

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Company Appeal No. 58 of 2015 (O&M)
DATE OF DECISION: 29.04.2016

M/s Shi tal Fibers Ltd.

.... Peti ti oner

versus

M/s Indi an Acryl ics Li mi ted

..... Respondent

**CORAM: - HON' BLE MR. JUSTICE S. J. VAZIFDAR, ACTING CHIEF JUSTICE
HON' BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Al ok Kumar Jain, Advocate for the appellant

Mr. Amandeep Si ngh, Advocate for the respondent

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S. J. VAZIFDAR, ACTING CHIEF JUSTICE:

This is an appeal against the order of the Learned Company Judge ordering the petition filed by the respondent for winding up the appellant to be admitted in the event of the respondent not settling the petitioner's dues.

2. The respondent i.e. the petitioning-creditor filed a petition for winding up the appellant *inter alia* on the ground that it is unable to pay its debts. The respondent's claim is for the price of goods *viz.* acrylic yarn, sold and delivered by it to the appellant. The claim in the sum of Rs. 8,92,723/- is on account of the balance amount due under four invoices.

3. The receipt of the goods is not denied. The appellant also admits having appropriated the goods in respect whereof the claim has been raised, but contends that the goods were not of the requisite quality. The defence is not bona-fide. The order of the Learned Company Judge must, therefore, be upheld.

4. There indeed were disputes regarding the quality of a part of the consignment. However, admittedly, the respondent granted the appellant credit in the sum of Rs. 6,22,073/- in respect of the goods that were returned by the appellant to the respondent claiming the same to be defective. The respondent also granted the appellant credit in the sum of Rs. 5 lacs on account of the dispute regarding the quality of a further quantity of the said goods.

5. The question is whether there is a *bona fide* dispute as regards the rest of the consignment in respect whereof the respondent makes its claim.

6. The appellant relies upon a statement of account for the period 01.04.2007 to 27.05.2009 prepared by the respondent which refers to the aforesaid credit granted by the respondent of Rs. 6,22,073/- and Rs. 5 lacs on account of the goods returned and on account of the quality of a part of the goods not meeting the contractual specifications. It is contended that this ought to lead to the inference that the appellant's case that further quantities of the goods were also defective.

7. The contention is not well-founded. We see no reason to draw such an inference. Indeed, the grant of credit would also indicate that the respondent fairly acknowledged the defects when there were any and that the rest of the consignment met with the contractual specifications. It is necessary, therefore, to examine the other surrounding facts and circumstances to judge the rival contentions.

8. Firstly, when the appellant raised a dispute about the quality and the same was acknowledged by the respondent it was

reflected in its conduct by the grant of credit. It is reasonable to presume that if there were any other defects and, in any event, if the appellant's case was that the goods were defective, it would have recorded the same in some manner or the other. The appellant, however, contends that the discussions in this regard were only oral. In the facts of this case it is difficult to accept this contention. The appellant's case has varied between its reply to the statutory notice and its written statement.

The respondent served a statutory notice dated 25.08.2008. The appellant's reply dated 10.09.2008 to the statutory notice does not refer to an oral agreement much less an agreement by the respondent to pay the appellant compensation for the alleged defective goods. This belies the defence now raised in the reply.

9. There is yet another fact which clearly disentitles the appellant to any credit in respect of the balance goods. The appellant, admittedly, retained the goods and, in fact, used the goods, namely, synthetic yarn, in the manufacture of its products, such as, blankets. Having done so, the appellant cannot refuse to pay for the same. If the goods were defective, the appellant ought to have rejected the same. Having utilized the raw material supplied by the respondent, it is now not even possible for the appellant to return the same to the respondent.

Moreover, the appellant nowhere raised the contention that its customer, who purchased the final product, raised grievance regarding the quality of the product. Moreover, the appellant has not furnished any details regarding its transactions with its customers involving the sale of goods manufactured from the raw material supplied by the respondent. There is nothing to

indicate that the appellant suffered any damages on account thereof or that the appellant was not paid for the same.

10. In these circumstances, the learned Judge rightly rejected the appellant's contentions. In our opinion, there is no *bona fide* dispute raised by the appellant in respect of the respondent's claim.

11. This leaves for consideration a question of law raised by the appellant. We deal with this question only because it is not the first time that it has been raised before us. It is contended on behalf of the appellant that a petition for winding up a company under Section 433 read with Section 434 of the Companies Act, 1956 is maintainable only if the company has admitted the debt. The contention is not well-founded.

12. As Mr. Amandeep Singh, the learned counsel appearing on behalf of the respondent, rightly submitted, the test is whether there is a *bona fide* dispute or not and whether the company has admitted the claim or not. In most cases, the company sought to be wound up does not admit its liability. It can hardly be suggested that merely because a debt has not been specifically or impliedly admitted a petition for winding up is not maintainable. We agree with Mr. Amandeep Singh that such a view would render the provisions of Sections 433 and 434 of the Companies Act nugatory despite the fact that the company raises no *bona fide* dispute whether of law or of fact. A company can hardly resist a winding up petition even where the debt is established merely on the ground that it has not admitted the debt. A view to the contrary would result in a company being able to resist a well-founded claim without even a false denial of its liability.

13. It was then contended that the learned Judge has not specified the extent of the appellant's liability. As we mentioned earlier, the learned Company Judge ordered the petition to be admitted only in the event of it not satisfying the respondent's claim. In paragraph-11 of the impugned order, the learned Judge granted the appellant an opportunity "to settle the accounts with the petitioner-company by 31.12.2015." The learned Judge has not specifically mentioned the amount in the operative part of the order. The order obviously granted the appellant an opportunity to pay the amount. This is what is meant by the words "to settle the accounts with the petitioner-company (i.e. the respondent in the appeal)". Although the learned judge has not specified the amount in the operative part of the order, he has referred to the same in the body of the judgment including in paragraph-2. The learned Judge has, therefore, expressly referred to the amount payable by the appellant to the respondent.

14. By an order dated 24.12.2015, a Division Bench of this Court issued notice to the respondent. The Court also stayed the publication of the admission notice subject to the appellant paying the amount in question by 31.12.2015. The appellant paid the same and thereby availed the benefit of the stay order.

15. In view of our finding that there is no *bona fide* dispute, there is no question of directing the respondent to repay the amount. Thus, in view thereof, while the respondent is entitled to retain the amount, the petition is liable to be dismissed on account of the appellant having satisfied the respondent's claim to the extent mentioned in the impugned order.

16. The invoices do not provide for interest. Nor is there any other document or agreement that provides for interest. However, the respondent claimed interest albeit for the first time by the statutory notice @ 24% per annum. We are, however, not inclined to enter into the question as to whether the appellant is also liable to pay interest to the respondent. The Learned Company Judge has not referred to the issue of interest. Further, the respondent has neither sought a clarification from the Learned Judge regarding the quantum to be paid by the appellant to the respondent nor filed an appeal on the ground that the Learned Judge has not taken into consideration the element of interest. The question of interest is, therefore, kept open.

17. In the circumstances, the appeal is dismissed and the respondent shall be entitled to retain the amount paid pursuant to the order dated 24.12.2015. It is clarified that in view of this payment, the petition itself does not survive. This is, however, without prejudice to the respondent's contention regarding interest which may be claimed either by way of an application for clarification before the Learned Judge or by way of an appeal or by any other proceedings.

There shall, however, be no order as to costs.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

29.04.2016
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(ARUN PALLI)
JUDGE

Note: Whether reportable: YES

