Hind Hosiery Mills Pvt. Ltd. Vs Anand Chemicals Co.

Court: Calcutta High Court

Date of Decision: Oct. 11, 2001

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

Citation: (2002) 3 CALLT 226 : (2003) 115 CompCas 739 : (2004) 50 SCL 46

Hon'ble Judges: Asok Kumar Ganguly, J

Bench: Single Bench

Advocate: S.M. Mukherjee, for the Appellant;Sakhya Sen and A.S. Sanyal, for the Respondent

Judgement

Asok Kumar Ganguly, J.
The petitioning creditor, Anand Chemicals Company, a registered partnership firm under the Indian Partnership

Act, filed this winding up petition against Hind Hosiery Mills Pvt. Ltd. (hereinafter called as the said company) under Sections 433/434/439 and

450 of the Companies Act, 1956. The said company was incorporated on or about July 7, 1948, and is a company within the meaning of the

Companies Act, 1956, having its registered office at 161/1 Mahatma Gandhi Road, Calcutta 700 007. The said company has a share capital of

Rs. 70,00,000 divided into 70,000 equity shares of Rs. 100 out of which 49,950 shares have been issued, subscribed and fully paid up.

2. It is the case of the petitioning creditor that with the said company it entered into an agreement in the month of July, 1998, for supply of

chemicals. Pursuant to such agreement, supply of chemicals commenced in the month of July, 1998, itself and bills were issued in respect of such

supply by the petitioning creditor to the said company. It is also the case of the petitioning creditor that upon receipt of the supply, the said

company did not raise any objection about the quality of the same and certain bills were paid from time to time. The payment of 11 bills dated

between May 15, 1999 and September 23, 1999, for a total sum of Rs. 1, 18,648 became due. The particulars of those bills have been given in a

separate statement which is marked B to the petition. Since the payments of the said bills have not been made, the petitioning creditor issued a

debit note of Rs. 33, 119.28 dated October 31, 2000, on account of interest up to that date on the aforesaid principal and the same was

presented before the company for payment.

3. The case of the petitioning creditor is that after the receipt of the said debit note, the said company for the first time allegedly questioned the

quality of the goods supplied by the petitioning creditor by a letter dated November 28, 2000, and, in the said letter, reference was allegedly made

to a letter dated August 10, 1999, which was never received by the petitioner. Thereafter, the petitioning creditor sent the statutory notice dated

December 8, 2000, through its learned advocate to the said company. In the said statutory notice, the petitioners stated that no particulars of the

alleged ""sub-standard quality"" in the matter of supply were ever furnished by the said company. The letter dated August 10, 1999, allegedly sent

under certificate of posting was never received by the petitioner. It was also pointed out in the said statutory notice that after August 10, 1999, the

company received chemicals from the petitioning creditor on four occasions and even made payment of bills between August 24, 1999, and

September 29, 1999. The company in answer to the said statutory notice by a reply dated January 8, 2001, introduced another letter dated June

29, 2000, allegedly sent under certificate of posting complaining of quality. The case of the petitioning creditor is that immediately on receipt of the

said letter dated January 8, 2001, which purports to be the reply of the company to the statutory notice, another registered letter dated January 17,

2001, by the petitioning creditor was sent denying the receipt of either of the two letters dated June 29, 1999, and August 10, 1999. Thereafter,

the winding up petition was presented before this court on February 1, 2001. Initially, nobody appeared for the company despite service and the

matter was posted for hearing under the heading ""unopposed matter"" on the list of April 30, 2001. Thereafter, an affidavit-in-opposition, affirmed

out of time, was forwarded by the learned advocate for the said company to the learned advocate for the petitioners and, thereafter, leave was

granted by this court on or about May 22, 2001, to the petitioner to file affidavit-in-reply and the affidavit-in-reply was filed.

4. In the affidavit-in-opposition, the stand of the said company is that they have complained about the quality of the materials which were supplied

to them and, as such, two letters were written by the said company, and the first one is dated June 29, 1999, and the second one is dated August

10, 1999. It was stated that the quality of Alfox 200 is sub-standard and, as such, on its application the cloth turned defective and it became

yellowish and there was hardness and patches on the fabrics. As such, the said company was getting complaints from its customers. Those two

letters dated June 29, 1999, and August 10, 1999, were disclosed in the affidavit-in-opposition. It is also the case of the said company that they

received several complaints from the customers. The case of the said company is that after receipt of the statutory notice, it replied by a registered

letter dated January 8, 2001, complaining of inferior quality of the materials. In the affidavit-in-opposition, it has also stated that it is not the fact

that the said company is unable to pay the debt. It has been admitted in the opposition that in view of the dispute with regard to the quality of the

materials supplied, there was delay in making payment of the prices of the materials.

5. In this proceeding, a reply has been filed by the petitioning creditor and in the said reply, it has been stated that the affidavit-in-opposition to the

winding up petition was affirmed by one Sri Nandlal Bhattar, who is neither a director, nor the principal officer of the said company. It is further

submitted that the dispute raised in the affidavit-in-opposition against the claim of the petitioners is not a bona fide dispute and it was stated that

only after receipt of the said debit note sent by the petitioning creditor on account of interest that for the first time letter was sent by the said

company on November 28, 2000, under registered post and in the said letter dated November 28, 2000, there was no reference to the letter of

June 29, 2001, purported to have been sent under the certificate of posting by the said company. It has further stated that even after the said letter

dated June 29, 1999, was purported to have been sent under certificate of posting, the company received materials from the petitioning creditor

under 4 challans and on four occasions between August 25, 1999, and September 23, 1999. It was further stated that even after August 10,

1999, the company made payment of 4 bills of the petitioning creditor between August 24, 1999, and September 29, 1999. The particulars of

such payment of bills to and receipt of goods from the petitioning creditor were sent out in annexure A to the reply. In the reply, it was reiterated

that the petitioning creditor delivered the goods as per the quality and specification and the so-called complaint of the said company was without

any substance.

6. In this proceeding, a supplementary affidavit has been filed by the company after leave was granted to file the same and to that supplementary

affidavit, an opposition was also filed by the petitioning creditor.

7. In the said supplementary affidavit, the company tried to point out that from time to time it had paid a total sum of over Rs. 2.25 lakhs and that

in view of the supply of inferior quality of materials by the said petitioning creditor, the payment was stopped. In the said supplementary affidavit,

reference was made to alleged verbal requests of the company to the petitioning creditor to improve the quality of supply, but the quality did not

improve. The payment of bill on and from the month of May, 1999, was stopped. In the said supplementary affidavit, reference was also made to

two letters dated June 29, 1999, and August 10, 1999, purported to be sent under certificate of posting and reference was also made to certain

complaints of the customers which have been annexed. In the opposition to the said supplementary affidavit, it was pointed out by the petitioning

creditor that the said supplementary affidavit was filed out of time. It was also pointed out from its own showing of the company from annexure A

of the said supplementary affidavit an amount of Rs. 1, 14,647 is due and payable by the said company to the petitioner. It was also denied that

any request was ever made to the petitioning creditor by the said company to improve the quality of its supply since the goods supplied by it was

according to the standard specification. It was also pointed out by the petitioning creditor that over the issue relating to payment of bonus disputes

arose between the employees and the management of the said company and the hosiery factory of the said company stopped functioning from

early October, 1999, and ultimately, a lock-out was declared in the first week of January, 2000. It was also stated that in view of such declaration

of lock-out, the said company was not in need of any further chemicals and as such, stopped payment of the pending bills of the petitioning

creditor. It was also stated that the alleged complaints of the customers do not show that the chemicals supplied by the petitioning creditor were

used by those customers. It is not the case of the said company that apart from the petitioners, they have not purchased chemicals from any other

source.

8. In the context of the aforesaid contentions of the rival parties, the following questions fall for decision of this court :

1. Whether, the court shall proceed to accept the complaint made by the company by its letter dated June 29, 1999, and August 10, 1999, about

the quality of supply as genuine complaints even though both the letters were sent under certificate of posting.

2. Whether the defence of the said company, in the facts and circumstances of the case, is bona fide one and whether, having regard to the nature

of dispute, the parties should be relegated to a suit.

3. The third question virtually arises out of the second one namely, whether, the defence of the company based on the poor quality of supply, in the

facts and circumstances of the case, can be said to be a bona fide defence.

9. On the question of the letters being sent under certificate of posting and the presumption arising out of the same, several decisions were cited

before this court.

10. The first of those decisions was of a Division Bench judgment in the case of Ramashankar Prosad and Others Vs. Sindri Iron Foundry (P) Ltd.

and Others, . The said case was also in respect of a matter under the Companies Act, 1956, and the question was one of relief against oppression

under Sections 397, 399 and 402 of the Companies Act, 1956. In that connection, the question which cropped up was whether notice of the

meeting was properly served on the parties. The notices in question were sent under certificate of posting. Construing the effect of such notices, the

learned judges in para. 50 of the judgment observed as follows (p. 528) :

In my opinion, the conclusion is irresistible that these notices had never been put in the post, although certificates of posting purported to have

been obtained in respect thereof. It is only too well known that certificates of posting can be got hold of without actually putting letters in the post

and the respondents must have adopted that course so far as the board meeting of January 22, 1963, or the extraordinary general meeting of

February 21, 1963, was concerned.

11. The next case cited on this point was the decision rendered between Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral and Anr, . That was a

case of preventive detention under COFEPOSA. The question which arose for consideration of the apex court was whether a letter containing

retraction of confession by the detenu sent under certificate of posting should be accepted by the court. The court after considering the facts of the

case held in para. 6 page 1194 of the report as follows (p. 318) :

We are satisfied that the alleged letter of retraction was only a myth. The certificate of posting might lead to a presumption that a letter addressed

to the Assistant Collector of Customs was posted on August 14, 1980, and in due course reached the addressee. But, that is only a permissible

and not an inevitable presumption. Neither Section 16 nor Section 114 of the Evidence Act compels the court to draw a presumption. The

presumption may or may not be drawn.

12. The learned judges in the said paragraph further held that the presumption may be drawn initially but the court on a consideration of the

evidence may hold that the presumption is rebutted and may arrive at a conclusion that no such letter was ever despatched or sent. The learned

judges also made it clear that there are cases where such postal services and postal seals have been found to be manufactured.

13. The next case cited on this point was rendered by a Division Bench of the Madras High Court in the case of Malleswara Finance and

Investments Co. Pvt. Ltd. v. Company Law Board [1995] 82 Comp Cas 836. In that case, the decision of the Company Law Board on the

question of oppression under Sections 397 and 398 of the Companies Act 1956, came up for consideration before the court. Before the Division

Bench, the learned counsel for the appellant relied on certain documents sent under certificate of posting and relied on provisions of Section 53 of

the Companies Act, 1956, in order to urge that articles sent under certificate of posting must give rise to a presumption u/s 53 of the Companies

Act, 1956.

14. The court, after considering the said section, opined that such presumption can only be drawn when there is no other evidence available.

15. The learned judges held in that case that the primary evidence regarding posting of letters was not produced. The best evidence in such a

situation, according to the learned judges, has been mentioned in page 882 of the report which I quote below :

The best evidence that can be produced in this case is the dispatch register of the company, and the books of account showing the expenses

incurred by the company for posting the letter, etc. None of these documents is produced. When the primary evidence is not produced, a

presumption on the basis of Section 53(2) of the Companies Act cannot be made use of since the posting of the letter is in dispute. Only if a

document is sent by post, the presumption u/s 53 of the Companies Act can arise. When there is no evidence regarding the posting of the letter,

the document relied on by the appellant cannot be made use of.

16. To the same effect is the judgment of the Punjab and Haryana High Court in the case of Bhankerpur Simbhaoli Beverages P. Ltd. v. Sarabhijit

Singh [1996] 86 Comp Cas 842 . In that case also, the question relating to the presumption of notices sent under certificate of posting came up for

consideration and the learned judge relied on the judgments of the hon"ble Supreme Court in Mst. L.M.S. Ummu Saleema Vs. Shri B.B. Gujaral

and Anr, and also of the Madras High Court in Malleswara Finance and Investments Co. Pvt. Ltd. v. Company Law Board [1995] 82 Comp Cas

836 and came to the conclusion that as the despatch register for sending those letters or the books of account showing expenses incurred towards

posting of those letters have not been produced, no reliance can be placed on the certificate of posting under which notices were allegedly sent to

the director (see 863 and 864 of the report).

17. In the instant case also, the dispatch register has not been produced by the said company, nor has it produced any account to show the

expenses incurred for sending those notices. Even the certificates of posting have not been annexed to any of the affidavits filed by it. The company

had got notice of the fact that the petitioning creditor was disputing the genuineness of those notices allegedly sent under certificate of posting from

the very beginning, viz., from the statutory notice itself, which was sent by it on December 8, 2000, and also its subsequent letter dated January 17,

2001. Apart from that, the said company did not refer to the letter dated June 29, 1999, said to have been sent under certificate of posting in its

subsequent letter dated November 28, 2000. In that letter dated November 28, 2000, only one letter allegedly sent under certificate of posting,

viz., letter dated August 10, 1999, has been referred to.

18. Thus the stand of the company is very unusual and, therefore, the subsequent introduction of the letter dated June 29, 1999, in its reply dated

January 8, 2001, to the statutory notice is highly suspicious.

19. Apart from the fact, it is an admitted position that even after allegedly sending those two letters dated June 29, 1999, and August 10, 1999,

which purportedly contains complaints about the quality of supply the said company had gone on paying the bills of the petitioning creditor at least

on four occasions. This conduct is highly unusual on the part of a company which is complaining of the quality of the materials supplied. Learned

counsel for the company has however tried to salvage this position by saying that the payment was made only in respect of one of the two

chemicals, viz. Igsurf and not in respect of Alphox 200 in respect of which there is complaint about its quality. Such a case was not made out in the

affidavit-in-opposition, which was initially filed in the winding up petition. On the other hand, in para. 4(e) of the affidavit-in-opposition, the

complaint about the quality of Igsurf was also made.

20. So in the facts and circumstances of this case and considering the principles decided on several cases referred to above, this court cannot

persuade itself to conclude that the letters dated June 29, 1999, and August 10, 1999, allegedly sent under certificate of posting were actually sent

by the said company and the defence allegedly raised on the basis of those two letters is not acceptable to this conduct as bona fide defence.

21. Now, the question which falls for consideration is whether the defence raised otherwise, apart from those two letters is a bona fide defence of

the said company.

22. A few things may be clarified at this stage. There is no dispute about the supply and the delivery of the goods. There is no dispute that the bills

were raised by the petitioning creditor and the same were accepted and payment was made from time to time by the said company. Now the only

dispute is about the quality and from the facts of the case, it is clear that the said dispute was raised only after the said company sent its debit note

dated October 31, 2000, indicating the amount payable towards interest on the delayed payment of the principal amount. It may be significant to

note that the reply of the said company dated November 28, 2000, to the debit note dated October 31, 2000, was sent under registered post with

A/D. So it is not the case that the said company was always sending all its letters under certificate of posting. This further makes the defence of the

said company, on the letters sent under certificate of posting, look very suspect and unworthy of credence.

23. Now coming to the question what is meant by a bona fide dispute, this court may consider the decision of the Court of Appeal in case of

Welsh Brick Industries Ltd., In re [1946] 2 All ER 197. Lord Greene, Master of the Rolls, speak''ing for the Court of Appeal held that there is no

difference between a bona fide dispute and dispute on substantial ground. However, the learned judge held that even though leave to defend has

been given in a winding up action that does not prevent the company judge from exercising his discretion to find out whether it is a bona fide

dispute and for the said purpose, the judge may go into the evidence, which is placed before him.

24. Considering the facts and circumstances of the case, the learned judges of the Court of Appeal held that the county court judge has come out

with the right conclusion that there was no bona fide dispute about the dues of the petitioning creditor. Therefore, the court was of the view that a

mere probability of a defence is not enough to deny relief to the petitioning creditor in a winding up proceeding. What has to be established is the

existence of a bona fide dispute which is likely to succeed.

25. The next judgment on this point cited before me by both the sides is the decision in the case of Madhusudan Gordhandas and Co. Vs. Madhu

Wollen Industries Pvt. Ltd., . In para. 20 of the said judgment, the principles have been laid down as follows :

First of all if the debt is disputed bona fide and the defence is a substantial one, the court will not wind up the company. In para. 21 of the said

judgment it has been further elucidated by the learned judge by saying that the principles on which the court acts in such a situation are, firstly the

defence of the company is in good faith and one of some substance and secondly, the defence is likely to succeed in point of law and thirdly, the

company adduces prima facie proof of the fact on which its defence depends. Therefore, the principles laid down by the hon''ble Supreme Court

and the principles laid down by the Court of Appeal in Welsh Brick Industries Ltd., In re [1946] 2 All ER 197 are virtually the same.

Following those aforesaid principles, if this court looks at the nature of the dispute raised in this case, this court finds that the alleged dispute is

raised only in respect of quality of supply.

Reference in this connection made to the decision of the Calcutta High Court in the case of T. P. Sahu and Sons Pvt. Ltd. [1982] 52 Comp Cas

182.

26. In that case the learned judge held that looking at the dispute as a whole and also taking into account the conduct of the company, the court

was satisfied that the company was trying to raise a frivolous dispute and was trying to create confusion. The goods in that case were accepted by

the company without any objection which will appear from the challan and the company did not raise any objection to the bills which were

presented on several dates for payment. In the instant case also the company has not raised any dispute about the delivery of the goods including

the date of delivery. The company also made certain payments from time to time but suddenly stopped payment on the alleged ground of inferior

quality of goods and this ground was raised only after the petitioning creditor served its debit note on the company.

27. In the case of T. P. Sahu and Sons Pvt. Ltd. [1982] 52 Comp Cas 182 (Cal) the learned company judge refused to accept the letter sent by

company under certificate of posting. This court has also taken the same view in the facts of this case discussed above.

28. Reference in this case may also be made to a decision of the Division Bench of the Delhi High Court in the case of Chem-Crown India Ltd. v.

Sports Equipment Private Ltd. [2001] 103 Comp Cas 1002. In that case goods were supplied to the company by the petitioning creditor for a

long period of time. There was no complaint about quality but the complaint about quality was made after its use in the manufacture of the products

which were sold to customers. In that case the sale contained a stipulation that responsibility of the seller of the goods ceased upon the goods

leaving the seller''s factory premises. In that case adhesives were supplied and complaints were made only after the adhesives were consumed in

the manufacture of shoes and shoes were sold to the retailers and other customers. In the instant case also all the complaints of the company''s

customers are all June, 1999. No complaints were made when the goods were delivered to the said company. There was no pleading in this case

also that the quality of the chemicals could not be tested before the company supplied them to the customers. It is, therefore, clear that the

complaints about poor quality of the goods were not made by the company but by the customers of the company after the goods had been used.

In that view of the matter, this court finds that in the instant case also on the same parity of the reason which was followed by the judges in the case

of Chem-Crown India Ltd. v. Sports Equipment Private Ltd. [2001] 103 Comp Cas 1002 (Delhi) the disputes raised cannot be called bona fide

disputes.

29. The learned counsel for the company also cited a few decisions in support of his case. Learned counsel submitted that in this case the goods

supplied are chemicals. Unless the goods are processed and used, its quality cannot be judged. Therefore, in the instant case, the complaint about

the quality was made only after the complaints are received from the customers of the company. Learned counsel further submitted that there is no

case of commercial insolvency of the company and in the absence of the commercial insolvency of the company, no case of winding up can be

made out. Learned counsel relied on the decision in the case of T. Srinivasa v. Flemming (India) Apotheke Private Ltd. [1990] 68 Comp Cas 506.

Learned counsel relied on the said judgment in order to contend that the jurisdiction of the company court is summary in nature and it has no

power to assess the evidence. In a case, where claim is disputed by the party the same should be relegated to a suit. Learned counsel also relied

on a decision in the case of U.V. Shenoy v. Karnataka Engineering Products Co. (P.) Ltd. [1981] 51 Comp Cas 116 (Karn). Learned counsel

submitted by referring to the facts of that case that goods supplied to the company were substandard and the contract was cancelled by the

company. Therefore, the court held that it is not a fit case for winding up of the company. Reliance was placed by learned counsel for the company

on the case of Fred Hausmann AG v. Bio-Solar P. Ltd. [1987] 61 Comp Cas 714 (Delhi). In that case, the petitioner, a Swiss company, filed a

winding up proceeding against the respondent-company on the ground that certain machinery was supplied by the Swiss company to the

respondent-company. But, the respondent-company defaulted in paying the entire price of the machinery despite repeated demands. Statutory

notice was also served by the petitioner-company to the respondent-company because the order was placed by the N. S. I. C. and not by the

respondent-company and this plea of the respondent-company was supported by N. S. I. C. The second defence was that the machinery was

damaged due to defective packing by the petitioner-company and even though this was pointed out, the petitioner company refused to rectify the

defects. As such it was held that the petitioner-company was not entitled to the relief claimed for. In the facts of those cases, the learned judges

held that there was a bona fide and substantial dispute about the liability of the respondent-company to pay the amount which formed the subject

matter of the winding up petition. Apart from that, the court also held that the winding up petition was time-barred inasmuch as the petition was

filed on February 10, 1984, and the debts which were mentioned in the winding up petition were of June, 1980, September, 1980, and invoice

was dated January 20, 1981. In view of those facts pointed out above, the winding up petition was dismissed. Therefore, the ratio in the said

decision was arrived on totally different facts and is not attracted here.

30. Learned counsel for the said company also relied on a decision in the case of Bengal Luxmi Cotton Mills Ltd. and Others Vs. Mahaluxmi

Cotton Mills Ltd. and Others, . Learned counsel relied on the said judgment in order to contend if there is nothing to show that if the dispute is

decided against the company, the company is unable to pay the debts and there is no present proof of insolvency, it would be wrong to pass a

winding up order. Reliance was placed in para. 7 of the said judgment.

31. This court finds that in the winding up petition itself, there are averments made in paragraph 17 and 18 to the effect that the company did not

file its balance-sheets for the period subsequent to March 31, 1996, to suppress its financial position and thus committed statutory defaults. It has

also been stated in para. 18 that the current liability of the company is amounting to Rs. 62,04, 161 and it exceeds the value of the assets of the

company amounting to Rs. 29,73, 143 and on the basis of those factual decisions, it has been stated in para. 19 that it is clear that the financial

substratum of the company is lost and the company is unable to pay its debts. These facts have been dealt with in para. 10 of the affidavit-in-

opposition. But the specific averments made in paragraphs 17 and 18 have not been denied. There is any vague denial that the financial position of

the company is precarious. In my view, the same is not a denial of the positive assertions made in paragraphs 17 and 18 of the petition. In the

absence of any specific denial, the factual position which is prevailing in this case is different from the factual position indicated by the Division

Bench in Bengal Luxmi Cotton Mills Ltd. and Others Vs. Mahaluxmi Cotton Mills Ltd. and Others, Therefore, the principles decided there are not

attracted.

32. Mr. Sen also relied on a Division Bench judgment of this court in the case of Kothari Marketing Pvt. Ltd. v. Shri Ramesh Doshi [2003] 115

Comp Cas 272 ; [2000] CWN 663. In that case an appeal was filed against the judgment of a learned single judge in which the learned single

judge admitted the winding up petition and directed the appellant-company to pay the petitioning creditor a particular sum by way of principal

amount and interest therein and the cost of winding up application.

33. In the case of the Division Bench judgment, the learned judges found that the debt of the company was disputed even though the decision of

the learned single judge is based on the admission of the appellant-company in the affidavit-in-opposition. The learned judges of the Division Bench

perused the said affidavit-in-reply and set out para. 5 of the same. From a perusal of para. 5 of the same, the learned judges of the Division Bench

came to the conclusion that there is no admission by the appellant-company. On the other hand, the appellant-company has seriously disputed the

claim of the petitioning creditor. In the context of those facts, the learned judges in para. 7 have held that the winding up petition is not maintainable

inasmuch as the claim of the petitioning creditor is seriously disputed. Those facts are not present in this case and the decision of the Division Bench

rendered on the peculiar facts of that case cannot be made applicable here.

34. Mr. Sen also relied on another judgment of the Rajasthan High Court in the case of Asu Singh Rajput v. Gehlot Enterprises ltd. [1994] 1

Comp LJ 449. Learned counsel relied on para. 4 of the said judgment. In that case, the winding up petition was based on an alleged promissory

note and statutory notice was served by the petitioning creditor calling upon the company to pay the money mentioned in the promissory note along

with interest. The company failed to pay the same and the winding up petition was filed. The company resisted the said claim on the ground that the

promissory note was a forged document and on the basis of forged document no debt can be recovered. The court ultimately held that since the

company has raised a prima facie bona fide dispute about the claim of the petitioning creditor the party should be relegated to the suit. From the

facts of that case, it appears that in respect of the purported promissory notes, an FIR was lodged and an investigation was conducted by the

police. In the background of those facts, the learned judge held that the machinery of winding up proceeding cannot be pressed into service to

enable the petitioning creditor to realise its debts on the basis of documents in respect of which fraud and forgery has been alleged. Those facts are

not present in this case. As such the said decision in the case of Asu Singh Rajput v. Gehlot Enterprises Ltd. [1994] 1 Comp LJ 449 has no

application in the facts of this case.

35. So for the reasons aforesaid, the winding up petition is admitted. It has to be advertised once in Times of India, Kolkata Edition and once in

Aajkal and advertisement in Calcutta Gazette is dispensed with. The advertisement is to be published within a period of 6 weeks from today. If the

company in the meantime pays the sum of Rs. 1, 18,648 together with interest therein at 15 per cent. per annum from December 8, 2000, until

payment on or before the expiry of the said period of 6 weeks from today, the winding up petition will remain permanently stayed. In default of

payment, the stay will stand vacated and the winding up petition will be advertised as directed and appear in the list of the learned company judge

on December 3, 2001. There will be no order as to costs.