Chowringhee Prakashan (P) Ltd. Vs Begwani Trade and Industries Pvt. Ltd.

Court: Calcutta High Court

Date of Decision: Dec. 20, 2012

Acts Referred: Companies Act, 1956 â€" Section 433, 434, 439

Citation: (2013) 3 CHN 524

Hon'ble Judges: Shukla Kabir Sinha, J; Ashim Kumar Banerjee, J

Bench: Division Bench

Advocate: Abhijeet Chatterjee, Mr. Jayanta Kumar Banerjee, Mr. Supriya Ranjan Saha and Mr. Sukanta Pal, for the Appellant; Rudradeb Chowdhuri, Advocate, Mr. Deep Nath Roy Chowdhury, Advocate and Mr. K.N. Jena, for the Respondent

Final Decision: Dismissed

Judgement

Ashim Kumar Banerjee, J.
The above three appeals would relate to a claim made by the three respondents being in the common

management, as against the company above named. The company was engaged in publishing news daily by the name of ""Statesman"" which had his

age old repute and glory that was decaying resulting in acute financial stringency. Newsprint suppliers were reluctant to continue supply as their

outstanding mounted up. The company approached the respondents for financial accommodation. The respondents were also in the business of

trading of newsprint. They agreed to supply newsprint by procuring from the market. Instead of direct supply from the paper mills the supply was

routed through the respondents inter alia on the following terms:-

i) The respondents would procure newsprint from the market and in turn would supply to the company that would be on forty five days credit.

ii) The respondents would charge one per cent service charges and/or commission over and above the price of the newsprint.

iii) The respondents would have reimbursement of the actual bank interest that the respondents might have to pay to their banker in case the

payments got delayed.

Initially supply continued. However, the company could not clear off the dues within the time stipulated. Amount staggered resulting in huge

outstanding to the tune of crores. The company by its letter dated June 11, 2009 acknowledged a sum of Rs. 3,18,34,478/- due as on April 30,

2009 in case of C.P. No. 78 of 2010 arising out of APO No. 76 of 2012. Similar acknowledgements were made in other two cases. There had

been subsequent acknowledgements. The respondents also gave rebate in case of APO No. 76 of 2012 to the extent of Rs. 34.5 lacs provided

the company would pay the outstanding at an early date. However, such thing did not materialize resulting in filing of the three winding up petitions

filed by the same group. The claim made in the winding up petitions were as follows:-

2. The above amount would include principal amount inclusive of interest as on November 30, 2009. The respondents claimed further interest on

the overdue amount. The learned single Judge heard the winding up petitions and disposed of the said petitions by three judgment and orders

admitting the winding up petitions. Although the amounts, for which the winding up petitions were admitted, varied the reasoning given by His

Lordship were identical. Hence, we intend to deal with all the three appeals by this common judgment.

3. If we go by the judgment and orders impugned, we find, the company raised a plea before His Lordship, the amount became disputed as the

company later on came to know, respondents overcharged by raising inflated invoices and as such they became entitled to appropriate rebate not

only in case of pending invoices but also in respect of bills and/or invoices already cleared by the company. Company in fact filed a suit inter alia

claiming for damage in view of such fraudulent activity of the respondents.

4. His Lordship rejected such contention mainly relying on the balance confirmations that were referred to above. Before His Lordship, the learned

senior counsel appearing for the company offered to pay a sum of Rs. 6.05 crores in full and final settlement of the claim of the respondents by

easy instalment. They were however not agreeable to pay any further interest on the said sum. Hence, such offer could not be accepted. His

Lordship directed payment of the sums for which the winding up petitions were admitted together with interest at the rate of fifteen per cent per

annum being the banking rate together with additional two per cent of penal interest that the respondents would be obliged to pay its banker. The

learned Judge also directed payment of one per cent service charge. Being aggrieved the company preferred the above appeals that were heard on

the above mentioned dates.

5. When we initially heard the matter we felt it prudent to give further opportunity to the company to find out ways and means to clear off their

admitted liability. Such feeling was a result of appreciation of the rival contentions made before us as well as before His Lordship as discussed by

His Lordship in the judgment and order impugned. We did not find any plausible defence that the company successfully put forward. We enquired

whether the company would be able to pay or deposit Rs. 6.05 crores so that we could give one more opportunity to the parties to go back to the

Civil Court where the suit was pending to have it adjudicated on the rival claims. We adjourned the matter on more than one occasion. Lastly Mr.

Abhijeet Chatterjee, learned senior counsel informed us that the company would not be in a position to pay or deposit Rs. 6.05 crores unless the

respondent would agree to the same. Moreover they would not pay so in one go. Pertinent to note, the amount was offered in the later part of

2009 and early part of 2010 and even after two full years the company was not in a position to pay and/or deposit the said amount. In such

circumstances we asked Mr. Chatterjee to conclude his argument so that we could dispose of the appeals finally.

6. Mr. Chatterjee handed over a written submission on behalf of the appellants. According to him, the total amount involved in these three appeals

would be Rs. 2,60,54,232/- and not beyond. According to him, in case simple interest was charged on the said amount, the amount would be Rs.

3.40 crores. He clarified his offer of Rs. 6.05 crores by saying that the said amount had been offered by taking into account the interest component

that would be applicable in view of payment being offered in easy instalments. The appellant could clear off the said amount by ninety monthly

instalments of Rs. 9.58 lacs. Since the respondents did not agree question of payment or deposit of the said sum did not arise. According to them,

the company was and still is ready and willing to pay Rs. 3.5 crores being the basic mill price and the simple interest. They were prepared to clear

off the said amount by eight to ten instalments and they were also prepared to give bank guarantee for the instalments.

7. We heard Mr. Rudradeb Chowdhuri, learned counsel appearing for the respondents who strenuously opposed the contentions of Mr.

Chatterjee by saying that the company was not entitled to back out from the acknowledgement of liability that were signed by the respondents.

8. We have considered the rival contentions. If a company was in difficulty they should be frank and candid before the Court of Law. We are

sorry to point out, the company should not have taken a dishonest approach that would cause immense injury to their past glory. The learned

Judge recorded, the company wanted to pay off the dues to the extent Rs. 6.05 crores. The learned Judge did not record the way the amount was

explained in the written notes of argument handed over to us in court. The company also did not go back to the learned Judge by making

application for correction of the judgment on that score. Once it was not done it is very difficult to go behind the acknowledgement of liability that

too, not disputed at the relevant time. In course of hearing, Mr. Chowdhury handed over an auction notice wherefrom we find, the properties

belonging to the respondents were put up for sale. Mr. Chowdhury would contend, such situation arose in absence of delay in clearing off the dues

of the bank that the respondents could not effectively do in absence of a corresponding payment from the appellant company.

9. We do not find any plausible dispute that could resist the winding up petition. The amount involved in all the three petitions would certainly

satisfy the test of applicability of Section 433, 434 and 439 of the Companies Act, 1956. Mr. Chatterjee relied upon the decision in the case of

The Company-VS-Sir Rameswar Singh reported in Volume-XXIII Calcutta Weekly Notes Page-814. Our Division Bench in the case of Sir

Rameswar (Supra) observed, ""I should like to refer to a passage in the judgment of the late Lord Justice Vaughan Williams, where he states ""in my

judgment if I am satisfied that a petition is not presented in good faith and for the legitimate purpose of obtaining a winding up order but for other

purposes such as to put pressure on a Company, I ought to stop it if its continuance is likely to cause damage to the Company."" From the facts

narrated above, we fail to understand how this decision would help the appellant. The Division Bench in the paragraph quoted (Supra) wanted to

avoid frivolous winding up proceedings. In the instant case, the company was admittedly in acute financial stringency. Over and above the defence

sought to be raised was nothing but a mala fide approach attempting to resist admission of the winding up proceeding that the learned Judge rightly

rejected.

10. The precedents on the issue would consistently say, winding up petition of a creditor could only be resisted through a bona fide dispute and

nothing else. From the facts it would be clear the parties with their eyes wide open, agreed to the terms and conditions stipulated in the agreement.

From the facts it is clear, the company was in financial stringency and their regular suppliers were reluctant to continue supply in view of huge

outstanding. At that juncture the company approached the respondent for financial support. No commercial people would agree to support

another party without any commercial gain. If the rate charged by the respondent was higher than the market rate the company was free to refuse

to accept supply, they did not do so. Company would contend, they came to know at a later stage. We refuse to believe. The company was in

business of publishing newspaper for almost a century. The main ingredient required for the purpose is news print. Hence, it is expected, the

company would know the prevalent market rate. In any event, when the respondent agreed to give rebate the company did not raise any protest.

Their protest came when the respondent insisted payment and threatened legal action. We are of the view that the defence so advanced was not

bona fide. On the proposal of repayment, the company was also not candid. They might be in financial difficulty that would not permit them to take

a dishonest approach before the Court of Law. Any individual or corporate entity might face financial stringency. However, they should be candid

to the Court of Law and ask for appropriate support. The company did not do so in the instant case. Hence, they would not deserve any sympathy

from this Court. The offer made by the company was not bona fide as we find from their conduct.

11. The respondent charged interest on interest that was perhaps not the correct approach. We would have intervened on such issue had the

company been diligent and candid enough to offer payment of the principal amount together with simple interest in easy instalments. They are not

agreeable to do so.

12. The appeals fail and are hereby dismissed.

13. The order of dismissal of the appeal would however not preclude the company to approach the learned single Judge again with appropriate

scheme of repayment and pray for simple interest instead of compound interest. In case such application is made we hope and trust, learned Judge

would certainly consider the same in accordance with law.

14. There would be no order as to costs.

15. Urgent certified copy of this judgment, if applied for, be given to the parties on their usual undertaking.

Shukla Kabir (Sinha), J.

I agree.