
(1991) 06 GAU CK 0005

Gauhati High Court

Case No: Company Petition No. 9 of 1989

Tinsukia Vastra Bhandar

APPELLANT

Vs

Assam Tea Corporation Ltd.

RESPONDENT

Date of Decision: June 6, 1991

Acts Referred:

- Companies Act, 1956 - Section 433, 433(1)

Citation: (1991) 72 CompCas 178

Hon'ble Judges: R.K. Manisana Singh, J

Bench: Single Bench

Advocate: B.A. Agarwal and G.N. Sahewalla, for the Appellant; A.C. Sarma and B.N. Sarma, for the Respondent

Judgement

Manisana, J.

The petitioner-firm has made this application for winding up of the respondent-company on the ground that the respondent-company is unable to pay its debts and that it is just and equitable that the company should be wound up.

2. Facts : The petitioner-firm carries on business, amongst others, of supply of woollen blankets, clothes, umbrellas, aprons, etc. (which I shall refer to as "goods"). Pursuant to orders given by the respondent-company and/or its managers at the Jorhat office, the petitioner-firm sold goods on credit to the company on condition that the payment would be made within 30 to 60 days and that, in default of payment, the firm would be entitled to interest at the rate of 24% per annum on the bill amount. The petitioner-firm raised six bills bearing Nos. 33 to 38 amounting to Rs. 3,10,815 for supply of goods on different dates. Out of Rs. 3,10,815, the respondent-company made a part payment of Rs. 25,000 only. The firm sent reminders requesting the respondent-company for payment of the balance amount, i.e., Rs. 2,85,815 with interest but the respondent company failed to make payment. The petitioner-firm sent a notice by registered post on December 24, 1987, to the

respondent-company for payment of the balance, but to no avail. Thereafter, the petitioner-firm again issued two legal notices through its counsel on March 20, 1989, and July 18, 1989, demanding payment. But the respondent-company neglected to pay the amount. Hence this petition.

3. The respondent-company has not filed a counter-affidavit. However, in the course of the hearing of the petition, Mr. A. C. Sarma, learned counsel for the respondent-company, produced a letter which indicates that a cheque dated July 27, 1990, for Rs. 96,885 was sent by the respondent-company to the petitioner-firm in full satisfaction of bill No. 37. Learned counsel for the petitioner-firm denies receipt of such a cheque. That apart, the letter relates to one of the six (6) alleged bills, and it is not supported by an affidavit. Therefore, I decline to consider it.

4. As already stated, no counter-affidavit has been filed by the respondent-company. In the absence of a counter-affidavit, it shall be presumed that the allegations made in the petition for winding up are admitted. In the petition, it is stated that the respondent-company had failed to pay or was unable to pay its debt. That apart, the petitioner has served on the respondent-company a demand notice requiring the respondent-company to pay the sum so due and the respondent company has for three (3) weeks thereafter neglected to pay the sum. Therefore, on the facts and in the circumstances of the case, it is concluded that the respondent-company was unable to pay its debts. As regards the "just and equitable" clause, no material has been set out in the petition or affidavit, and as such, it is not considered. In other words, a ground u/s 433(e) for winding up has been made out.

5. The next question which arises for consideration is whether a winding up order should be made in the present case. Clause (1) of Section 443 provides:

"On hearing a winding up petition, the court may--(a) dismiss it, with or without costs; or

(b) adjourn the hearing conditionally or unconditionally ; or

(c) make any interim order that it thinks fit ; or

(d) make an order for winding up the company with or without costs, or any other order that it thinks fit :".

6. Clause (1) of Section 443 lays down the various orders which can be passed by the court when hearing a winding up petition. On a reading of Clause (1) of Section 443 together with Section 433, it indicates that whether or not a winding up order is to be made is within the discretion of the court. Therefore, the court is not bound to make an order of winding up u/s 433, although a ground for winding up u/s 433(a) to (e) is made out. In the present case, I am of the opinion that it will be just and fair to give a chance to the respondent-company which has an authorised share capital of Rs. 2,00,00,000 (rupees two crores), for maintaining commercial morality, to settle with the petitioner-firm, that is to say, to pay what the company owes to the

petitioner-firm, within three (3) months from today, if the respondent-company is so inclined. I do so accordingly. The winding up petition would remain unclosed. The matter to appear in the cause list on September 5, 1991, for further orders.