

(2007) 04 CAL CK 0035

Calcutta High Court

Case No: Company Petition No. 329 of 2004

Bliss Graphics (P.) Ltd.

APPELLANT

Vs

Multi Layers Plastics

RESPONDENT

Date of Decision: April 18, 2007**Citation:** (2008) 82 SCL 407**Hon'ble Judges:** Sanjib Banerjee, J**Bench:** Single Bench**Advocate:** Anil Kr. Gupta, Rakhi Shroff and S. Khaitan, for the Appellant; D.K. Basak and D. Roychowdhury, for the Respondent

Judgement

Sanjib Banerjee, J.

The petition was originally admitted for a sum of Rs. 6,04,564.63 together with interest at the rate 6 per cent per annum from 26-3-2003 by an order of 6-12-2004. However, in a departure from the usual procedure of the petition being permitted to the second stage upon its admission, by the order of 6-12-2004 the petition was disposed of upon its admission by giving liberty to the petitioner to recover the sum or the balance sum by instituting appropriate proceedings by treating the order as a decree.

2. The company applied for recalling the order and was put on terms before the order of 6-12-2004 was recalled and the company allowed to contest the petition. The company has put in cash security of Rs. 3 lakhs with the advocates of the parties as Joint Receivers in respect thereof.

3. The company did not respond to the statutory notice of 18-3-2004. The company did not initially file any affidavit opposing the order of winding up sought in these proceedings. In the affidavit which has been filed at a subsequent stage a specious explanation has been given. The company claims that it had excellent business relations with the petitioner or persons in control thereof and had been assured by the petitioner that both the statutory notice and the petition were made to keep

other creditors of the petitioner at bay and were never really intended to be gone through. Whatever the merit of such explanation, the company's stand is there in its affidavit as to the principal claim of the petitioner.

4. The company asserts that a sum of Rs. 2,18,371.59 was adjusted by the company from out of the amount due to the petitioner, against the company's claim in respect of its dealings with an associate concern of the petitioner. The company relies on a letter said to have been issued on 1-12-2003 by one Manoj Kr. Maheswari on behalf of the petitioner accepting such adjustment.

5. In respect of the balance claim of the petitioner to the extent of about Rs. 3.8 lakhs, the company claims that the petitioner had accepted in 2002 that it would give up its claim to such amount on account of material being rejected by the company or the clients of the company. The company relies on letters, it claims that the petitioner issued on 11-8-2001 and 10-4-2002 agreeing to adjust such amount from the price in respect of the future supplies to be effected by the petitioner to the company.

6. All the letters, said to have been issued on behalf of the petitioner to the company both on account of the adjustment for alleged inferior quality goods and for alleged adjustment in respect of the company's dealings with an associate of the petitioner, have been denied. The petitioner claims that such letters have been brought into existence in support of the company's false assertions. The petitioner relies on the company's lack of the response to the statutory notice and its not filing any affidavit at the earlier stage despite obtaining directions therefor, to be other indicators as to the authenticity of the documents now sought to be relied on.

7. As far as the alleged letter of 1-12-2003 said to have been issued by Manoj Kr. Maheswari is concerned, the petitioner relies on a letter addressed by some of its employees to the petitioner, with copies thereof issued to divers authorities including the Labour Commissioner, to suggest that as at 1-5-2003 the said Maheswari had resigned. The petitioner submits that a disgruntled erstwhile employee of the petitioner had been roped into service by the company to embellish its false denials of the petitioner's claim. Though the original letter or resignation of the said Maheswari is not relied upon, apparently as the petitioner's office remains closed. There is no material produced by the company to controvert the petitioner's assertion, supported by the letter issued by its employees, that Maheswari had no authority to issue any letter on behalf of the petitioner on 1-12-2003. In any event the petitioner cannot be penalised on account of the claims that the company may have had against its associate unless the petitioner expressly acknowledged liability therefore or permitted adjustment of such claims against money due to it from the company. In the absence of such letter of 1-12-2003 being acceptable, there is nothing else to suggest that the petitioner's account could be debited for the claims that the company may have had against its associate.

8. The other limb of defence is, however, different. In dealing with several sub-paragraphs of the affidavit-in-opposition that referred to the correspondence said to have been exchanged between the parties leading up to the petitioners permitting adjustment of a sum of Rs. 3,86,975.84, the petitioner had this to say in paragraph 6 of its affidavit-in-reply:

6. ... it is denied that the petitioning-creditor accepted that the materials supplied by the petitioning-creditor was of inferior quality as alleged or at all. The purported letters dated 11-8-2001, 30-8-2001 are similarly take and brought into existence with an ulterior motive to give a colour to the false case of the company. It is denied that there were any meeting or any telephonic conversation between myself and any officer of the said company or with the deponent as alleged or at all. It is denied that any letter dated 10-4-2002 was addressed by the petitioner as alleged or at all. The alleged letter dated 10-4-2002 is a fake letter and brought into existence with a view to give a colour to the false case of the company. It is denied that the company is entitled to receive from the petitioning-creditor the alleged sum of Rs. 3,86,975.84 or any sum as alleged or at all.

9. It is quite possible that the letters have been manufactured or brought into existence as suggested by the petitioner. But that is a matter of evidence that has to await trial. Manufactured documents, unless demonstrably false, afford the party relying on it to have the adjudication in proceedings other than where summary procedure applies. The benefit of the doubt ought always, to go in favour of the company and it is quite possible, despite it appearing to the Company Court that it was more than likely that such documents relied upon by the company had been manufactured, that the documents may ultimately be sustained.

10. The company is therefore, afforded the luxury of taking such balance adjustment sought, to trial and the petitioner is relegated to a suit in respect of its principal claim of Rs. 3,86,975.84. The petitioner seeks an order for security for such amount upon such claim being relegated to suit. However, when the Company Court harbours doubt as to be genuineness of the company's defense it loses authority to direct security to be furnished. In summary proceedings, just as in applications under Chapter XIII-A of the Rules on the Original Side of this Court, the order directing payment (or decree) or furnishing security is founded on the Court having concluded that the defense is moonshine or sham. Since it appears that the genuineness of the document relied upon by the company as regards the adjustment claimed on account of inferior quality of goods supplied requires to be tested, it cannot be concluded, at least as yet, that the defense taken in these proceedings on such account is completely moonshine.

11. The petition is admitted for the principal sum of Rs. 2,18,371.59 together with interest thereon at the rate of 10 per cent per annum from 1-4-2002. The company is liable to pay interest as it has relied on its accounts for the year 1-4-2002 to March 2003 and admitted in such accounts that a sum in excess of Rs. 6.13 lakhs remained

due to the petitioner as at the beginning of that financial year.

12. The company offers the security already furnished and now being held by the advocates of the parties jointly as security in respect of the amount for which the petition had been admitted and the interest thereon so that the company may contest even such part of the claim should the petitioner file a suit in respect thereof. The company is merely permitted to take back its security with all interest accrued thereon.

13. The company is permitted to pay off the entire admitted amount together with interest thereon within a period of three weeks from date. In default of such payment, the petition will be advertised once in "The Statesman" and once in "Aajkal. Publication in the Official Gazette will stand dispensed with. The advertisements should indicate that the matter would be returnable on the next available Court day four weeks after the date of publication.

14. The balance claim of the petitioner, including its claim on account of non-furnishing sales tax declaration form is relegated to a suit.

The petitioner seeks an order restraining it from instituting a suit for a period of six weeks from date.

15. The petitioner will be so restrained.