

Rathi Bars Ltd. Vs. Deepak Casting Ltd.

Rathi Bars Ltd. Vs. Deepak Casting Ltd.

SooperKanoon Citation : sooperkanoon.com/712660

Court : Delhi

Decided On : Jan-29-2007

Reported in : [2007]141CompCas94(Delhi); 137(2007)DLT491; 2007(94)DRJ178; [2007]77SCL168(Delhi)

Judge : C.J. and; Hima Kohli, J.

Acts : [Companies Act, 1956](#) - Sections 433 and 434(1)

Appeal No. : Co. Appeal No. 11 of 2003

Appellant : Rathi Bars Ltd.

Respondent : Deepak Casting Ltd.

Advocate for Def. : Rajendra Singhvi, Adv.

Advocate for Pet/Ap. : M.L. Lahoty and; P.K. Sharma and; Poonam Lahoty, Adv

Disposition : Appeal dismissed

Judgement :

Hima Kohli, J.

1. The present appeal is directed against the order dated 7th January, 2003 passed by the learned Company Judge in a winding up petition filed by the respondent herein, petitioner in CP No. 201/2000 praying, inter alia, for winding up

of the appellant company on account of its inability to pay the acknowledged dues of Rs. 55,88,589/- payable to the respondent . By the impugned order, the learned Company Judge has held that the winding up petition preferred by the respondent is maintainable and as an interim measure, the appellant company has been directed to deposit the principal sum of Rs. 43,75,630/- in court within four weeks from the date of the impugned order. Aggrieved by the said order, the appellant company has preferred the present appeal.

2. The brief facts of the case, as culled out from the record are that the respondent issued a statutory notice dated 7th January, 2000 under Section 434(1)(a) of the [Companies Act, 1956](#) (for short 'the Act') to the appellant company calling upon it to pay an amount of Rs. 60 lacs to the respondent. Prior to issuance of the said statutory notice, vide letter dated 11th January, 1999, the appellant company acknowledged the outstanding dues of Rs. 55,88,589/- as being payable to the respondent. However, in its reply dated 29th January, 2000 issued by the by the appellant company, it referred to two earlier letters dated 8th December and 29th December, 1999 stated to have been sent to the respondent denying its liability to pay any amount to the respondent. It is pertinent to note that the aforesaid two letters were, however, neither annexed to the aforesaid reply dated 29th January, 2000 issued by the appellant company nor were the same filed Along with the reply/counter affidavit filed before the Company Court and in fact, the same were produced in court on 7th January, 2003 and sought to be tendered in the course of arguments on the ground that they could be discovered only on the said date.

3. In view of the refusal on the part of the appellant company to discharge its outstanding dues payable to the respondent a winding up petition was preferred by the respondent to which a reply was filed by the appellant company wherein it raised the question of maintainability of the winding up petition. It was submitted that in view of the fact that the goods supplied by the respondent to the appellant company were defective and the winding up petition was based on amounts claimed on the basis of a running account, the petition was not maintainable. Submitting that the winding up petition based on a running account is not maintainable and that only a civil suit is maintainable, it was argued before the learned Company Judge that the winding up petition should be dismissed as not

being maintainable. The said submissions were, however, rejected by the Company Court. After going through the records and considering the submissions of both the parties, it was held that the dispute in respect of the debt sought to be raised by the appellant company cannot be termed as 'a bona fide dispute' and that no correspondence or any document of any nature was brought on record or even averred to exist by the learned Counsel for the appellant company in respect of such defective goods. Further, the learned Company Judge referred to the acknowledgment of debt by the appellant company contained in its letter dated 11th January, 1999, issued by the Manager (Accounts) of the appellant company and also reproduced in the impugned order, wherein the appellant company acknowledged the credit balance of Rs. 55,88,589/- in favor of the respondent as on 31st December, 1998. Holding that the foundation of the winding up petition is 14 days credit facility and acknowledgment of the amount by the appellant company, the learned Company Judge arrived at the conclusion that the winding up petition is founded on the above letter dated 11th January, 1999 and not based on a running account and further that nothing had been placed on record by the appellant company to show that the aforesaid amount of Rs. 55,88,589/- as acknowledged in the letter dated 11th January, 1999 was thereafter paid to the respondent.

4. In the present appeal, similar arguments as addressed before the learned Company Judge have been submitted on behalf of the appellant company before us. Learned counsel for the appellant company has vehemently argued that the appellant company is financially sound and commercially solvent and in view of the evidence of its financial soundness, the winding up petition preferred by the respondent under Section 433 of the Act ought not to have been entertained by the learned Company Judge; that the letter dated 11th January, 1999 ought not to have been treated as containing an admission of liability by the appellant company as the same indicated only the amount entered into the books of account maintained by the appellant company based on a running account and that the said letter was only for reconciliation of accounts; that as there was a running account maintained between the parties, the parties were selling and making the payment and there is no confirmation by the appellant company of the balance amount at any time and finally that certain disputed questions of facts are involved

in the matter and that the same can only be resolved through a civil suit and not through the present proceedings initiated by the respondent.

5. In support of these submissions, learned Counsel for the appellant company has placed reliance on a judgment of this Court in the case of Rishi Pal Gupta v. S.J. Knitting and Finishing Mills Pvt. Ltd. stated to be reported as Company Cases (1998) Vol. 93-849, but in fact is reported as (1994) 1 Comp.L.J.343 (Delhi) and has submitted that the learned Company Judge has not considered the said judgment in its true perspective and that in the said judgment it has been categorically held that mere entries in the books of accounts were not sufficient to fix liability on any person as each and every entry in the books of accounts shall have to be proved and that in the present case also the claim of the respondent emanates only from mere entries in the books of accounts of the appellant company which is not sufficient to maintain a winding up petition.

6. In reply, the learned Counsel for the respondent has placed reliance on a judgment rendered by a Division Bench of this Court in an intra court appeal against the judgment of the Company Court in the above case referred to and relied upon by the learned Counsel for the appellant company and reported as (1998) 4 Comp.LJ 517 (Delhi). It is submitted by the learned Counsel for the respondent that the learned Counsel for the appellant company is misconstruing the said judgment and in fact in the said judgment it has been categorically held by a Division Bench of this Court that there was an admission of liability in the said case and that the view taken in the order under appeal that entries in the books are no evidence is not correct as there is material to fix liability which material was contained in the admission made by the respondent therein in its reply dated 22nd November, 1991. Hence, it is stated that reliance by the appellant company on the aforesaid judgment of the Company Court is misplaced and in fact the present case is squarely covered by the judgment rendered by the Division Bench in the same matter, which was taken in appeal.

7. It is also submitted by the learned Counsel for the respondent that the winding up petition was not based on a mere running account, but was substantiated by an admission on the part of the appellant company contained in its letter dated 11th

January, 1999 which letter has not been denied by the appellant company in its reply dated 29th January, 2000 to the statutory notice dated 7th January, 2000 issued by the respondent under Section 434(1)(a) of the Act and that the learned Company Judge rightly concluded that the winding up petition was founded on the above acknowledgment and could not be based on a running account.

8. We have heard the arguments addressed by the counsels for the parties and have also perused the records as placed before us.

9. The main thrust of the arguments addressed on behalf of the appellant company is that the basis of filing of the winding up petition by the respondent was a running account and, therefore, the said petition cannot be the subject matter of a winding up petition and there can be no presumption against the appellant company of its inability to pay. Coming to the judgment dated 2nd November, 1993 passed by the learned Company Judge in the case of Rishi Pal Gupta (supra) wherein it was held that the winding up petition in the said case was not maintainable since the basis thereof was a running account and that as each entry has to be proved in the books of accounts, the same cannot be done in a summary procedure under Section 433 of the Act and thus the proper remedy available was not a winding up petition but a civil suit, as observed above, the aforesaid judgment dated 2nd November, 1993 was taken in appeal before a Division Bench of this Court and the same was set aside by a judgment dated 29th November, 1995 in the same matter of Rishi Pal Gupta v. S.J. Knitting and Finishing Mills Pvt. Ltd. reported as (1998) 4 Comp.L.J.517 (Delhi) whereunder it was held as below:

Para 3: In view of the fact that there is an admission of liability to the extent of Rs. 6,89,870.76, we are of the view that the Company Court could have considered the application of the provisions of Section 433 of the Companies Act. The view taken in the order in appeal that entries in the books are no evidence-is not correct as there is material to fix liability. The material is contained in the admission made by the respondent in its reply, dated 22.11.91 referred to in our order dated 27.9.95 extracted above.

10. With the above observations, the appeal was allowed and the matter was remitted back to the learned company Judge for disposal in accordance with law. Accordingly, the Company Court took up the matter in the absence of the counsel for the respondent and on consideration of the facts and circumstances of the case, expressed satisfaction that a prima facie case had been made out by the petitioner therein that the respondent therein was unable to pay the debt of the petitioner and in that view of the matter, citation was directed to be issued in the newspaper. After publication of the aforesaid citation, vide order dated 2nd December, 1997 reported as (1998) 4 Comp.LJ 519 (Delhi), the learned Company Judge directed the respondent company to be wound up. However, subsequently, the respondent company therein filed an application for recalling of the aforesaid order. The said application was heard by the learned Company Judge who, after going through facts and circumstances of the case, held vide judgment dated 18th May, 1998 reported as Rishi Pal Gupta v. S.J. Knitting and Finishing Mills Pvt. Ltd. : 73(1998)DLT593 that in view of the fact that there was an acknowledgment of debt by the respondent in its reply dated 22nd November, 1991 wherein it had transmitted the balance sheet reflecting the outstanding dues of the petitioner company to the Registrar of Companies and view of the fact that the respondent company failed to pay to the petitioner therein the said amount, the order of winding up of the respondent company was held as valid and justified. While passing the aforesaid order, the learned Company Judge also referred to another judgment of this Court in the case of Larsen & Toubro Ltd. v. Commercial Electrical Works and Ors. reported as : 67(1997)DLT387 wherein reliance was placed on an earlier judgment wherein it was held that it is well settled that a statement of account like balance sheet would constitute acknowledgment of liability. Relying on the aforesaid judgment and noting that in the aforesaid case also there was not only reliance placed on the balance sheet but an acknowledgment of debt contained in the reply dated 22nd November, 1991 issued by the respondent therein, the learned Company Judge dismissed the applications of the respondent therein for recalling the order of its winding up.

11. In our opinion, the aforesaid judgment dated 29th November, 1995 of the Division Bench of this Court, setting aside the order dated 2nd November, 1993 and remanding the matter back to the Company Court, followed by the judgment

of learned Company Judge dated 18th May, 1998 in the same case, holding that the winding up petition is maintainable in view of the fact that the same was based on not only the balance sheet reflecting the amount payable by the respondent but was also supported by acknowledgment of debt, reiterates the correct proposition of law. Had the present petition filed by the respondent herein been based only on a running account simplicitor, the argument of the learned Counsel for the appellant company that such a petition is not maintainable, was perhaps sustainable. However, in the present case where apart from and in addition to the said running account there is a clear, unequivocal and categorical admission on the part of the appellant company acknowledging the said debt, as contained in its letter dated 11th January, 1999, it cannot be said that the case in hand is a case of a mere running account and thus not maintainable. In view of the fact that there is a clear acknowledgment of liability by the appellant company in respect of the debt which it owes to the respondent the appellant company cannot wriggle out of its liability and seek to take cover behind a plea of disputed questions of facts or the fact that the petition is based on a simple running account and is not maintainable. The debt contained in a running account followed up by a confirmation thereof acknowledging the said debt by the appellant company is sufficient for us to hold that there is no infirmity in the order of the learned Company Judge that the winding up petition preferred by the respondent is maintainable.

12. We accordingly dismiss the present appeal and direct the appellant company to comply with the orders of the Company Court and deposit the principal sum of Rs. 43,75,630/- in the court within a period of four weeks. The parties are directed to appear before the learned Company Judge for further proceedings on 6th March, 2007.