

(2008) 11 DEL CK 0216

Delhi High Court

Case No: C.O. Petition No. 211 of 2005 and C.A. No's. 880-881 of 2005

Cross Link Cargo Management
(P.) Ltd.

APPELLANT

Vs

Amrit International Rice Co. Ltd.

RESPONDENT

Date of Decision: Nov. 4, 2008

Acts Referred:

- Companies (Court) Rules, 1959 - Rule 130
- Companies Act, 1956 - Section 433, 434, 435, 436, 437

Citation: (2009) 89 SCL 399

Hon'ble Judges: Gita Mittal, J

Bench: Single Bench

Advocate: Rajdeepa Behura, for the Appellant;

Final Decision: Dismissed

Judgement

Gita Mittal, J.

This petition was filed at the instance of M/s. Cross Link Cargo Management Private Limited u/s 433 of the Companies Act, 1956 seeking winding up of the respondent M/s. Amrit International Rice Company Limited on the ground that despite service of notice dated 29-4-2005 under Sections 433 - 439 of the Companies Act, 1956, the company has failed to meet its liability. I find that the respondent-company has sent a reply dated 7-5-2005 setting up the ground of financial constraints for non-payment. It is evident thereby that the company has admitted the liability to pay the sum of Rs. 1,26,246. The petitioner has contended that despite the lapse of a period of two weeks sought in the letter dated 7-5-2005 to make the payment, the payment has not been made for the period of over three years which has lapsed.

2. On consideration of these facts, a view was taken that a case u/s 433(e) of the Companies Act, 1956 read with Section 434 of the Companies Act, 1956 for winding up of the respondent-company was made out. The petition was accordingly

admitted for hearing by the order passed on 18-4-2006 and the Official Liquidator attached to this Court was appointed as the provisional liquidator to take steps with directions to take into custody assets of the respondent company.

3. The Official Liquidator has filed a status report dated 8-2-2007 wherein it is submitted that the registered office of the company stated to be located at 204, Ideal House, 69, Nehru Place, was actually the office of some other company. One Shri Ram Lal who introduced himself as ex-director of the company had handed over a copy of the land agreement whereby it was shown that the company was merely renting space. For this reason, no registered office could be sealed.

4. Pursuant to the notice under Sections 454, 455 and 456 of the Companies Act, 1956 and Rule 130 of the Company Court (Rules), 1959, Shri Dinesh Kumar Khaitan, Shri Raghvendera Khaitan and Shri Ram Lal Chauhan appeared before the Official Liquidator and filed a statement of affairs. An amount of Rs. 15 which was shown as cash in hand was handed over to the Official Liquidator. As per the report dated 8-2-2007 of the Assistant Official Liquidator, the company in liquidation was a trading company and has no plant and machinery. It has only an asset of Rs. 64,389 which was shown as bank balance. Based on this report of the Official Liquidator, an order dated 7-12-2007 was passed permitting the Official Liquidator to invite claims from the creditors by issuing individual notices and posting the same on the website of this Court and the Ministry of External Affairs.

5. I find that a report dated 31-10-2008 has been filed to the effect that pursuant to the orders passed by this Court, claims were invited by notice dated 4-4-2008. Individual notices were also issued. As per the information given by the ex-directors, notices to the creditors were also sent to the Deputy Registrar (Co.) of this Court as well as the Ministry of Corporate Affairs to display the same on the website. The Official Liquidator has reported that no claims have been received.

6. In the above background, it is clearly evident that the respondent company is not in a position to discharge its admitted debts. The Official Liquidator who has already filed a report to the effect that the company did not own any immovable assets. The only asset of the company as could be traced out is an amount of Rs. 64,389 in cash. It would therefore be just and equitable if the company is wound up. The company is ordered to be wound up. Accordingly, the Official Liquidator attached to this Court is appointed as the liquidator of the company who shall take charge of the assets, books and records of the company forthwith. Fresh citation be also published in "Statesman "(English edition) and" Veer Arjun" (Hindi edition) by the Official Liquidator cost of which shall be borne from the aforesaid account of the company in Union Bank of India. Intimation to this effect be sent to the Registrar of Companies. The Registry shall inform the Official Liquidator in prescribed form about the winding up order of the company.

7. List on 28-1-2009 for status report of the Official Liquidator.

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8. In view of the order passed in company petition, these applications shall stand dismissed.