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Court : Himachal Pradesh

Decided On : Nov-14-2002

Reported _____ **in** _____ :

[2003]114CompCas638(HP),(2003)3CompLJ139(HP),[2003]43SCL126(HP)

Judge : Arun Kumar Goel, J.

Acts : [Companies Act, 1956](#) - Sections 433, 434, 439, 442 and 443

Appeal No. : OMP. No. 394 of 2002 in Civil Suit No. 54 of 2001

Appellant : Ranbaxy Laboratories Ltd.

Respondent : Jerath Electronics and Allied Industries (P.) Ltd.

Advocate for Def. : B.N. Misra, Adv.

Advocate for Pet/Ap. : Deepak Gupta, Adv.

Disposition : Application dismissed

Judgement :

Arun Kumar Goel, J.

1. This is an application under Section 10 of the Code of Civil Procedure read with Section 442 of the [Companies Act, 1956](#) for stay of proceedings in this suit.

2. Admitted facts of this case are that the plaintiff filed Company Petition No. 2 of 1999 under Sections 433, 434 and 439 of the Companies Act for winding-up of the defendant. This winding-up petition was contested and resisted by the latter. Finally on 5-1-2002, this Company Petition was dismissed when it was held by this Court that the dispute which the defendant has raised cannot be treated as fictitious and frivolous. It was further held that there appears to be sufficient justification in the claim of the defendant and that the disputes raised are bona fide. It was further not disputed on behalf of the parties to this suit that Company Appeal No. 1 of 2000 is pending in this court against the rejection of Coy. Petition No. 2 of 1999.

In the aforesaid background present suit was filed on 16-5-2001 wherein this application has now been filed.

3. Defendant when put to notice in suit, has filed its written statement. While contesting and resisting the claim of the plaintiff, there is no murmur regarding the aforesaid company petition and/or pendency of the Coy. appeal. What is the effect of such omission will be dealt with hereinafter.

4. Fact of company petition, its dismissal and company appeal being there, was stated in para 12 of the plaint. For ready reference para 12 from the plaint, as well as from written statement and replication, respectively are extracted hereinbelow:--

'12. That left with no option, the plaintiff company filed a Company Petition before this Hon'ble Court for winding-up the defendant company. This petition was numbered as Company Petition No. 2 of 1999. The said petition was dismissed by the Hon'ble Company Judge of this Hon'ble Court vide his judgment dated 5-1 - 2000 mainly on the ground that there are disputes raised, which cannot be decided in a company petition. It would be pertinent to mention that the plaintiff company had filed an appeal being Company Appeal No. 1 of 2000 against the said order and the same has been admitted.'

'12. That in reply it is submitted that the Hon'ble High Court has already come to the conclusion that there is no legally enforceable debt on the defendant.'

'12. Para 12 of the written statement is wrong and denied. It is wrong and denied that this Hon'ble Court has come to the conclusion that there is no legally enforceable debt.'

5. Under what circumstances the court can exercise its power under Section 442 of [Companies Act, 1956](#), is no more res Integra in view of the decision of the Supreme Court in Official Liquidator v. Dharti Dhan (P.) Ltd. [1977] 47 Comp. Cas. 420. In this case, Company under liquidation i.e. Golcha Company had a contract with M/s. Dharti Dhan Private Limited. Latter company was to pay certain sum in the manner agreed in terms of the agreements dated 25-6-1966 and 17-1-1967, Part payment had been made. Since there was default in payment of the amount by this company to Golcha Company, claim under Section 446 of the Companies Act was initiated for the recovery of amount due by the Official Liquidator to the Company Judge of High Court of Rajasthan. Meanwhile, Registrar of Companies in Maharashtra filed a winding-up petition in Bombay High Court against aforesaid M/s, Dharti Dhan Private Limited, Company Judge ordered winding-up of this company. This was appealed against and a Division Bench ordered stay of advertisement of winding-up petition. This appeal was pending, when Official Liquidator challenged the order before the Supreme Court. In this background while considering the object of Sections 442(A) and 446(2) of the Companies Act, it was held as under:--

'After obtaining an order of stay of the proceeding against it in the Bombay High Court, the Dhan Company made an application under Section 442(&) of the Act in the Rajasthan High Court for stay of proceedings against it under Section 446(2) on the ground that a compulsory winding-up petition was pending against it in the Bombay High Court. The object of the respondent, Dhan Company, appeared to be to obtain an indefinite stay of proceedings against it in both High Courts. If this is a correct inference, as it appears to us to be, the stay application under Section 442(6) of the Companies Act could not be a bona fide one. It looks more like an abuse of the processes of the Court. It is, therefore, not surprising that the learned

company judge of the Rajasthan High Court rejected the Dhan Company's application under Section 442(6) of the Act on 9th May, 1974. It is, however, somewhat surprising that a Division Bench of that High Court should have allowed an appeal from the judgment of the company judge and ordered stay of proceedings under Section 446(2) of the Act against the respondent, Dhan Company, even though this was subjected to the condition that 'the appellant-company produces the entire documentary evidence inclusive of account books, vouchers, files and other documents and papers in its possession or power relating to the claim in question, as it may desire to produce or the official liquidator desires to summon or as the learned company judge may direct in his discretion and also produces a list of witnesses that the appellant-company may desire to examine in its defence in respect of the claim in question along with an affidavit of what each witness is likely to depose'. Thus, the Division Bench had, while making the stay order, attempted to safeguard the interests of the Golcha Company by making an order which, in the opinion of the Division Bench, would prevent valuable evidence from being lost due to either the death or the fading memory of a witness or other causes.' (p. 422)

In the aforesaid background, when the matter came up before the Supreme Court, after referring to the provisions of the aforesaid two sections, it was held as under:--

'Sections 442 and 446 of the Act have to be read together. It is only where the object of the two sections, when read together, is served by a stay order that the stay order could be justified. The object is to expeditiously decide and dispose of pending claims in the course of winding-up proceedings. A stay is not to be granted if the object of applying for it appears to be, as it does in the case before us, merely to delay adjudication on a claim, and thereby to defeat justice....' (p. 425)

6. Finally, the appeal of the Official Liquidator was allowed and the order of the Division Bench was set aside.

7. Applying the ratio of this decision, I am satisfied that filing of the present O.M.P. cannot be termed to be a bona fide exercise on the part of the defendant in

seeking stay of proceedings in this suit. Written statement was filed on 17-12-2001. There is no pleading for the stay of this suit made therein. Issues were framed after admission/denial of documents on 21-6-2002. Thereafter case was ordered to be listed for evidence of the plaintiff. Present application was filed on 9-9-2002 that too after the date for leading plaintiff's evidence having been already fixed. It is a different matter that evidence was not present on that date. Looking to the interpretation given to Section 442(6) by the Supreme Court in the aforesaid decision, present application as already noted appears to be an attempt to thwart and stop the process of the present suit. Why no plea was raised in the written statement, learned counsel was unable to satisfy the court. However, he placed reliance on a decision of Madhya Pradesh High Court in the case of Eastern Automobile Syndicate Ltd. v. Babu Rajendrakumarsingh AIR 1959 MP 95. Without being detained by this decision, as well as keeping in view the aforesaid decision of the Supreme Court, I see no reason to allow this application.

8. No other point is urged.

9. In view of the aforesaid discussion, there is no merit in this application which is accordingly dismissed with no order as to costs.