

This was a case pertaining to the prosecution of the assessee under Section 13 of the Hoarding and Profiteering Ordinance, 1943, on a charge of selling goods at prices higher than what was reasonable in contravention of the provisions of Section 6 thereof. The prosecution ended in acquittal. It was held that, in the circumstances of the case, the sum spent in defending the criminal proceedings was not an expenditure laid out or expended wholly and exclusively for the purpose of the business and it was, therefore, not an allowable deduction under Section 10(2) (xv) of the Income Tax Act, 1922.

(8) It will be seen that the view of the Supreme Court in *H. Hirjee's case* (supra) appears to be at variance with that of *Dhanrajgirji Raja Narasingirji's case* (supra), but, what is pertinent to note here are the observations of the Supreme Court in the latter case to the effect that the earlier cases where it had been held that the expenditure incurred by the assessee to defend himself against a criminal charge, did not fall under Section 10 (2) (xv) of the Income Tax Act, 1922, were decisions on their own facts. *Dhanrajgirji Raja Narasingirji's case* (supra) is thus what holds the filed. Applying the test laid down therein, question No. (4) has clearly to be answered in the negative in favour of the assessee and against revenue.

(9) This reference is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

Before : G. R. Majithia, J.

KIRPAL SINGH AND SMT. SIMAR KAUR AND ANOTHER,  
—Petitioner.

versus

THE SUTLEJ LAND FINANCE PVT. LTD. SUTLEJ MARKET,  
THROUGH ITS MANAGING DIRECTOR AND OTHERS,  
—Respondents.

Company Petition No. 85 of 1985.

May 24th, 1989.

*Companies Act, Ss. 433, 434, 439—Petition for winding up—Company making the payment of entire debt to petitioners—Fresh creditors filing Civil Misc. Application in same petition—No notice served by fresh Creditors—Application filed after claim becoming time barred—Legality of such claim.*

Kirpal Singh and Smt. Simar Kaur and another v. The Sutlej Land Finance Pvt. Ltd. Sutlej Market, through its Managing Director and others (G. R. Majithia, J.)

*Held*, that it is well-settled that the machinery for winding up cannot be allowed to be utilized as a means for realizing debts due from the company. If the debt was *bona fide* disputed, there cannot be neglect to pay within the meaning of section 434(1) (a) of the Act. The principles on which the Company Court acts are : (1) that the defence of the Company is in good faith and one of the substance; (2) the defence is likely to succeed in point of law and (3) the company produced *prima facie* proof of the facts on which defence depends. In the instant case, the respondent-company has succeeded in proving that their defence is in good faith and one of substance.

(Para 5)

*Petition under sections 433, 434 and 439 of the Companies Act, 1956 praying that:—*

- (a) *that the said The Sutlej Land Finance (P) Ltd. be wound up by this Hon'ble Court under its supervision and under the provisions of the Companies Act, 1956 insolvent to pay its admitted debts and liabilities.*
- (b) *that the petitioners submit further that under the circumstances, stated above, it is just and equitable that the Company should be wound up. Such other order as may be deemed necessary and fit may also be passed.*

S. N. Sharma, Advocate, for the petitioners.

N. K. Sodhi, Advocate, with Nitin Kumar, Advocate, for the Respondents.

### JUDGMENT

(1) This is an application under section 439 read with sections 433 and 434 of the Companies Act (for short "the Act") for winding up of the respondent-company.

(2) C.P. 85 of 1985 was originally filed by some of the creditors of the company. By order dated September 11, 1986, the company petition was ordered to be advertised and the order was duly complied with. On September 3, 1987, the counsel for the petitioners admitted that the entire claim of the petitioners had been paid to them. On August 11, 1988 the counsel for the petitioners made a statement that he did not want to prosecute the petition on behalf of the petitioners since they had entered into a

settlement and had received the entire amount due to them. C.A. 100 of 1987 in C.P. 85 of 1985 was moved by some of the creditors for substitution as petitioners. The application was allowed and the counsel for the petitioners was directed to file an amended petition. It is the amended petition on behalf of the fresh creditors allowed to be substituted which is being disposed of.

(3) In the petition, it is stated that the petitioners deposited various amounts with the respondent-company against receipts, details of which are as under :—

S. No.	Name	Receipt No. and date	Amount deposited Rs.	Rate of interest P.A.
1.	Daulat Ram	003848/80, dated 31-3-80	2,500	12%
2.	Smt. Amrit Kaur	004041/80, dated 25-11-80	2,000	12%
3.	Smt. Promila Saini	004018/80, dated 30-10-80	1,000	12%
4.	Ramandeep Singh	003862/80 dated 30-4-80	3,400	12%
5.	Jagdish Singh Saini	003624/79, dated 1-9-79	3,000	12%
Total			13,400	

(4) The amount was not paid when demanded. The respondent-company has defaulted in making payment of the sum due. The respondent-company admitted that the amounts were deposited by the petitioners. Payment of interest to some of the creditors on their deposits was also admitted, but this was before October 1, 1982. On December 31, 1982, the petitioners came to the company's office, abused the Managing Director of the respondent-company and demanded immediate payment. After December 31, 1982, the petitioners did not approach the respondent-company. It was

Kirpal Singh and Smt. Simar Kaur and another v. The Sutlej Land Finance Pvt. Ltd. Sutlej Market, through its Managing Director and others (G. R. Majithia, J.)

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pleaded that their claim had become barred by time. It was also pleaded that the petitioners did not serve the statutory notice under section 434 of the Act before filing the petition.

(5) It is well-settled that the machinery for winding up cannot be allowed to be utilized as a means for realizing debts due from the company. If the debt was *bona fide* disputed, there cannot be neglect to pay within the meaning of section 434(1) (a) of the Act. The principles on which the Company Court acts are : (1) that the defence of the company is in good faith and one of the substance; (2) the defence is likely to succeed in point of law and (3) the company produced *prima facie* proof of the facts on which defence depends. In the instant case, the respondent-company has succeeded in proving that their defence is in good faith and one of substance. It was held in *Chemical Enterprises and another v. Kalpanalok Ltd. and others* (1), that the creditors who had not served any statutory notice were not entitled to continue the petition. No contrary authority has been brought to my notice by the learned counsel for the petitioners. On the question of limitation, the learned counsel for the respondent submitted that the deposit was for a term of six months bearing interest at the rate of 12 per cent per annum. The limitation to effect the recovery will start after the expiry of six months and not from the date when the payment is made. In support of his submission, he relied on *Kanshinath Sankarappa Wani v. New Akot Cotton Ginning and Pressing Co. Ltd* (2), and more particularly the following observations made therein :—

“The only question which arises for our consideration in this appeal is whether the appellant’s suit was barred by limitation. The appellant, in the first instance, relied upon the deposit receipt which was passed by the company in his favour on January 15, 1940. This receipt (Ex. P.1) evidenced a deposit of Rs. 79,519-12-9 for 12 months from August 1, 1939 to July 31, 1940, and the amount at the foot thereof became due and payable by the respondent to him on July 31, 1940. The appellant, however, sought to extend the commencement of the

(1) (1984) 55 Company cases 552.

(2) A.I.R. 1958 S.C. 437.

period of limitation to May 17, 1941, on the ground that the money, the subject-matter of that deposit receipt, were payable to him on demand, that such demand was made by him on May 17, 1941, and that, therefore, that was the date for the commencement of the period of limitation. No express agreement in this behalf could be proved by him nor could an agreement be implied from the course of dealings between him and the company for the period of 25 years during which the dealings continued between the parties. As a matter of fact, such an agreement, either express or implied was negatived by the very terms of the deposit receipt which, apart from mentioning that the monies were received by the company as deposit for 12 months from August 1, 1939, to July 31, 1940, contained on the reverse a note that interest would cease on due date. This was sufficient to establish that the amount due at the foot of the deposit receipt became due and payable on the due date mentioned therein and that there was no question of the amount being payable at any time thereafter on demand being made in this behalf by the creditor."

(6) The ratio of the above authority is fully applicable to the facts of the instant case. The claim is *prima facie* barred by time. The respondent company has succeeded in proving that their defence is in good faith and likely to succeed in point of law.

(7) The petition is accordingly dismissed. The petitioners can enforce the remedy by way of a suit.

P.C.G.

Before J. V. Gupta, J.

DR. MANGAT RAI,—*Petitioner.*

*versus*

STATE OF PUNJAB THROUGH THE SECRETARY AND  
OTHERS,—*Respondents.*

*Civil Writ Petition No. 4176 of 1989.*

June 2nd, 1989.

*Admission to M.D./M.S. courses—Petitioner eligible for admission to such course—Admission refused as the Petitioner was working as Demonstrator—Validity of such refusal.*