A M/S. VIJAY INDUSTRIES

v.

M/S. NATL TECHNOLOGIES LTD.

(Civil Appeal No. 7352 of 2008)

B DECEMBER 17, 2008

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Companies Act, 1956 – ss. 433 and 434 – Winding up petition under – Maintainability of – Interest payable on the C *sum due whether debt to attract ss. 433 and 434 – Held: Failure to pay agreed interest or statutory interest would be 'debt' – s.433 does not state that debt must be a definite sum – On facts, failure of purchaser to pay price for the goods to supplier on presentation of invoices – Credit bill signed by* D *purchaser's representative contained clause for payment of interest on delayed payments – Purchaser agreed to compensate supplier for delay in payment and never denied demand of interest – Supplier issued notices that payments had been adjusted towards interest first and balance would be adjusted towards principal, thus, a prima face case was made* E *out – On receipt of legal notice also purchaser did not make payment to liquidate debt – More so, when application for winding up filed, dues were more than the amount specified in s.433 – Thus, High Court not justified in setting aside application for winding up admitted by Company Judge – In* F *the interest of justice, purchaser directed to pay simple interest on admitted sum @ 12% pa on the balance amount instead of 24% pa within the specified period.*

Interest – Grant of – Held: Interest is inter alia payable by way of restitution – It is also payable in terms of s.62(1)(a) G *of Sale of Goods Act; s.3 of Interest Act, 1978 as also ss.5 and 6 of Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993.*

Appellant-small scale unit was supplying Castor Oil to the respondent-company. The invoices of credit bills

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contained a clause that the amount was to be paid within seven days, else buyer would be liable to pay 2% interest per month. The representative of the respondent signed the credit bill. Respondent did not pay the complete price of the said supplies on presentation of the invoices. Appellant adjusted the amount first towards interest at the stipulated rate and balance against the principal amount. Appellant raised the demand but the respondent did not make the payment. Parties negotiated as regard the manner of making payment. Appellant agreed to restore supply of Castor Oil provided the respondent deposited the outstanding dues. Certain sum was paid and the appellant refused to make further supplies. A meeting took place. Respondent agreed to square up the old dues and also agreed to compensate respondent for the delay in payment on account of earlier supplies. The said agreement was not adhered to. Appellant issued a notice u/s. 434 of the Companies Act, 1956 to the respondent that if payment is not paid after availing the credit period, respondent would be liable to pay interest @ 2% pm. Respondent was to pay Rs. 65,15,947 with interest @ 2% pm. Respondent did not deny or dispute demand of interest and according to it Rs. 16,80,468/ was due. But the said amount was not paid. Appellant filed a winding up petition u/s. 433(e) and 433(f) r/w s. 439 of the Act. Single Judge admitted the company petition and held that a prima facie case was made out therefor having regard to the correspondences passed between the parties, the credit bills and also the minutes of the meeting. Respondent filed an appeal. Division Bench of High Court allowed the same. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1 Circumstances in which a company may be wound up by the court are contained in s. 433 of the Companies Act, 1956. If a company is unable to pay its debts as contained in Clause (e) thereof, it would be one of the grounds therefor. Section 434 raises a legal fiction

A as to when the company would be deemed to be unable to pay its debts. On a plain reading of clause (a) of sub-section (1) of s.434, it is evident that what is necessary for invoking the said provision is that despite service of notice, company which was indebted in a sum exceeding
B one lakh rupees then due failed and/or neglected to pay the same within three weeks thereafter or to secure or compound for it to the reasonable satisfaction of the creditor. [Paras 28 and 29] [989-D, E, H; 990-C-D]

1.2. Section 433 of the Act does not state that the
C debt must be precisely a definite sum. Failure to pay agreed interest or the statutory interest would come within the purview of the word 'debt'. It is one thing to say that the amount of debt is not definite or ascertainable because of the bona fide dispute raised thereabout or there exists a dispute as regards quantity or quality of
D supply or such other defences which are available to the purchaser; but it is another thing to say that although the due as regards the principal amount resulting from the quantity or quality of supply of the goods stands admitted but a question is raised as to whether any
E agreement had been entered into for payment of interest or whether the rate of interest would be applicable or not. In the latter case, the application for winding up cannot be dismissed. [Para 33] [992-D-G]

1.3. In the instant case, despite receipt of a legal
F notice dated 23.12.2003, no payment was made to liquidate the debt on the part of the company. Appellant had been supplying Castor Oil to the respondent. Respondent did not pay the price of the said supplies, on presentation of the invoices. It also stands admitted
G that the parties negotiated as regards the manner in which the payments could be made. In a meeting held on 25.11.2003, promises were made to square up the old outstanding dues and bring it into the system for the purpose of rotation. The agreement spoke of payment of compensation to the appellant for the delay in payment
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on account of earlier supplies after clearing the entire old dues. There cannot be any doubt whatsoever that when, in principle, the respondent had agreed to compensate the appellant for the delay in payment, the same must be by way of interest payable on the principal amount or otherwise. Respondent never denied the demand of interest as such, but in its reply dated 30.12.2003 merely stated that a sum of Rs. 16,80,468 was due. [Paras 30 and 31] [990-D; 991-A]

1.4. On the date of filing of the application, dues in respect of at least a part of the debt which was more than the amount specified in Section 433 of the Companies Act was not denied. It is not a requirement of the law that the entire debt must be definite and certain. Division Bench of the High Court proceeded on the basis that the entire sum covering both the principal and the interest must be undisputed. Division Bench upon noticing the fact of the matter formulated the question "as to whether respondent is liable to pay interest at 2% pm on delayed payments and what that is being disputed would it constitute prima facie a valid ground for admission of the company petition". It held that it cannot be presumed prima facie that the respondent is unable to pay its debt. [Paras 37 and 38] [996-998-F-G; D, E]

1.5. The findings of the High Court are not correct for more than one reason; firstly, because the Division Bench did not hold that the invoices were not proved by cogent evidence; secondly, question of leading evidence would arise only after the company petition is admitted and, thirdly, issuance of invoices and signature of the respondent thereon is not disputed. The judgment of the Division Bench also contains a legal flaw insofar as it failed to take into consideration that the appellant had in fact issued three notices dated 6.01.2003, 8.09.2003 and legal notice dated 23.12.2003 specifically mentioning that the payments had been adjusted towards interest first and balance, if any, shall be adjusted towards the

A **principal. Thus, a prima face case was made out. [Paras 39 and 40] [998-F-H; 999-A]**

Stephen Chemical Limited v. Innosearch Limited **(1986) 60 CC 702;** *Rashid Leathers (P) Ltd. v. Super Fine Skin Traders* **(1990) 68 CC 684;** *Devendra Kumar Jain v. Polar* B *Forgings and Tools Ltd.* **(1995) 84 CC 766;** *Multimetals Ltd. v. Suryatronics Pvt. Ltd.* **(1997) 89 CC 259;** *Bombay Glass Blowing Industries v. Bio Vaccines Pvt. Ltd.* **(1999) 98 CC 174;** *Ultimate Advertising and Marketing v. G.B. Laboratories Ltd.* **(1989) 66 CC 232;** *M/s. Ultimate Advertising and* C *Marketing New Delhi v. G.B. Laboratories Ltd., Kanpur* **AIR 1998 Allahabad 320;** *Kitply Industries Ltd. v. Hari Narain and Sons Pvt. Ltd.* **(1998) 91 CC 715;** *Jyothi Limited v. Boving Fouress Limited* **(2001) 3 Comp LJ 413 (Karn);** *Southern Industrial Polymers (P) Ltd. v. Amar Formulators and Electronics (P) Ltd.* **(1984) 56 CC 77 (Karn);** *Anand Steel v.* D *Bharat Earth Movers Ltd.* **(1987) 3 Comp LJ 175 (Karn);** *Unisystems (P) Ltd. v. Stepan Chemical Ltd.* **(1985) CC 875 (P&H);** *Gangadhar Narsinghdas Agrawal v. Timble (P) Ltd.* **(1996) 5 Comp LJ 342 (Bom);** *Unisystems P. Ltd. v. Stepan Chemical Ltd.* **(1986) 60 CC 753;** *Universal Bearing Agency* E *v. Wpil Limited* **2006 (2) CHN 530;** *Amalgamated Commercial Traders (P.) Ltd. v. A.C.K. Krishnaswami and Anr.* **(1965) 35 CC 456;** *M/s. Madhusudan Gordhandas & Co. v. Madhu Woollen Industries Pvt. Ltd.* **(1971) 3 SCC 632;** *Pfizer Ltd. v. Usan Laboratories P. Ltd.* **(1985) 57 CC 236;** *Ispat* F *Industries Ltd., in RE* **(2005) 2 Comp LJ 235;** *Mediquip Systems (P) Ltd. v. Proxima Medical System GMBH* **(2005) 7 SCC 42 and** *Tube Investments of India Ltd. v. Rim and Accessories (P) Ltd.* **(1990) 3 Comp LJ 322, referred to.**

Re. Tweeds Garages Ltd. **1962 Ch 406, referred to.**

G **2. An interest is** *inter alia* **payable by way of restitution. Interest is also payable in terms of the provisions of Section 62(1)(a) of the Sale of Goods Act. Interest may be held to be payable in terms of Section 3 of the Interest Act, 1978 as also in terms of Sections 5 and**

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6 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993. [Paras 41 and 42] [999-B; 1000-A-H]

Clariant International Ltd. and Another v. Securities & Exchange Board of India **(2004) 8 SCC 524;** *Alok Shanker Pandey v. Union of India and Ors.* **(2007) 3 SCC 545;** *Meka Venkatadri Appa Rao Bahadur Zamindar Garu and Ors. v. Raja Parthasarathy Appa Rao Bahadur Zamindar Garu* **AIR 1922 PC 233;** *Meghraj and Ors. v. Mst. Bayabai and Ors.* **1969 (2) SCC 274;** *Gurpreet Singh v. Union of India* **(2006) 8 SCC 457;** *Krishna Chemicals v. Orient Paper and Industries Ltd.* **(2005) 128 CC 72 and** *Assam Small Scale Industries Development Corpn. Ltd. and Others v. J.D. Pharmaceuticals and Anr.* **(2005) 13 SCC 19, referred to.**

3. The judgment of the High Court is set aside. Interest of justice would be subserved if in exercise of jurisdiction under Article 142 of the Constitution of India the respondent is directed to pay simple interest on the admitted sum at the rate of 12% per annum on the balance amount instead of 24% per annum within eight weeks from the date of amount became due till it is paid failing which the consequences provided in law shall ensue. [Para 43] [1001-G-H; 1002-A-B]

Case Law Reference:

(1986) 60 CC 702	Referred to.	Para 18
(1990) 68 CC 684	Referred to.	Para 18
(1995) 84 CC 766	Referred to.	Para 18
(1997) 89 CC 259	Referred to.	Para 20
(1999) 98 CC 174	Referred to.	Para 20
(1989) 66 CC 232	Referred to.	Para 21
AIR 1998 Allahabad 320	Referred to.	Para 23
(1998) 91 CC 715	Referred to.	Para 24
(2001) 3 Comp LJ 413 (Karn)	Referred to.	Para 25
(1984) 56 CC 77 (Karn)	Referred to.	Para 25
(1987) 3 Comp LJ 175 (Karn)	Referred to.	Para 25

A	(1985) CC 875 (P&H)	Referred to.	Para 25
	(1996) 5 Comp LJ 342 (Bom)	Referred to.	Para 25
	(1986) 60 CC 753	Referred to.	Para 26
	(2006) 2 CHN 530	Referred to.	Para 27
	(1965) 35 CC 456	Referred to.	Para 31
B	(1971) 3 SCC 632	Referred to.	Para 32
	1962 Ch 406	Referred to.	Para 34
	(1985) 57 CC 236	Referred to.	Para 34
	(2005) 2 Comp LJ 235	Referred to.	Para 34
C	(2005) 7 SCC 42	Referred to.	Para 35
	(1990) 3 Comp LJ 322	Referred to.	Para 36
	(2004) 8 SCC 524	Referred to.	Para 41
	(2007) 3 SCC 545	Referred to.	Para 41
	AIR 1922 PC 233	Referred to.	Para 41
D	(1969) 2 SCC 274	Referred to.	Para 41
	(2006) 8 SCC 457	Referred to.	Para 41
	(2005) 128 CC 72	Referred to.	Para 42
	(2005) 13 SCC 19	Referred to.	Para 42

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7352 of 2008.

From the final Judgment and Order dated 14.3.2005 of the High Court of Andhra Pradesh at Hyderabad in Original Side Appeal No. 64 of 2004.

F Gourab Banerji, Saurav Agrawal, Gautam Jha and Ruby Singh Ahuja for the Appellant.

P.S. Narsimaha, P. Nagesh, L. Roshmani and Sudhir Nandrajog for the Respondent.

G The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Whether interest payable on the sum due would be a debt so as to attract the provisions of Sections 433 and 434 of the Companies Act, 1956 is the question involved herein.

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3. Before, however, adverting to the said question, we may notice the fact of the matter.

Appellant is a small scale unit registered with the District Industries Centre. Admittedly, it supplied Castor Oil to the respondent valued at Rs. 89,13,589/-. A sum of Rs. 49,99,000/- had been paid by the respondent. The invoices of the credit bills attached with each of the supply contained a clause relating to payment of interest in the following terms:

> "amount must be paid within seven days or you are liable to pay 2% interest per month."

4. It is not in dispute that at the foot of each credit bill an officer of the respondent – company had put its signatures as a token of acceptance.

5. Appellant is said to have adjusted the amount first towards interest at the stipulated rate and balance against the principal amount. As despite demand the amount due and owed to it was not paid by the respondent, a legal notice was served upon it claiming interest on the said sum. It was stated that the appellant had appropriated account of payments made by it against the interest and balance, if any, against the principal amount. On the basis thereof, a demand for a sum of Rs. 64,58,457/- together with future interest at the rate of 2% per month was raised. The said legal notice was replied by the respondents, stating:

> "We have received a legal notice from Sri Rao Raghunandan, Advocate dt. 06.01.2003. You are aware that after making payment of Rs. 10.00 lakhs towards Castor Oil Supplies to our plant, we have received a notice under Section 226 (3) of the Income Tax, 1961 from the Income Tax Department. As per the notice, we are directed to pay the amounts due to you on account of Castor Oil supplied directly to the department in view of your dues to the department to an extent of Rs. 25,43,737/-.
>
> Subsequently, we have paid by way of cheques to Income Tax Officer Ward-8(3) on account of supply of castor oil as

A detailed below:-

Cheque No.	Bank	Dated	Amount (Rs.)
074013	Allahabad Bank	09.08.02	2,00,000/-
100313	S.B.H.	09.09.02	3,34,868/-
			5,34,868/-

B

After adjusting the above amounts and our earlier payment of Rs.10.00 lakhs, the balance amount due to your company on account of oil supplies is only Rs. 27,40,882/-.

C In view of the notice served by the Income Tax Department, we could not arrange any payment directly to your company. This matter was brought to your notice and also advised you to obtain a direction from the Income Tax Department to pay the dues directly to your company. In the circumstances, we have not intentionally defaulted in D making arrangements for the payment of your dues on account of Castor Oil Supplies from time to time.

We request you kindly to obtain the clearance, so as to enable us to arrange payment of the outstanding amount due to you amounting to Rs. 27, 40,882/-. In the E circumstances, we request you to kindly advice your advocate to withdraw the legal notice served on us forthwith."

6. Without disputing its liability, however, in view of the correspondence that exchanged between the parties, the F respondent offered to pay a sum of Rs. 2,00,000/- per week to the appellant beginning from April, 2003. It is on that assurance the appellant is said to have agreed to restore supply of Castor Oil provided it deposited 50% of the outstanding dues and remaining 50% at the rate of Rs. 2,00,000/- per week.

G 7. In its letter dated 8.09.2003, the respondent stated:

"...We have accounted your payments against the interest and balances against Castor Oil Supplies approximately. On such account being taken the balance of Rs. 64, 58,457/- upto November, 2002. Accordingly, the balance

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upto 31st March, 2003 stands Rs. 69, 75,134/-. This amount carries interest @ 2 % per month."

8. A sum of Rs. 8 lakhs was paid in between the period 19.04.2003 to 11.07.2003. As evidently, the appellant refused to make further supplies, a meeting took place, the minutes whereof reads, thus:

"As per the discussion regarding the old outstanding and for the continuity of the Business at present, Vijaya Industries is rotataing, One Tanker load for the payment arrangement towards old outstanding. The Representatives of NATL Technologies Ltd. have agreed to arrange payment for the values of 2 truck loads of Castor Oil in the month of December. Against the above payment, the Company representative Sri Jagadish Prasad agreed for supply of Three Tanker loads including the existing One Tanker load which is already supplying.

Basing on the convenience and as per the discussions from time to time NATL have agreed to square up the old outstandings and bring in to the system for the rotation. Also in principle agreed to compensate Vijaya Industries for the delay in payment on account of earlier supplies after clearing the entire old dues."

9. As the said agreement between the parties arrived at in the said meeting was not adhered to, on 23.12.2003 a legal notice under Section 434 of the Companies Act, 1956 was served on the respondent, stating:

"...My client states that as per the invoices raised by it, you are laible to pay interest at 2% per month if payment is not paid after availing the credit period..."

It was further stated:

"In view of the above, my client calls upon you to pay an amount of Rs. 65,15,947/- with further interest thereon at 2% per month within three weeks from the date of receipt of this notice..."

10. In its reply to the said legal notice, the respondent did

A not deny or dispute demand of interest. According to it, the total sum due was Rs. 16,80,468/ (sic for Rs. 15, 80,460/-), stating:

> "In the circumstances, we advice you kindly withdraw the legal notice dated 23rd December, 2003 so as to enable us to arrange payment for full and final settlement of your
B dues amounting to of Rs. 16,80,468/- within two months from the date of this letter."

Even that amount was not paid.

11. Appellant filed a winding up petition under Section 433(e) and 433(f) read with Section 439 of the Companies Act
C on 23.01.2004.

12. Respondent in its counter-affidavit before the learned Company Judge denied its liability to pay its interest for the first time, stating that it was not liable to pay any interest nor it entered into any agreement in connection therewith.
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13. Appellant in its rejoinder contended that the credit bills mentioned that the respondent was liable to pay interest at the rate of 2% per month on delayed payment.

14. An interim order was passed on 17.02.2004 directing:

E "Both the learned counsel agree that the matter can be settled out of Court having regard to the commercial relations between petitioner and respondent for long duration. Sri V.S. Raju, learned counsel for respondent has given a Demand Draft bearing No. 097852, dt. 14.06.2004
F for an amount of Rs. 2,00,000/- (Rupees two lakhs only) drawn on Punjab National Bank, Bank Street, Hyderabad, and six post-dated cheques- five cheques bearing Nos. 216948, 216949, 216950, 216951, 216952 dt.25.07.2004, 25.08.2004, 25.09.2004, 25.10.2004 and 25.11.2004 respectively, each for an amount of Rs.
G 2,30,000/- (Rupees two lakhs thirty thousand only), and another cheque bearing No. 216953 dt.25.12.2004 for an amount of Rs. 2,30,468/- (Rupees two lakhs thirty thousand four hundred and sixty eight only), drawn on State Bank of India, Commercial Branch, Secunderabad, in favour of the
H petitioner company in Court today. Learned counsel for

petitioner has received the Demand Drafts, without prejudice to the claim of the petitioner for interest and seeks time for getting instructions from his client regarding cheques.

Post on 09.07.2004."

15. The learned Single Judge, in view of the stand taken by the parties, while admitting the company petition by an order dated 10.11.2004 held that a prima facie case has been made out therefor having regard to the correspondences passed between the parties, the credit bills and also the minutes of the meeting.

16. Aggrieved by and dissatisfied therewith, the respondent preferred an appeal. By reason of the impugned judgment, the Division Bench has allowed the said appeal.

17. Mr. Gourab Banerji, learned senior counsel appearing on behalf of the appellant, would at the outset bring to our notice that there is a difference of opinion on the issue amongst the different High Courts; one taking a liberal view and another a strict view.

We have noticed hereinbefore that the defence of the respondent was:

(i) there has been no agreement between the parties to pay interest;

(ii) it had not been informed about the adjustment of payments made by it towards interest.

Mr. Banerji would submit that the High Court committed a serious error in accepting the aforementioned contentions of the respondent as each of the credit bill was signed by the representative of the respondent – company.

18. The *Punjab and Haryana High Court in Stephen Chemical Limited v. Innosearch Limited* [(1986) 60 CC 702], the Madras High Court in *Rashid Leathers P) Ltd. v. Super Fine Skin Traders* [(1990) 68 CC 684] and the Delhi High Court in *Devendra Kumar Jain v. Polar Forgings and Tools Ltd.* [(1995) 84 CC 766] took a liberal view of the matter opining

A that even if interest is not payable by way of an agreement, usage or custom, the Company Court will have the requisite jurisdiction to go into such a question and admit a company petition for non-payment of interest on the admitted dues.

19. In *Devendra Kumar Jain* (supra), a Division Bench of B the Delhi High Court, opined:

> "My conclusion is that in a case where the liability to pay the principal amount is not disputed by the company the creditor need not be forced to initiate separate litigation for recovery of the interest amount and the interest amount C can be determined by the Company Judge in the winding up proceedings and on failure of the company to pay that amount the Company can be ordered to be wound up on the ground that it is unable to pay its debts. Interest at the rate of 12% per annum was granted in stead and place D of stipulated rate of interest."

20. We may notice the two decisions of the Andhra Pradesh High Court in *Multimetals Ltd. v. Suryatronics Pvt. Ltd.* [(1997) 89 CC 259] and *Bombay Glass Blowing Industries v. Bio Vaccines Pvt. Ltd.* [(1999) 98 CC 174] wherein after the E company petition was admitted, the parties adduced evidences. A finding of fact was arrived at that there was no written agreement except the printed clause for payment of interest in the invoices. The court did not rely upon the evidence adduced on behalf of the appellant. It was in the aforementioned situation, the said Court in *Bombay Glass* F *Blowing Industries* (supra) held that the provisions contained in Section 3 of the Interest Act, 1978 or Section 62(1)(a) of the Sale of Goods Act, 1930 would not be attracted, stating:

> "From a reading of Section 61 (2)(a) of the Sale of Goods Act, it is revealed that it is the discretion of the Court to G award interest at such rate as it thinks fit on the amount of price to the seller from date of tender of goods or from the date on which the price was payable and under Section 3 of the Interest Act, at a rate not exceeding the current rate of interest. If the proceedings relate to a debt payable by H virtue of a written "instrument at a certain time from the date

when the debt is payable to the date of institution of the proceedings and if the proceedings do not relate to any such debt, then, from the date mentioned in this regard in the written notice given by the person entitled to the date of institution of the proceedings. These provisions refer to the sole discretion of the Civil Court to award interest in a suit for recovery of money. Therefore, the concerned creditor is not at all entitled to interest until the Court so orders. In other words, it cannot be said that the creditor is entitled to interest as a matter of right before the institution of the proceedings in the Court. Before that, the alleged amount of interest or damages is unascertained. *The creditor cannot claim interest at any particular rate, in the absence of any agreement to pay the same, prior to the institution of the proceedings. He cannot claim that from the person liable to pay the price of goods he is entitled to, in addition to the unpaid price of goods, the interest claimed and calculated according to his-unilateral act and, therefore, the concerned person cannot be said to be indebted to a certain extent so far as the claim of interest is concerned.* This being the position, how can it be said that at the time of issuance of the statutory notice, the respondent-company was indebted to the petitioner-company to pay the interest at any rate, much less at the rate of 21 per cent per annum ? and, therefore, on account of default in making payment of interest as claimed by the petitioner-company, it is liable to be declared as commercially insolvent The same position continues even during the pendency of the proceedings."

[Emphasis supplied]

21. The Division Bench of the High Court, in its impugned judgment, not only relied upon the aforementioned two binding precedents but also a judgment of the Allahabad High Court in *Ultimate Advertising and Marketing v. G.B. Laboratories Ltd.* [(1989) 66 CC 232].

22. We may at the outset notice that *Ultimate Advertising*

A *and Marketing* (supra) has also been noticed in *Devendra Kumar Jain* (supra) to hold that the Company Judge is the appropriate forum for determining as to whether the creditor is entitled to interest, where the company admits its liability.

23. It may, however be placed on record that the B aforementioned decision of the learned Single Judge of the Allahabad High Court in *Ultimate Advertising and Marketing* (supra) came up for consideration before a Division Bench thereof in *M/s. Ultimate Advertising and Marketing New Delhi v. G.B. Laboratories Ltd., Kanpur* [AIR 1998 Allahabad 320] C wherein inter alia it was held:

> "From the cases referred to above by various High Courts, it seems that the company Judge has a power to direct the respondent-company to pay the amount of interest but in each case, the facts are to be examined as to whether D there is bona fide dispute regarding the claim of the interest and if the Court finds that there is bona fide dispute, the petitioner-company cannot make a grievance that the company Judge failed to allow the company petition for winding up the company for payment of the Interest..."

E However, on the facts of that case, there was nothing to show that prior to the issuance of the statutory notice by the appellant, any claim was made in respect of the payment of interest and furthermore the respondent had filed a counter affidavit to the said petition denying and disputing the said assertion of the appellant that an order of winding up of the F company was not passed only for payment of the interest which had been disputed bonefide.

24. We may furthermore notice that even in *Kitply Industries Ltd. v. Hari Narain and Sons Pvt. Ltd.* [(1998) 91 CC 715] a similar view was taken by the Rajasthan High Court. G The learned Judge upon holding that the principles enumerated in various decisions referred to therein must be applied in each and every case having regard to the facts thereof, rejected the claim for payment of interest, stating:

> "...In my opinion, in the absence of any agreement between H

the parties, the dispute which the respondent has raised regarding its liability to pay interest cannot be treated as a fictitious or frivolous dispute. There is sufficient justification in the claim of the respondent that the dispute is a bona fide dispute. It is also to be noted that the petitioner has not even said that the parties had agreed for payment within a particular time period..."

The said decision was rendered after trial.

25. We may notice an elaborate judgment of a learned Single Judge of the Karnataka High Court in *Jyothi Limited v. Boving Fouress Limited* [(2001) 3 Comp LJ 413 (Karn)] wherein the learned Judge from paragraphs 5 to 8 of the judgment considered *Stephen Chemical Limited* (supra), *Rashid Leathers P) Ltd.* (supra) and *Devendra Kumar Jain* (supra), on the one hand and from paragraphs 10 to 16 considered *Southern Industrial Polymers (P) Ltd. v. Amar Formulators and Electronics (P) Ltd.* [(1984) 56 CC 77 (Karn)], *Anand Steel v. Bharat Earth Movers Ltd.* [(1987) 3 Comp LJ 175 (Karn)], *Multimetals Ltd. (supra), Unisystems (P) Ltd. v. Stepan Chemical Ltd.* [(1985) CC 875 (P&H)], *Gangadhar Narsinghdas Agrawal v. Timble (P) Ltd.* [(1996) 5 Comp LJ 342 (Bom)], *Ultimate Advertising and Marketing v. G.B. Laboratories Ltd.* [(1989) 66 CC 232] and *Kitply Industries Ltd.* (supra).

26. We have noticed hereinbefore that the decision of the Allahabad High Court in *Ultimate Advertising and Marketing v. G.B. Laboratories Ltd.* [(1989) 66 CC 232] was reversed by the Division Bench. The said fact was not brought to the notice of the learned Single Judge. It was furthermore not brought to the notice of the High Court that *Unisystems (P) Ltd.* (supra) has also been overruled in Unisystems P. Ltd. v. Stepan Chemical Ltd. [(1986) 60 CC 753].

The learned Judge opined that the word "debt" refers to an ascertained and definite amount due to the creditor and not a disputed amount. However, it was furthermore held:

"(a) The term 'debt' refers to an ascertained and definite amount 'due' and does not refer to a claim for

compensation/ damages or a claim which requires assessment by a court before it becomes due and payable.

(b) The term 'debt' may refer not only to 'principal' (value of goods or amount advanced), but also to interest due thereon, where there is a contract to pay interest. Where the contract specifically provides for payment of interest, or where there is an admission or promise to pay interest by the company or where in proceedings for recovery of money, a competent court or arbitrator has determined the liability to pay interest, then non-payment of interest (whether with principal or interest alone) may amount to inability to pay debts.

(c) Interest cannot be awarded merely on the basis of a term in a bill or invoice, unless the creditor proves that such provision is based on a contract or agreement on the part of the purchaser to pay interest. This is because a credit bill or an invoice is a unilateral demand by the supplier and is neither a bilateral agreement nor a promise by the purchaser to pay interest. Interest can be awarded on the basis of a provision in a bill/ invoice, if it is supported by an agreement or promise to pay interest by the purchaser. Such agreement may be established with reference to correspondence, or by countersigning of the bill by the purchaser, or by acceptance by the purchaser of the term in the bill relating to interest. Where in the absence of an agreement or contract for payment of interest on the value of goods supplied, a notice of demand is sent by the supplier requiring payment of the value of goods supplied with interest thereon and a reply is sent by the purchaser in general terms seeking time to pay the bill amount, such reply cannot be construed as an admission to pay interest. Either an agreement to pay interest or a specific admission or promise to pay interest or an order or decree granting interest by a court or tribunal empowered to award interest, is a condition precedent to hold that interest is a debt due, for the purpose of a winding up petition. In the absence of a contractual or legal liability, nor act as an

estoppel in regard to a subsequent denial by the company in legal proceedings. A

(d) Where there is a bona fide dispute in regard to interest, the court considering a petition under section 433(e) should not decide the issue, merely to avoid multiplicity proceedings. The purpose of winding up proceedings being completely different from the purpose of proceedings for recovery of a debt, winding up proceedings are not a substitute for a civil suit, and, therefore, relegating parties to a civil suit cannot be considered as resulting in multiplicity of proceedings." B C

27. We may also notice that a Division Bench of the Calcutta High Court in *Universal Bearing Agency v. Wpil Limited* [2006 (2) CHN 530] followed the decision of the Punjab and Haryana High Court in *Stephen Chemical Limited* (supra).

28. Keeping in view the aforementioned divergence in the opinions of the different High Courts, let us consider relevant provisions of the Companies Act. D

Circumstances in which a company may be wound up by the court are contained in Section 433 of the Companies Act. If a company is unable to pay its debts as contained in Clause (e) thereof, it would be one of the grounds therefor. E

Section 433 (f) of the Companies Act reads as under:

"A company may be wound up by the Tribunal, --

(a) *** *** F

(b) *** ***

(c) *** ***

(d) *** ***

(e) *** *** G

(f) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up;"

Section 434 raises a legal fiction as to when the company would be deemed to be unable to pay its debts; Clause (a) of Sub-section (1) whereof reads as under: H

A "(1) A company shall be deemed to be unable to pay its debts--

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by causing it to be B delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction C of the creditor;"

29. On a plain reading of the aforementioned provisions, it is evident that what is necessary for invoking the said provision is that despite service of notice, the company which was indebted in a sum exceeding one lakh rupees then due failed D and/ or neglected to pay the same within three weeks thereafter or to secure or compound for it to the reasonable satisfaction of the creditor.

30. The fact that despite receipt of a legal notice dated 23.12.2003, no payment has been made to liquidate the debt E on the part of the company is not in dispute. Admittedly, appellant had been supplying Castor Oil to the respondent. The fact that the respondent did not pay the price of the said supplies, on presentation of the invoices, is also not in dispute. It also stands admitted that the parties negotiated as regards the manner in which the payments could be made. In a meeting F held on 25.11.2003, promises were made to square up the old outstanding dues and bring it into the system for the purpose of rotation. The agreement spoke of payment of compensation to the appellant for the delay in payment on account of earlier supplies after clearing the entire old dues. There cannot be any G doubt whatsoever that when, in principle, the respondent had agreed to compensate the appellant for the delay in payment, the same must be by way of interest payable on the principal amount or otherwise.

31. Respondent never denied the demand of interest as H such, but in its reply dated 30.12.2003 merely stated that a sum

of Rs. 16,80,468 (sic for Rs. 15,18,460) was due.

Construction of the aforementioned provision came up for consideration before this Court in *Amalgamated Commercial Traders (P.) Ltd. v. A.C.K. Krishnaswami and Another* [(1965) 35 CC 456], wherein it was held:

> "It is well-settled that "a winding up petition is not a legitimate means of seeking to enforce payment of the debt which is bona fide disputed by the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the process of the court. At one time petitions founded on disputed debt were directed to stand over till the debt was established by action. If, however, there was no reason to believe that the debt, if established, would not be paid, the petition was dismissed. The modern practice has been to dismiss such, petitions. But, of course, if the debt is not disputed on some substantial ground, the court may decide it on the petition and make the order.""

32. Yet again in *M/s. Madhusudan Gordhandas & Co. v. Madhu Woollen Industries Pvt. Ltd.* [(1971) 3 SCC 632], this Court upon considering *Amalgamated Commercial Traders (P.) Ltd.* (supra) and various other English cases opined as under:

> "20. Two rules are well settled. First, if the debt is bona fide disputed and the defence is a substantial one, the court will not wind up the company. The court has dismissed a petition for winding up where the creditor claimed a sum for goods sold to the company and the company contended that no price had been agreed upon and the sum demanded by the creditor was unreasonable. (See London and Paris Banking Corporation) Again, a petition for winding up by a creditor who claimed payment of an agreed sum for work done for the company when the company contended that the work had not been properly was not allowed. (See *Re. Brighton Club and Horfold Hotel Co. Ltd.*)"

A The court furthermore opined:

(i) Where the debt is undisputed, the court will not act upon a defence that the company has the ability to pay the debt but did not choose to pay that particular debt.

B (ii) Where, however, there is no dispute that the company passed the creditor a debt entitled him to a winding up order but the exact amount of the debt is disputed, the court will make a winding up order without requiring the creditor to quantify the debt C precisely.

(iii) The principles which the court acts are first that the defence of the company is in good faith and one of substance, secondly, the defence is likely to succeed in point of law and, thirdly, the company D adduced prima facie proof of the facts on which the defence depends.

33. Section 433 of the Companies Act does not state that the debt must be precisely a definite sum. It has not been disputed before us that failure to pay agreed interest or the E statutory interest would come within the purview of the word 'debt. It is one thing to say that the amount of debt is not definite or ascertainable because of the bona fide dispute raised thereabout or there exists a dispute as regards quantity or quality of supply or such other defences which are available to F the purchaser; but it is another thing to say that although the due as regards the principal amount resulting from the quantity or quality of supply of the goods stands admitted but a question is raised as to whether any agreement had been entered into for payment of interest or whether the rate of interest would be applicable or not. In the latter case, in our opinion, the G application for winding up cannot be dismissed.

34. In *M/s. Madhusudan Gordhandas & Co.* (supra), this Court referred to the decisions of the Chancery Division in *Re. Tweeds Garages Ltd.* [1962 Ch 406], holding:

H "From those sections it appears that the only qualification

which is required of the petitioners in this case is that they are creditors and about that, as I have said, there is really no dispute. Moreover, it seems to me that it would, in many cases, be quite unjust to refuse a winding-up order to a petitioner who is admittedly owed moneys which have not been paid merely because there is a dispute as to the precise amount owing. If I may refer to an example which I suggested in the course of argument, suppose that a creditor obtains judgment against a company for £10,000 and after the date of the judgment something is paid off. There is a genuine bona fide dispute whether the sum paid off is £10 or £20. The creditor then presents a petition to have the company wound up. Is the company to be entitled to say: "It is not disputed that you are a creditor but "the amount of your debt is disputed and you are not, therefore, "entitled to an order"? I think not. In my judgment, where there is no doubt (and there is none here) that the petitioner is a creditor for a sum which would otherwise entitle him to a winding-up order, a dispute as to the precise sum which is owed to him is not of itself a sufficient answer to his petition."

Re. Tweeds Garages Ltd. (supra), apart from *M/s. Madhusudan Gordhandas & Co.* (supra), has *inter alia* been followed by the *Bombay High Court in Pfizer Ltd. v. Usan Laboratories P. Ltd.* [(1985) 57 CC 236] holding that only because there is a dispute in regard to the rate of interest, the winding up petition cannot be thrown out on that ground alone. Pfizer Ltd. (supra) has been followed by the Bombay High Court in *Ispat Industries Ltd., in RE* [(2005) 2 Comp LJ 235]. *Pfizer Ltd.* (supra) was a case of principal plus interest.

35. Our attention, however, has also been drawn to a recent decision of this Court in *Mediquip Systems (P) Ltd. v. Proxima Medical System GMBH* [(2005) 7 SCC 42] wherein the questions of law which fell for consideration before this Court inter alia were:

"(i) Whether the Division Bench of the High Court at Calcutta was justified in dismissing the appellant's appeal

summarily holding, inter alia, that the appellant was not entitled to stay of operation of the order passed by the Company Judge under appeal or, in other words, whether dismissal of connecting stay petition could be justified reason alone for dismissing appeal summarily which was based on cogent grounds?

(ii) Whether the appellant Company can be said to be indebted to the respondent petitioning creditor in respect of US $ 11,000 equivalent to INR 4,69,480 when the said sum was not remitted by the said petitioning creditor, namely, Proxima Medical System GmbH?

(iii) Whether the winding-up proceedings under the relevant provisions of the Companies Act are maintainable against the Company by the said respondent petitioning creditor when it is evident from the document issued by Deutsche Bank (remitter's banker) and foreign inland remittance certificate (issued by the Company's banker) that US $ 11,000 was remitted by another company, namely, Pameda Medizinische Systems GmbH and not by the petitioning creditor?

(iv) Whether the Division Bench as well as the Company Judge, in exercise of their jurisdiction under the Companies Act, erred in directing the Company to deposit Rs 4,69,480 to secure the alleged claim of the petitioning creditor when the petitioning creditor was not the remitter of the said amount and such was seriously disputed before the Company Judge and the Company Judge did not adjudicate the disputes at controversy and directed the petitioning creditor to file suit in respect thereof?

(v) Whether the Division Bench in passing the order under appeal was justified to direct the Company to deposit the balance amount when an earlier Division Bench by an interim order reduced the quantum of deposit from Rs. 4,69,480 as directed by the Company Judge to Rs. 2 lakhs in compliance whereof the Company had duly deposited Rs. 2 lakhs on 11-11-2002 and the petitioning creditor failed to present any suit within three months thereof as per

direction of the Company Judge? A

(vi) Whether the Division Bench was justified in passing the order under appeal by dismissing the stay application, on extraneous considerations, when an earlier Division Bench by an interim order granted stay of advertisement subject to the appellant's depositing Rs. 2 lakhs which was B duly deposited by the Company to the satisfaction of the Court?".

In that case, on the premise that no clear cut finding had been arrived at by the Company Judge that the debt was prima facie due and payable by the company to the creditor and the C impugned order had been passed in purported exercise of jurisdiction not vested in the Company Court for an application for winding up of the Company, it had no jurisdiction to direct the company to deposit the amount payable to a third party or to a party other than the petitioning creditor. Thus, what was in D question was whether the Company Judge could issue a direction to the company to make payment to a third party. Holding that such a jurisdiction is not vested in the company court, it was held:

"18. This Court in a catena of decisions has held that an E order under Section 433(e) of the Companies Act is discretionary. There must be a debt due and the company must be unable to pay the same. A debt under this section must be a determined or a definite sum of money payable immediately or at a future date and that the inability F referred to in the expression "unable to pay its debts" in Section 433(e) of the Companies Act should be taken in the commercial sense and that the machinery for winding up will not be allowed to be utilised merely as a means for realising debts due from a company.

*** *** *** G

21. The debt under Section 433 of the Companies Act must be a determined or a definite sum of money payable immediately or at a future date..."

36. It is, however, of some interest to note that the Division H

A Bench referred to a decision of the Madras High Court in *Tube Investments of India Ltd. v. Rim and Accessories (P) Ltd.* [(1990) 3 Comp LJ 322] where the following principles relating to bona fide dispute had been evolved:

> "(1) If there is a dispute as regards the payment of the sum
B towards principal, however small that sum may be, a petition of winding up is not maintainable and the necessary forum for determination of such a dispute existing between the parties is the Civil Court;
>
> (2) The existence of a dispute with regard to payment of
C interest cannot at all be construed as existence of a bona fide dispute relegating the parties to decide such a dispute before the Civil Court and in such an eventuality, the Company Court itself is competent to decide such a dispute in the winding-up proceedings; and
>
> D (3) If there is no bona fide dispute with regard to the sum payable towards the principal, it is open to the creditor to resort to both the remedies of filing of a civil suit as well as filing of a petition for winding-up of the company."

In that case also a bona fide dispute was raised by the E company.

It was furthermore found that there was no general allegation or averment that the company was unable to pay its dues and other obligations in the sense of its innumerable creditors. It was in the aforementioned situation that Section F 433(f) of the Companies Act was found to be not applicable.

37. In this case, on the date of filing of the application, dues in respect of at least a part of the debt which was more than the amount specified in Section 433 of the Companies Act was not denied. It is not a requirement of the law that the entire debt G must be definite and certain. The Division Bench of the High Court proceeded on the basis that the entire sum covering both the principal and the interest must be undisputed, holding:

> "Except making a bald allegation in the company petition that the petitioner had come to know that the respondent
H company owes large sums of money to its creditors and

it is not in a position to meet its debt obligations and as, therefore, become commercially insolvent, the petitioner has not taken necessary care to prima facie establish the same. The only piece of evidence available on the side of the petitioner is that the respondent is indebted to the petitioner a sum which is claimed towards interest on the delayed payment. Assuming for a moment that the respondent company is liable to pay interest on the delayed payments and it has not paid the said amount to the petitioner, could it be said that the respondent neglected to pay the debt particularly when the respondent is disputing the liability of payment of interest on the delayed payments and when there is no such written agreement in between the parties for such payment of interest."

38. The Division Bench upon noticing the fact of the matter formulated the question "as to whether the respondent is liable to pay interest at 2% per month on delayed payments and what that is being disputed would it constitute prima facie a valid ground for admission of the company petition?" It was held:

"...The petitioner seeks to rely upon the invoices which according to him contain at the foot a clause for payment of interest on delayed payments. Such a clause, even assuming is there, since it has not been placed by means of any cogent evidence in this case, in view of the judgment of the Rajasthan High Court in *Kitply Industries* case (supra), cannot constitute an agreement between the parties for payment of interest. The legal position, thus, seems to be obvious. Before seeking a company to be wound up on the ground that it is unable to pay its debts, it must be shown before the Court that the debt claimed against the company is ascertained and definite and that the company failed to pay the same. Mere failure to pay the amount would not constitute the requisite 'neglect to pay' as envisaged under Clause (a) of Sub-section (1) of Section 434 of the Act when the company bona fide disputes the very liability and hence the defence taken up

A by it is of substance."

It was furthermore held:

"Having regard to the facts and circumstances of the instant case, we are of the considered view that the claim of the petitioner towards interest on delayed payments
B since not covered by any specific agreement between the parties inter se is a contentious issue and the dispute as regards the payment of interest is bona fide and it cannot, therefore, legitimately be concluded that the respondent has neglected to pay. The petitioner, who pleaded inter alia
C in his petition that as per the trade practice payments made shall be adjusted towards interest first and balance, if any, shall be adjusted towards principal later, failed to establish the same by any prima facie evidence. In the absence of any such trade practice, appropriating the
D amounts towards interest first and the balance, if any towards principal next becomes inappropriate, in which event the claim of the petitioner that the respondent is liable to pay Rs. 65,15,947/- basing upon such calculations cannot be accurate. The total amount claimed by the petitioner as due in that view of the matter becomes
E doubtful and not definite. It is still got to be ascertained if the claim of the respondent were to be considered that there has been no agreement for payment of interest on delayed payments. For the above reasons, it cannot be presumed prima facie that the respondent is unable to pay
F its debts."

39. The findings of the High Court, with respect, are not correct for more than one reason; firstly, because the Division Bench did not hold that the invoices were not proved by cogent evidence; secondly, question of leading evidence would arise
G only after the company petition is admitted and, thirdly, issuance of invoices and signature of the respondent thereon is not disputed.

40. The judgment of the Division Bench also contains a legal flaw insofar as it failed to take into consideration that the
H appellant had in fact issued three notices being dated

6.01.2003, 8.09.2003 and legal notice dated 23.12.2003 specifically mentioning that the payments had been adjusted towards interest first and balance, if any, shall be adjusted towards the principal. Thus, a prima face case was made out.

41. This brings us to the question as to why an interest is payable. An interest is inter alia payable by way of restitution.

In *Clariant International Ltd. and Another v. Securities & Exchange Board of India* [(2004) 8 SCC 524], this Court held:

"25. A direction in terms of Regulation 44 which was in the interest of securities market indisputably would have caused civil or evil consequences on the defaulters. Clause (i) of Regulation 44, however, does not provide for any penal consequence. It provides for only civil consequences. By reason of the said provision, the power of the Board to issue directions is sought to be restricted to pay the amount of consideration together with interest at a rate not less than the interest payable by banks on fixed deposits. Both the Board and the Tribunal have proceeded on the basis that the interest is to be paid with a view to recompense the shareholders and not by way of penalty or damages. Such a direction, therefore, was for the purpose of protecting the interest of investors and not "in the interest of the securities market". The transactions in the market are not thereby affected one way or the other. The Board, as noticed hereinbefore, has a discretion in the matter and, thus, it may or may not issue such a direction. The shareholders do not have any say in the matter. As a necessary concomitant, they have no legal right."

Yet again, this Court in *Alok Shanker Pandey v. Union of India and Others* [(2007) 3 SCC 545] has held that interest is payable by way of accretion on capital.

The question came up for consideration in *Meka Venkatadri Appa Rao Bahadur Zamindar Garu and others v. Raja Parthasarathy Appa Rao Bahadur Zamindar Garu* [AIR 1922 PC 233] wherein it was held:

"...There is a debt due that carries interest. There are moneys that are received without a definite appropriation

A on the one side or on the other, and the rule which is well established in ordinary cases is that in those circumstances the money is first applied in payment of interest and then when that is satisfied in payment of the capital. That rule is referred to by Rigby, L.J., in *Parr's* B *Banking Co. v. Yates* in these words:

"The defendant's counsel relied on the old rule that does, no doubt, apply to many cases, namely, that, where both principal and interest are due, the sums paid on account must be applied first to interest. That rule, where it is C applicable, is only common justice. To apply the sums paid to principal where interest has accrued upon the debt, and is not paid, would be depriving the creditor of the benefit to which he is entitled under his contract."

The said decision has been followed by this Court in D *Meghraj and Others v. Mst. Bayabai and others* [(1969) 2 SCC 274, para 5] and a Constitution Bench of this Court in Gurpreet Singh v. Union of India [(2006) 8 SCC 457, para 19].

In *Alok Shanker Pandey v. Union of India and Others* [(2007) 3 SCC 545], this Court held:

E "8. We are of the opinion that there is no hard-and-fast rule about how much interest should be granted and it all depends on the facts and circumstances of each case. We are of the opinion that the grant of interest of 12% per annum is appropriate in the facts of this particular F case. However, we are also of the opinion that since interest was not granted to the appellant along with the principal amount, the respondent should then in addition to the interest at the rate of 12% per annum also pay to the appellant interest at the same rate on the aforesaid interest from the date of payment of instalments by the G appellant to the respondent till the date of refund of this amount, and the entire amount mentioned above must be paid to the appellant within two months from the date of this judgment."

42. Interest is also payable in terms of the provisions of H

Section 62(1)(a) of the Sale of Goods Act. Interest may be held to be payable in terms of Section 3 of the Interest Act, 1978 as also in terms of Sections 5 and 6 of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993.

In *Krishna Chemicals v. Orient Paper and Industries Ltd.* [(2005) 128 CC 72], the Orissa High Court held:

> "The interest amounts as claimed by the petitioners in the two cases against the Company however may not be in accordance with the provisions of Sections 4 and 5 of the Act, 1993. The fact that the exact amount of interest claimed by the petitioners against the Company is disputed can be no ground to dismiss the petition for winding up for non-payment of the interest so long as the liability to pay interest of the Company to the petitioners exists under Sections 4 and 5 of the Act, 1993 and admittedly such liability has not been discharged by the Company. As has been held by the Supreme Court in *Madhusudan Gordhandas and Co. v. Madhu Woollen Industries Pvt. Ltd.* (supra) in the portion of the judgment quoted above, where there is no doubt that the Company owes the creditor a debt entitling him to a winding up order but the exact amount of the debt is disputed the Court will make a winding up order without requiring the creditor to quantify the debt precisely."

The provisions of the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993 were applied in *Assam Small Scale Industries Development Corpn. Ltd. and Others v. J.D. Pharmaceuticals and Another* [(2005) 13 SCC 19]

43. For the reasons aforementioned, we have no other option but to set aside the judgment of the High Court. The question, however, which arises for consideration is whether at this stage we shall remit the matter back to the learned Single Judge to admit the company petition or dispose of the matter ourselves. We choose to adopt the latter course. But, we are of the opinion that interest of justice would be subserved if we

in exercise of our jurisdiction under Article 142 of the Constitution of India direct that the respondent shall pay simple interest on the admitted sum at the rate of 12% per annum on the balance amount instead of 24% per annum within eight weeks from the date of amount became due till it is paid failing which the consequences provided in law shall ensue.

44. We have passed this order with a view to avoid multiplicity of proceedings and for the purpose of avoiding unnecessary delay in the interest of parties.

45. The appeal is allowed. No costs.

N.J. Appeal allowed.