

## Depro Foods Ltd. Vs S.K. Agencies and another

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Sept. 27, 1985

**Acts Referred:** Companies Act, 1956 " Section 446(2)

**Hon'ble Judges:** R.N. Mittal, J

**Bench:** Single Bench

**Advocate:** O.P. Verma, for the Appellant; R.M. Suri . for Mr. L.M. Suri, A.K. Jaiswal, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

R.N. Mittal, J.

Briefly the facts are that the petitioner was carrying on the business of manufacturing of and trading in packed and canned

food at Rai (Haryana). It was ordered to be wound up in CP. No. 234 of 1977 vide orders dated 21st August, 1980. The petitioner filed claim

petition u/s 446 (2) of the Companies Act (hereinafter called the Act) for recovery of Rs 10971.14 with past and future interest on the ground that

the said amount is shown due from respondent No 1 in the ledger account maintained by the petitioner. It is further stated that respondent No. 2

was the Managing Director of the petitioner and he was duty bound to recover the outstanding amount from respondent No. 1, but he failed to do

so. Consequently, he is personally liable to make payment of the outstanding amount of Rs. 1087.14 to it.

2. Respondent No. 1 in its written statement has denied that any amount is due from it to the petitioner. Respondent No. 2 in his statement pleaded

that he is not personally liable to pay the amount. On the pleadings of the parties, the following issues were framed :--

1. Whether any amount on account price of goods supplied to respondent No. 1 is due from it to the petitioner ? If so, what amount ? OPP.

2. Whether the petitioner is entitled to interest ? If so, at what rate ? OPP.

3. If issues Nos. 1 and 2 are proved, whether respondent No. 2 is personally liable to pay the amount ? OPP.

4. Relief.

Issue No. 1

In order to prove the issue, the petitioner has produced copy of the ledger account Exhibits P-5, P-6 and P-7. Exhibit P-5 relates to the year 1975

(from 1-1-1975 to 31-12-1975). Exhibit P-6 to the year 1976 (from 1-1-1976 to 31-12-1976) and Exhibit P-7 to the year 1977 (from 1-1-

1977 to 29-10-1977). In addition, the petitioner has also produced Sh. M P. Mittal Ex-Managing Director of the company, PW 2. Shri Mittal

proved the aforesaid documents.

Mr. Suri learned counsel for the respondent has pointed out in the Exhibit P-5 that an amount of Rs. 14626.70 was debited to the account of

respondent No. 1 on 31-12-1975. It is not explained as to how this amount has been debited. I have given due consideration to the argument and

find force in it. The amount has been debited to the account as ""To amount Journal"". The copy of the journal has not been produced. In the case of

bills which have been debited to the account, the number of bills have been mentioned in the ledger. The learned counsel for the petitioner has not

been able to explain the said entry. If that entry is not taken into consideration, no amount can be said to be due to the petitioner. However,

Yathish Bhakta R.W. 1, Accountant of respondent No. 1 in the evidence admitted that an amount of Rs. 409.38 was due from the respondent to

the petitioner. Consequently, I hold that respondent No. 1 is liable to pay Rs. 409.38.

Issue No. 2

Shri M.P. Mittal, RW2 stated that if a customer did not pay the price of the goods within a period of 45 days, they were liable to pay interest at

the bank rate. He further deposed that the minimum bank rate had been 12 per cent per annum. There is no rebuttal to this evidence.

Consequently, I hold that the petitioner is entitled to interest at the rate of 12 per cent per annum from 1.4.1978 till the date of realisation.

Issue No. 3

Section 543 of the Act provides that the Managing Director or any other officer shall be personally liable in case he has been guilty of any

misfeasance or breach of trust in relation to the company. No allegations about misfeasance or breach of trust have been made in the petition

against respondent No. 2 and no proof in this regard has been given. Consequently, respondent No. 2 cannot be held personally liable for payment

of the amount.

For the aforesaid reasons, I partly accept the petition and pass a decree for the recovery of Rs. 409.38 against respondent No. 1 with interest at

the rate 12 per cent per annum from 1-4-1978 till the date of realisation. The respondent shall also be liable to pay the costs of the petition.