

Reserved.

Company Appeal No.01 of 2010

Shree Gobind Deo Glass Works Ltd.

Vs.

Mohan Gold Water Breweries Ltd.

Hon'ble Pradeep Kant, J.

Hon'ble Ritu Raj Awasthi, J.

(Delivered by Hon'ble Ritu Raj Awasthi, J)

Heard Sri Shyam Mohan, learned counsel appearing for the appellant as well as Sri Sudeep Seth, learned counsel appearing for the respondent and perused the records.

This Company Appeal has been filed under Section 483 of the Companies Act, 1956 against the judgement and order dated 16.07.2010 passed by the learned Company Judge in Company Petition No.09 of 1995 preferred under Section 433 read with Section 434 and 439 of the Companies Act. In the impugned order the learned Company Judge has provided that the respondent is liable to pay the interest on the principal amount at the rate of 12% per annum with effect from August, 2008 till the date of actual payment of the principal amount and accordingly direction has been issued to the respondent to pay the same.

The short question involved for consideration in this appeal is as to whether the appellant is entitled to get the payment of interest on the principal amount from 28.9.1994, when for the first time the liability was admitted by the respondent or the interest on the principal amount shall be paid to the appellant with effect from August, 2008, as directed by the learned Company Judge.

In 1993 the respondent company had placed various orders to the appellant's company for supply of Amber Glass and empty Beer Bottles. It did not raise any grievance regarding quantity or quality of the goods supplied by the appellant's company. The bills were submitted to the respondent company for payment of the supply of the goods against which the respondent company had paid certain amounts. However, after due adjustment an outstanding amount of Rs.2,66,848.70 remained unpaid. It is alleged that the respondent company admitted the said due amount in its letter dated 28.09.1994 written to the appellant's company. On 20.10.1994 the appellant's company gave statutory notice under Section 434 of the Companies Act, demanding the due amount of Rs.2,66,848.70 along with interest at the rate of 24%. In the reply dated 16.11.1994, the respondent company admitted the payment of the aforesaid amount but did not pay the

same. Ultimately, the company petition was filed on 24.11.1995 for winding up of the respondent company.

In the counter affidavit filed by the respondent company on 2.7.1996, in paragraph-10, it was admitted that there is an outstanding dues of Rs.2,66,848.70, which is required to be paid by the respondent company to the appellant's company. However, the liability of payment of interest was denied. It was only after the order dated 28.07.2009 passed by the Company Judge for payment of the admitted amount, the respondent company paid the principal amount in three instalments on 19.08.2009, 15.09.2009 and 26.10.2009.

The learned counsel for the appellant-company vehemently submitted that since the liability of payment of the said principal amount was duly admitted by the respondent company, however, the same was not paid, as such the appellant was fully entitled to claim the winding up of the respondent company and it was also entitled to get the interest on the principal amount from 28.09.1994, when the respondent company in its letter dated 28.09.1994, had accepted its liability and admitted to pay the said outstanding amount. It is further submitted that in the counter affidavit dated 02.07.1996, the respondent company had admitted the liability of the payment of said amount, therefore, in view of the settled preposition of law as enunciated in number of decisions of the Hon'ble Apex Court, the appellant is entitled to get the payment of interest on the withheld or differed amount.

In support of his argument the learned counsel for the appellant company has relied on the following decisions:

1. 2009 (10) S.C.C. Page 187, Indian Hume Pipe Company Ltd. vs. State of Rajasthan and others.
2. 2002 (1) S.C.C. Page 367, Central Bank of India vs. Ravindra and others.
3. 1992 (1) S.C.C. Page 508, Secretary, Irrigation Department, Government of Orissa and others vs. G.C. Roy.
4. 2009 (3) S.C.C. Page 527, Vijay Industries vs. Natl Technologies Ltd.

In the aforesaid judgements the Hon'ble Apex Court has consistently held that a person deprived of the use of money to which he has legitimate right shall be compensated for the deprivation, though it may be called by any name, i.e. interest, compensation or damages. The person deprived is

entitled to get the interest on the withheld amount, whether there is any clause in the agreement or not.

It is contended by the learned counsel for the appellant that the learned Company Judge had failed to appreciate that the appellant-company was entitled to get the interest on the principal amount for the entire period from the date the amount had fallen due till the date of its actual payment, and in any case, at least for the period from the date, on which the liability of payment of principal amount was admitted till the date of its actual payment. It is submitted that the learned Company Judge has wrongly held that the respondent company is liable to pay the interest on the principal amount with effect from August, 2008 till the date of actual payment.

The learned counsel for the appellant tried to emphasize that the petitioner (appellant) had not agreed for payment of the said principal amount without interest in July, 2008 when his counsel had met to the Manager of the respondent-company. A personal affidavit to this effect has also been brought on record by the counsel for the appellant Sri Shailendra Srivastava, Advocate. It is further submitted that even if, though not admitted, it is presumed that the counsel for the petitioner (appellant) had given a proposal to the respondent company to make the payment of principal amount without interest, it can not be said that the appellant company has lost his rights to claim interest on the withheld amount as the said proposal was never accepted or honoured by the respondent company and against the said proposal no payment was made by the respondent company. It was only under the directions of the learned Company Judge dated 24.07.2009, the outstanding principal amount was paid in instalments sometime in August, 2009 to October, 2009, as such the appellant is fully entitled to get the interest on the said principal amount from the date of admission of the liability of payment of the said amount till its actual payment.

The learned counsel for the respondent company has very candidly accepted that a sum of Rs.2,66,848.70 was the principal amount which was liable to be paid to the appellant-company and the same could not be paid due to financial problems of the respondent company. It is also admitted by the counsel for the respondent company that in the reply dated 28.09.1994, the respondent company had admitted its liability to pay the said amount, however, it had denied to pay the interest.

The learned counsel for the respondent company contended that the counsel for the appellant had made a statement before the Company Judge that in July, 2008 he met the Manager of the respondent company and asked

him to pay the principal amount even without interest. On the basis of the statement of the counsel for the appellant, the learned Company Judge has proceeded to hold that the respondent company is liable to pay the interest on the principal amount only with effect from August, 2008 till the date of actual payment of the principal amount, as such there is no infirmity or illegality in the order under challenge, which is just and proper.

We have considered the various submissions made by the learned counsel for the parties and perused the records.

It is admitted case that the principal amount of Rs.2,66,848.70 had become due to the appellant-company, which was liable to be paid by the respondent company. It is also admitted that the said liability of payment was accepted by the respondent company in its letter dated 28.09.1994.

From the perusal of records of Company Petition No.9 of 1995, it is very much clear that in paragraph-10 of the counter affidavit dated 02.07.1996, the respondent company had accepted the outstanding dues of Rs.2,66,848.70 to the appellant-company. The contents of paragraph no.10 of the counter affidavit is being quoted below:

“10. That the contents of para 9 of the company petition so far as related to the amount of outstanding due to petitioner company viz. Rs.2,66,846.70 are not disputed. However, the respondent company denies that any amount as interest has become due or is payable to the petitioner company by the respondent company.”

So far as the payment of interest on the outstanding dues is concerned, the law is well settled that the aggrieved party is entitled to get the interest. It is also well settled that it is the discretion conferred on the Court to award or not to award interest on the withheld amount in the facts and circumstances of the case.

In the present case there is no reason or justification for the Company Judge to award the interest on the said admitted principal amount only w.e.f. July, 2008 till the date of its actual payment when the said liability was accepted in the letter dated 28.9.1994. Even if, it is presumed that the learned counsel for the appellant (petitioner) had made any offer or proposal to the Manager of the respondent company to make the payment of the principal amount without interest, it can not be said that the appellant had given up its right to claim interest on the said withheld amount, as first of all, the said offer or proposal was not accepted or honoured by the respondent company and secondly, no such offer or proposal can deny the appellant

from claiming the interest on the withheld principal amount.

In view of the above, we are of the considered opinion that the direction of the learned Company Judge, so far as it relates to the payment of interest on the principal amount with effect from August, 2008 till the date of payment of principal amount is concerned, the same is not sustainable, hence liable to be set aside. Hence, the order dated 16.07.2010 passed in Company Petition No.9 (Comp) of 1995, *Shree Gobind Deo Glass Works Ltd. vs. Mohan Goldwater Breweries Ltd.*, is hereby set aside.

The Company Appeal No.01 of 2010 is hereby allowed with a direction to the respondent company to pay the interest @ 12% per annum on the withheld principal amount of Rs.2,66,848.70 from 28.09.1994 till the date of the payment of the principal amount within a period of six months from the date a certified copy of this order is produced before the respondent company. No order as to cost.

September 29th, 2010
Prajapati/-