

**Keerat Kaur and others v. Patiala Exhibitors Private Ltd. (Aey Cee Cinema), Patiala (I. S. Tiwana, J.)**

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the employee to become regular or permanent against a job which continues or the nature of duties is such that colour of contractual engagement is given to take it out from the principal clause, then such agreement shall have to be tested on the anvil of fairness of *bona fide*". It was held therefore, that clause (bb) of Section 2(o) of the Act cannot be extended to such cases, where the job continues and the employee's work is also satisfactory, but periodical renewals are made to avoid regular status being conferred upon him.

(7) Reference was next made to *Dalip Hanumantrao Shirke and Ors. vs. Zila Parishad, Yavatmal and others*, (3), where it was held that the amended sub-clause (bb) of Section 2(o) of the Act would apply to only such cases where the work ceases with the employment or the post itself ceases to exist or such other analogous cases where the contract of employment is found to be fair, proper and *bona fide*. It was observed there that it was always open to the Court to examine the case and protect the workman against abuse of the amended provision.

(8) No occasion is, however, provided for the application of the principle enunciated in the judicial precedents cited, keeping in view the fact that it was never the plea of the petitioners that the work for which they had been employed was continuing or that their repeated appointments were a mere device to deny them regular or permanent status.

(9) The impugned Award of the Labour Court thus warrants no interference in writ proceedings. This petition is accordingly hereby dismissed. In the circumstances, however, there will be no order as to costs.

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R.N.R.

*Before I. S. Tiwana, J.*

**KEERAT KAUR AND OTHERS,—Petitioners.**

*versus*

**PATIALA EXHIBITORS PRIVATE LTD. (AEY CEE CINEMA),  
PATIALA,—Respondents.**

*Company Petition No. 144 of 1987.*

6th September, 1990.

*Companies Act, 1956—Ss. 433E, 434A & 439—Companies (Court) Rules, 1959—Rl. 21—Creditors Petition for winding up—At the stage*

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(3) 1990 Lab. I.C. 100.

of admission of Company Petition, persons who may be interested other than parties in the winding up have right and locus standi to be heard.

Held, that the Court has discretion to hear any other person i.e. other than the parties, who may be interested in the winding up on public grounds or otherwise. Where a stage is reached as to issuance of notice to the Company to show cause why the petition should not be admitted, there is no logic or rationale that other share-holders, who are members of the Company have no right to be heard at this stage i.e., at the time of admission of the petition. Hence, it has to be held that such persons have locus standi in the matter. (Para 6)

*Petition by Creditors under section 433(e), 434(1) (a) and 439 of the Companies Act, 1956 praying that:—*

(a) *The Company M/s. Patiala Exhibitors Private Limited, Theatre Building, The Mall, Patiala be wound up by the Court under the provisions of the Companies Act, 1956; and*

(b) *such other order may be made in the premises as shall be just.*

Mr. N. K. Sodhi, Sr. Advocate (Nipun Mittal & S. K. Hirajee, Sr. Advocate with him), for the Petitioner.

J. S. Narang, Advocate. for the Respondent.

#### JUDGMENT

*I. S. Tiwana, J.*

(1) Smt. Keerat Kaur and others have filed this petition for winding up of the respondent-company on the following pleas :

They own 169 shares out of 280. The company is indebted to them to the following extent :—

<u>Sr. No.</u>	<u>Name of the petitioner</u>	<u>Amount of debt.</u>
1.	Smt. Keerat Kaur wife of Shri Hari Dhan Singh	Rs. 2,79,050.05
2.	Shri Hari Dhan Singh	Rs. 48,041.72
3.	Smt. Praveen Kaur daughter of S. Hari Dhan Singh	Rs. 17,000.00
4.	Smt. Gobind Kaur daughter of Sh. Hari Dhan Singh	Rs. 16,960.00

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All these loans were advanced to the company in the year 1978 and find mention in its account books and the balance sheet for the year ending 30th June, 1985. (A photo copy of the audited balance-sheet duly signed by the Managing Director and other directors is Annexure P-1 to the petition). It had also been approved in the Annual General Meeting of the company held in the year 1985. These amounts, of course, form part of the total amounts of Rs. 8,37,421.32 and Rs. 1,20,960 shown payable to the sundry and unsecured creditors respectively. Even in the books of accounts for the subsequent years these are duly mentioned. Though the petitioners were in dire need of money during the years 1986/1987 yet on account of the poor financial position of the company the petitioners accommodated the company for some time. Ultimately petitioners' *mukhtiar-e-aam* (General Attorney) Shri Brij Mohan Handa, addressed a letter to the Managing Director of the Company indicating that they cannot wait any further for the repayment of these loans and the company should arrange to make the payments at the earliest. Copy of this letter is Annexure P-4. The Managing Director Shri Jujhar Singh replied to this letter on 19th August, 1987, expressing the inability of the company to repay these amounts. Copy of this reply is Annexure P-5. Thereafter, a notice (dated 2nd November, 1987) under section 434 of the Companies Act was personally delivered to the Managing Director of the Company by hand on 3rd November, 1987, stating that in case the latter failed to make the repayment in question within a period of three weeks from the date of the delivery of the notice, it would be presumed that the company was unable to pay its debts and the appropriate proceedings for its winding up would be initiated. Copy of this notice is Annexure P-6 to the petition. Despite the service of this notice the company has failed to make the payment. As a matter of fact, it never responded to the notice. By that time one of the creditors of the company i.e. the Punjab and Sind Bank had even filed a suit in the Court of Sub Judge 1st Class, Patiala, for the recovery of Rs. 44 lacs 50 thousand with interest from the Company and its guarantors. That suit is still pending. According to the petitioners the total claim thus due to them is Rs. 3,61,051.77 i.e. the principal amount and the interest thereon at the rate of 18 per cent per annum.

(2) Though the respondent-company has been sued through Shri Jujhar Singh as its Managing Director yet a detailed reply to

the petition has been filed by Shri Pushpinder Singh Dhillon claiming himself to be the Managing Director of the company. Besides raising the legal plea that the petition is not supported by a duly sworn affidavit, as per the requirements of rule 21 of the Companies (Court) Rules, 1959, it is highlighted therein that up to 31st December, 1985, Hari Dhan Singh petitioner himself was the Managing Director of the Company and he was not maintaining any proper accounts. He maintained these in the manner he liked. The management during its tenure had adopted a methodology to cyphon out the money of the company or its profits under various heads like the festival account, establishment expenses and T.A. etc. He deliberately created a situation that the company appeared to be running in loss and unable to meet its day-to-day expenses. He even chose to make a mention of the self created loans in the account books of the company. Shri Jujhar Singh through whom the company has been sued presently is none other than the son of Hari Dhan Singh petitioner. The present petition is only a collusive petition to suit the interests of Shri Hari Dhan Singh and his family members. Hari Dhan Singh and his group including Jujhar Singh had removed the books of account before the present management took over the affairs of the company with effect from 30th June, 1985. Since the books of accounts and other documents were taken away by Hari Dhan Singh and Jujhar Singh before the present management took over the latter may not be able to expose the various acts of omission and commission indulged into by the earlier management. The amounts now being claimed are only fictitious entries and are not supported by any vouchers etc. The claim of interest on the alleged principal amounts is not even supported by the entries made by Hari Dhan Singh in favour of his family members. As per the said entries, no agreement for payment of any interest on the said amounts exists. It is obviously wrong on the part of the petitioners to contend that subsequent to 30th June, 1985, no balance sheet etc. of the company has been prepared. On the contrary the audited accounts and the balance sheet of the company were passed in their Annual General Meeting held on 31st December, 1987. The amounts can, by no stretch of imagination, be taken to be due to the petitioners merely on the basis of self created evidence. The alleged issuance and service of notice under section 434 of the Companies Act on Juihar Singh personally is only a cooked up affair and has been pleaded with a view to maintain this collusive petition. The whole effort of the petitioners is to oust the validly elected Board of Directors i.e. the present management and to take over the affairs of the company.

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(3) Further petitioner Nos. 1 and 2 i.e. Smt. Keerat Kaur and Shri Hari Dhan Singh have wrongly claimed themselves to be the Directors of the company. They ceased to be so with effect from 31st December, 1987 and this fact is supported by the entries in form No. 32 which was filed by Shri Hari Dhan Singh under his signatures with the Registrar of Companies. It is also denied that any letter dated 3rd August, 1987, as alleged in the petition, was ever received by the company or reply to the same was sent by the Managing Director on 19th August, 1987. As a matter of fact, Jujhar Singh remained the Managing Director of the company only up to 29th December, 1986, when in the annual general meeting held on that day Shri Pushpinder Singh Dhillon was duly elected as the Managing Director of the Company. The letters including the alleged notice under section 434 of the Companies Act are only cooked up material. The present management within a period of two years of its taking over the affairs of the company has already paid off approximately Rs. 2 lacs. to its sundry creditors. As a matter of fact, it was Hari Dhan Singh, who instigated the Punjab and Sind Bank to file the suit, referred to above. This is more than evident from the fact that when during the pendency of the suit the Bank filed an application for appointment of a receiver on 26th November, 1987. Shri Hari Dhan Singh petitioner No. 2 of his own put in appearance on behalf of the company without service of any formal notice on him and filed a reply to the said application on the very next date i.e. 28th November, 1987 and straightaway conceding the claim of the Bank for the appointment of a receiver suggested that he himself should be appointed the receiver. Copy of his reply is Annexure R-1 to the written statement. However, the Court suspecting the *bona fides* of Hari Dhan Singh did not appoint him as the receiver. Shri Hari Dhan Singh having failed to secure the management of the company in this manner, has filed this collusive petition along with his family members suing the company through his own son, i.e., Jujhar Singh. He even got the provisional liquidator appointed by concealing the material facts from the Court. The petition is, thus, nothing but abuse of the process of Court.

(4) Besides the above noted reply filed by Pushpinder Singh Dhillon, Jujhar Singh too has filed a reply to this petition. By and large he has admitted the claim of the petitioners except that they are entitled to the payment of any interest on the amounts claimed by them. In other words, he has admitted all the material allegations

made by the petitioners except a few which do not harm their interest in any manner.

(5) In her replication Smt. Keerat Kaur, besides controverting the actual stand taken by Pushpinder Singh, has reiterated the main assertions of her petition. What is specially highlighted therein, however, is that Pushpinder Singh never became the Managing Director of the company and it was Jujhar Singh only, who continued to be so till the affairs of the company were taken over by the provisional liquidator on 18th December, 1987.

(6) The learned counsel for the petitioners and Jujhar Singh while urging for the winding up of the company in the light of the above noted factual pleas, have raised one principal contention that Pushpinder Singh has no *locus standi* in the matter and his stand, by way of his written statement, deserves to be discarded all together. Though this objection has not been raised by the petitioners or Jujhar Singh anywhere, including the replication filed by Smt. Keerat Kaur, yet I permitted them to address their arguments taking it to be a strictly legal proposition going to the root of the case. It has been so urged by the learned counsel in the light of certain observations made by a learned Single Judge of Delhi High Court in *Bipla Chemical Industries v. Keshariya Investment Ltd.* 1977 (Vol. 47) Company Cases 211. It is ruled therein that while the company whose winding up is sought may be allowed to show cause against the admission of the petition for winding up, but there is no rule which envisages that anyone other than the company may be heard to oppose the admission of the petition. Creditors inclined to oppose the winding up are not entitled to be heard at the stage of the admission of the petition for winding up as their interests are not, in any manner affected or prejudiced by the mere admission of the petition. Having analysed the judgment I find that the said opinion was expressed in the light of the facts of that case. It was a case where some of the creditors of the Company had filed a petition for its winding up and the said petition was sought to be opposed by another set of creditors right at the stage of admission. The stand of the respondent-creditors was that it was not in the interest of the general body of creditors of the company that it be wound up. No such situation arises in the instant case. It is not a matter of dispute that Pushpinder Singh and others who belong to his group are share-holders or members of the company. Therefore, they form a part of the company itself. No doubt, it is true that the company on account of its incorporation has entirely a separate entity from that of its share-holders

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and members, yet this distinction does not appear to make any difference in the instant case where the "controlling interest" is in issue. This is more so when, as per the stand of Pushpinder Singh, a fraud is intended to be prevented. While examining the proposition as to who are the persons entitled to be heard in a winding up petition, the Supreme Court in the context of section 443 of the Companies Act, has expressed the opinion in *National Textile Workers Union v. Ramakrishnan* (1), that even the workmen employed by the company have the right to be heard by the Court, not as creditors of the company for dues outstanding but because they are likely to be deprived of the means of livelihood if the company is wound up. By a majority decision the Court held that since the right to apply for winding up is a creature of the statute and is available only to those mentioned in the statute, the workers cannot prefer a winding up petition against the company. However, it does not follow as a necessary consequence that the workers have no right to appear and be heard in support or opposition to the winding up petition. The Court further held that since there was nothing in the Companies Act expressly prohibiting workers from being heard in a winding up proceeding, the workers would be entitled to be heard though as interveners and not as parties. Therefore, it is apparent that the Court has enough of discretion to hear any other person i.e. other than the parties, who may be interested in the winding up on public grounds or otherwise. The objection of the learned counsel, however, is that this discretion is not vested in the Court at the stage of the admission of the petition and may be there once the petition is published. This again does not appear to contain any merit. In *National Conduits v. S. S. Arora* (2), their Lordships of the Supreme Court after analysing the various provisions of the Act, have enunciated the law in the following words :

"When a petition is filed before the High Court for winding up of a company under the order of the Court, the High Court (i) may issue notice to the company to show cause why the petition should not be admitted; (ii) may admit the petition and fix a date for hearing, and issue a notice to the company before giving directions about advertisement of the petition; or (iii) may admit the petition, fix

(1) 1983 (Vol 53) Company cases 184.

(2) A.I.R. 1969 S.C. 279.

the date of hearing of the petition, and order that the petition be advertised and direct that the petition be served upon persons specified in the order. A petition for winding up cannot be placed for hearing before the Court, unless the petition is advertised; that is clear from the terms of Rule 24(2). But that is not to say that as soon as the petition is admitted, it must be advertised. In answer to a notice to show cause why a petition for winding up be not admitted, the company may show cause and contend that the filing of the petition amounts to an abuse of the process of the Court. If the petition is admitted, it is still open to the Company to move the Court that in the interest of justice or to prevent abuse of the process of Court, the petition be not advertised. Such an application may be made where the Court has issued notice under the last clause of Rule 96, and even when there is an unconditional admission of the petition for winding up. The power to entertain such an application of the company is inherent in the Court and Rule 9 of the Companies (Court) Rules, 1959 which reads :

“Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice to prevent abuse of the process of the Court”.

(reiterates that power. In re. A. Company, (1894)2 Ch. 349 it was held that if the petition is not presented in good faith and for the legitimate purpose of obtaining a winding up order, but for other purpose, such as putting pressure on the Company, the Court will restrain the advertisement of the petition and stay all further proceedings upon it”.

The stage the instant petition has reached is, as stated by their Lordships, at (i) above. I, therefore, see no logic or rationale in the contention of the learned counsel for the petitioners and Jujhar Singh that Pushpinder Singh and other share-holders, who, as already pointed out, are members of the company have no right to be heard at this stage i.e. the admission of the petition. Therefore, I repel the above noted stand of the learned counsel.



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(7) Now the merits.

(8) Having examined the respective pleas of the parties I find that the contentions of Pushpinder Singh that the present proceedings are not only collusive but also amount to abuse of the process of Court, deserve to prevail. It is abundantly clear from the above-noted statement of facts that the affairs of the company have all through primarily been run by Hari Dhan Singh and Jujhar Singh as per their own showing. The reply to the notice sent by Jujhar Singh (Annexure P5) and the receipt of the notice under section 434 of the Act by him by hand on 3rd November, 1987, only appear to be cooked up affair. Similarly, the existence of the entries of loan amounts, even if there, are self serving piece of evidence supporting the claim of the petitioners. The effort made by Hari Dhan Singh to get himself appointed as a receiver during the pendency of the suit between Punjab and Sind Bank and the Company also indicates that he was too eager to get hold of the affairs of the company one way or the other. Lastly, it is not in dispute that on 6th April, 1989, a compromise (photo copy on record) was arrived at between the two sets of share-holders, i.e., one headed by Haridhan Singh and another by Smt. Surjit Kaur (including Pushpinder Singh) whereby the former agreed to the following condition :—

“The deposits, if any made by the group of share-holders headed by Haridhan Singh shall be paid to the extent of 50 per cent and it shall be accepted by the said group in full and final settlement.”

In the face of this, it appears difficult to accept the genuineness of the above-said loan transactions. If the petitioners had actually advanced the above-noted amounts to the Company by way of loan, it is difficult to appreciate as to why should they be accepting 50 per cent of their value as the full and final settlement of their dues.

(9) I am, therefore, of the view that the petition besides lacking *bona fides* appears to have been filed for purposes of putting pressure on the Company with a view to control its affairs and this clearly amounts to the misuse of the process of Court. Thus, the petition is dismissed but with no order as to costs. However, the petitioners, if so advised may seek their relief through a Civil Court of competent jurisdiction.

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R.N.R.