the Registrar of Companies. There is no doubt that the respondent company fully complied with the legal requirements having submitted form No. 18 within 30 days as prescribed by Section 146(2) of Act as permissible period for intimation from the date of the change of the address of the registered office of the registered company. However, it is also proved that the petitioner could not have known about the change of the address as the address of the respondent even after the change continued to be at Aurobindo Marg in the records maintained by the Registrar when the aforesaid two statutory notices were issued by the petitioner. The intimation about change of address by the

respondent company was filed with the Registrar of Companies only on 7.11.2001 and before the said date the registered notices were sent by the petitioner. The petitioner could not, therefore, had any knowledge about change of the registered office of the respondent company as in the official records the same address continued to exist. therefore, sending of the notices by the petitioner at the registered office of the respondent in terms of the official records has to be held to be legal and valid and the present proceeding cannot be held to be not maintainable because the same could not be served on the respondent company as it in the meantime changed its office. There is full compliance by the petitioner as required by the provisions of Sections 433 and 434 and the petition cannot be dismissed on the aforesaid ground as alleged by the respondent.

8. The second defense that is raised by the respondent is that a counter claim has been filed by the respondent before the MRTTP Commission and a summary suit is also filed by the petitioner herein and the same is also pending for consideration and, therefore, the amount is disputed. It is submitted that in that view of the matter a bona fide dispute has been raised and, therefore, the parties should be relegated to a civil suit and the MRTTP proceeding which are pending as of now. The fact that the petitioner made supplies for the amount as stated in the petition is not disputed. The balance confirmation given by the respondent on 17.3.2000 and 24.10.2001 also cannot be disputed as the same is duly signed and stamped by the respondent. therefore, the said balance confirmation is a clear admission of the liability of the respondent. The respondent also cannot dispute the fact that the cheques issued by the respondent to discharge its part liability were dishonoured for non-availability of the funds.

9. In view of the aforesaid position, the only question that falls my consideration is whether the aforesaid admissions in respect of the liability of the respondent to repay the debt becomes disputed only because the respondent has filed a claim petition before the MRTTP Commission and that a summary suit is pending for consideration. A complaint was filed by CETMA of which the petitioner and the respondent are members before MRTTP Commission. Although the aforesaid complaint was filed by CETMA before the MRTTP Commission, the complainant neither filed any document nor is pursuing the said matter diligently. As a matter of

fact a copy of the order dated 23.5.2003 is placed on record, which indicates that the counsel for the complainant has sought for discharge as the complainant is not giving any instructions to his counsel to proceed further with the case. The said order indicates that except for filing the complaint no further effective steps are being taken by the complainant to proceed with the matter. The respondent company filed a compensation application only after the respondent received a notice of the present winding up proceeding but at no stage before filing of the present petition in this Court the respondent had ever taken up a stand before any forum that the aforesaid claim is barred in any manner or that the said claim is disputed. The respondent signed the balance confirmation admitting its liability to repay the debt of the petitioner and even cheques have been issued acknowledging the aforesaid liability, which when presented to the bank were dishonoured. This conduct on the part of the respondent proves and establishes that the respondent is indebted to the petitioner and that it is unable to pay its debts. Merely because a compensation application is pending for consideration or a summary suit filed by the petitioner is pending for consideration would be no ground to allege in the present petition that there is a bona fide dispute raised by the respondent in the present case. Even assuming that a case of bona fide dispute is raised by the respondent before the MRTP Commission, the total claim of the respondent against the petitioner in the said proceeding as spelt out from the prayer clause of the petition filed before the MRTP is only Rs. 30 lacs whereas the admitted liability of the respondent is to the tune of Rs. 1.24 crores. The dispute that is sought to be raised before the MRTP Commission by the respondent does not appear to be bone fide as the same was an after thought and is initiated by the respondent only after the petitioner has taken resort to the provisions of Section 433, 434 and 439 of the Companies Act. I am prima facie satisfied that such a plea is raised before the MRTP Commission in order to cause delay in payment of the admitted dues which cannot be said to be a bona fide dispute. It is also to be noted that at this stage the Company Court is only to be prima facie satisfied that the respondent is indebted to the petitioner and that it is unable to pay its debts. Indebtedness of the respondent to the petitioner is an admitted fact and that it is unable to pay its debt is also proved from the evidence on the record as the cheques issued by it were dishonoured by the bank when

presented for encashment.

10. The counsel appearing for the respondent sought to submit that the remedy of winding up is a discretionary remedy of the Court which is to be exercised very cautiously. There can be no denial of the aforesaid position in law but where it is found that a party has sought to raise a dispute to defeat the bona fide claim of a party, the Court cannot and should not postpone the adjudication of the right of a party if on the basis of the evidence on record the Court is prima facie satisfied that a case for admission is made out. The Court should not postpone such adjudication on the ground that the respondent is thriving to exist and that it should be given an opportunity to revive itself. Accordingly, I am of the considered opinion that the present petition is required to be admitted to hearing which I hereby do. Citation shall also be published in a daily issue of 'Statesman' (English) and 'Jansatta' (Hindi) for 16th October, 2003. The Official Liquidator attached to this Court is appointed as the Provisional Liquidator, who is directed to take over the assets and the records of the respondent company. It is also made clear that the observations made herein are meant only for the purpose of deciding whether or not the present case could be admitted for hearing and the opinions recorded are prime facie in nature.

11. Renotify on 16th October, 2003.