

(2013) 07 CAL CK 0081

Calcutta High Court

Case No: C.A. No. 20 of 2013 and C.P. No. 660 of 2011

In Re: Durgapur Steels Ltd.

APPELLANT

Vs

RESPONDENT

Date of Decision: July 26, 2013

Citation: (2014) 185 CompCas 71

Hon'ble Judges: Harish Tandon, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Harish Tandon, J.

This application u/s 466 of the Companies Act, 1956, is at the instance of the company praying for stay of the winding up proceeding. At the time of moving the said application the applicant-company candidly accepted its liability of payment of Rs. 1.65 crores to Shilpa Sanei and Rs. 20 lakhs to G.S. Fertilisers P. Ltd., and a further sum of Rs. 50 lakhs to the petitioning-creditor. When the matter again appeared on June 12, 2013, the petitioning-creditor submitted that they have no subsisting claim against the company because of the subsequent agreement. However, the company prays for two instalments to pay off the entire principal amount due to Shilpa Sanei and handed over two demand drafts covering the entire claim of G.S. Fertilisers P. Ltd., to the advocate of the said creditor. The company also handed over a demand draft of Rs. 82,50,000 being the half of the principal amount due to Shilpa Sanei and handed over the sum to the advocate-on-record of the said creditor. The court records those payments and directed the company to pay off the balance principal amount due to Shilpa Sanei within four weeks from date and kept the point relating to the claim of interest open and to be decided subsequently. Today the company hands over the demand draft of the rest of the principal amount to the advocate-on-record of the Shilpa Sanei and submits that those creditors are not entitled to claim any interest on the said amount.

2. Both the creditors, namely G.S. Fertilisers P. Ltd., and Shilpa Sanei, submit that the money were unreasonably withheld by the company and therefore, the creditors are entitled to claim the interest. There is some disputes raised with regard to the claim of Shilpa Sanei for the interest as those dues relate to the supply of the goods and there is no corresponding agreement for payment of the interest.

3. According to the company, the claim of Shilpa Sanei does not relate to inter-corporate deposit as submitted by the advocate on an earlier occasion.

4. This court finds that the inter-corporate deposit was made by G.S. Fertilisers P. Ltd., which has now been disputed by the company. The aforesaid creditors took me to the affidavit affirmed on behalf of the company where the company seeks a waiver of payment of interest. According to the learned advocate of the aforesaid creditors, unless there has been an express agreement to pay the interest there is no justification and/or occasion on the part of the company to plead waiver of the interest in the proceeding.

5. The company in turn says that those affidavits were taken out to show bona fide that the company agrees to pay the principal amount and the said statement cannot be co-related with an admission of liability to pay the interest in absence of any express agreement in this regard. The learned advocate appearing for the company relies upon a judgment of the Karnataka High Court in the case of Deepak Insulated Cable Corporation Ltd. Vs. Union of India (UOI) and Others, to contend that unless there has been an express agreement to pay the interest, submission of the credit bill or the invoice unilaterally, does not create a bilateral agreement.

6. The court must bear in mind that the winding up proceeding is not a recovery proceeding for enforcing the recovery of the debt. It is not a tool to realise the debts due from the company, nor could be taken out to exert the pressure on the company to pay the dues. The debt must be of an ascertained and/or definite sum. If there is some bona fide disputes so raised, the proper course which the company court should adopt is to relegate the parties to a regular civil proceeding. Furthermore, the financial solvency of the company should also be taken in mind in discharging the admitted liability and raising a bona fide disputes. In the present case the company has paid off the entire principal amount, may be after the winding up petition is advertised. All the creditors who appeared at the post advertisement stage including the present creditors have been paid in entirety. It is only the dispute relating to the payment of interest which is left to be considered in the winding up proceeding. From the admitted fact that the company has paid the entire principal amount, it is demonstrated that the company is otherwise financially solvent and that its continuance in operation would not affect the public at large. Except from a stray statement that the company has pleaded the waiver of the interest, there is no contemporaneous document forthcoming before the court which would lead to an inevitable conclusion that the company has agreed to pay the interest as claimed by those secured creditors.

7. This court, therefore, finds that the company has been able to raise a triable issue and therefore, is relegated to the civil suit.

8. The application u/s 466 of the Companies Act is allowed, meaning thereby that the winding up petition shall remain permanently stayed.

9. The official liquidator says that because of the fact that the winding up petition has already been advertised and the official liquidator has taken some steps, certain expenditure has been incurred in this regard. A photocopy of the statement of the expenditure has been handed over to the advocate-on-record of the company. The company is directed pay the said expenditure within a week from date. In default of the payment within the stipulated time, the order of stay of the winding up petition shall automatically stand recalled.