(1991) 08 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No''s. 169 of 1974 and 15 of 1991

Amar Nath Krishan Lal and Others APPELLANT

Vs

Hindustan Forest Co. (Pvt.) Ltd. RESPONDENT

Date of Decision : 23-08-1991

Acts Referred:

Companies (Court) Rules, 1959 — Rule 148, 149, 150, 159, 163
Companies Act, 1956 — Section 515, 522, 524, 525

Citation : (1993) 77 CompCas 128 : (1992) 101 PLR 169

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : Hemant Gupta, for the Appellant; Munishwari Puri and Deepali Puri, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, J.—This is a petition filed under Sections 524 and 525 of the Companies Act, 1956 (hereinafter called "the Act"), read with Rule 9 of the Companies (Court) Rules for the removal of Shri B. K. Kapoor, liquidator, appointed by this court. The facts giving rise to the present petition are as under :

Hindustan Forest Co. (Pvt.) Ltd. (In Liquidation) (hereinafter referred to as "the company") filed an application numbered as C. A. No. 169 of 1974, u/s 522 of the Companies Act for winding up of the company under the supervision of this court. The aforesaid application was allowed by this court on February 27, 1975, and Shri B. K. Kapoor, ex-managing director of the company, was appointed as liquidator of the company for winding up of the company under the supervision of the court. On June 17, 1975, notices under Rule 148 of the Companies (Court) Rules, 1959 (hereinafter referred to as "the Rules"), were issued to the creditors for filing their claims within the prescribed period. The petitioners in the present petition in whose favour a decree in the sum of Rs. 43,690.23 has been passed by the Jammu and Kashmir High Court and another decree in the sum of Rs.

800, passed by a civil court filed their claim in pursuance of the notice under Rule 148. Thereafter, on June 25, 1979, that is after a lapse of four years, notices were issued to the creditors by Sh. B. K. Kapoor, liquidator, under Rule 149 asking the creditors to file proof of debt in order to prove the debt. The petitioners, on July 19, 1979, filed their affidavit in terms of Rule 150. Thereafter, the liquidator issued notices under Rule 159, asking the creditors to file proof of their evidence. The petitioners, on July 15, 1981, sent their reply along with the documents which were in their possession.

2. The allegation of the petitioners is that after July 15, 1981, no communication has been received by them from the liquidator relating to the determination of their claim. The liquidator is duty bound under Rule 163 either to accept or reject the claim of the creditors. The failure of the liquidator to communicate the determination or to decide the claim has prejudiced the rights of the petitioners. It is further averred that the liquidator has no right legal or moral to continue with the winding up of the company subject to the supervision of the court. It is further alleged that the liquidator has not paid off any creditor and that he is prosecuting his claims only. The liquidator has failed to discharge his duties, and, therefore, has no right to continue or officiate as the liquidator and, therefore, sought the removal of Sh. B. K. Kapoor as liquidator of the company and prayed that in his place an official liquidator be appointed for the winding up of the company subject to the supervision of the court.

3. Under Rule 163, the liquidator after such investigation as he thinks necessary, is required either to admit or reject the proof submitted by the creditor either in whole or in part. The said decision of the liquidator is required to be communicated to the creditors concerned by post under postal certificate where proof is admitted and by registered post for acknowledgment where proof is rejected. It is further provided that it would not be necessary to give notice of the admission of the claim to the creditor who has appeared before the liquidator and acceptance of his claim has been communicated to him or in writing at the time of acceptance.

4. This petition was resisted by the respondent. In the written statement, it was alleged that the petition is frivolous, mala fide, and untenable and it has been instituted with a design to coerce the answering respondent in order to enforce claims against the company. That the claim of the petitioners is no longer due from the company and the same is barred by limitation and not payable in law. The allegation of the petitioner on merits that no action has been taken by the liquidator after putting in of the claims of the creditors and asking for proof in support thereof after July 15, 1981, has not been denied specifically. It is averred that the liquidator had been continuously pursuing the matter in this court for establishing the claim of the company which has resulted in the passing of a substantial decree in favour of the company. That in C. P. No. 35 of 1975, a decree in the sum of Rs. 8,50,000 has been passed along with interest at the rate of 12 per cent, with effect from December 16, 1971, and the total amount

due to the company under this decree along with interest comes to Rs. 26 lakhs approximately. That the liquidator has been acting in the interest of the company and has taken various steps which would enable the company to generate enough funds to pay off its creditors.

5. I have gone through the records carefully and have heard counsel for the parties at length. I do not find any substance in the submission of counsel for the respondent that the petition is vague. The petitioner has clearly stated in his petition that after 1981, the provisional liquidator, Shri B. K. Kapoor, has not taken any steps and has failed even to admit or reject the proof submitted by the petitioner as required under Rule 163. The petition is not either vague or lacking in particulars as has been alleged by the respondents in their reply. I further do not find any force in the submission of counsel for the respondent that the petition is not tenable because the same is motivated, untenable and coercive in nature. Except for levelling these allegations in the written statement and repeating them in the court a number of times while arguing, counsel for the respondent was unable to substantiate these allegations.

6. The statutory provisions relating to winding up of a company subject to the supervision of the court are contained in Sections 522 to 527. u/s 522, the court can direct voluntary winding up of the company subject to such supervision of the court and with such liberty for creditors, contributors or others to apply to the court, as the court may think fit. u/s 524 of the Act, the court is invested with absolute discretion to remove a liquidator and appoint in his place an official liquidator.

7. The object of ordering voluntary liquidation under the supervision of the court is to ensure the protection of the interest of all persons concerned, i.e., the company, contributors and the creditors. u/s 524, if the court is satisfied that the provisional liquidator is not acting in the interests of the company or its creditors then the court can order the removal of the provisional liquidator and order that an official liquidator be appointed in his place. u/s 515 of the Act, the court can order the removal of the liquidator on some "good cause" being shown. In Section 524 the words "good cause" shown do not find mention but all the same it has been interpreted by various courts that a liquidator appointed on voluntary liquidation of a company cannot be removed arbitrarily and the order of removal of the liquidator should only be passed on some good cause being shown, viz., that the liquidator has failed to protect the interests of all persons concerned, that is the company, contributors and the creditors. The point, therefore, which arises for consideration is as to whether the petitioner has been able to show good cause for the removal of Shri B. K. Kapoor as liquidator and for his replacement by an official liquidator under the supervision of the court.

8. In my view, the petitioners have shown a good cause for the removal of Shri B. K. Kapoor as liquidator of the company. Shri Kapoor has not taken any steps for the protection of the interest of the creditors. Since the company had gone into voluntary liquidation, the creditors were issued notices under Rule 148 for

filing their claims which they did immediately thereafter. After an inordinate delay of four years therefrom notices were issued to the creditors under Rule 149 asking them to file proof of debt in their possession in order to prove the debt. The creditors-petitioners filed their reply to the notices issued to them under Rule 149 by filing their affidavits in terms of Rule 150. No action was taken by Shri Kapoor for a period of one year. Thereafter notices under Rule 159 were issued by him asking the creditors to file proof of that evidence. The creditors-petitioners filed their reply to these notices on July 15, 1981. Shri B. K. Kapoor did not take any action thereafter. Communications addressed by the creditors were not replied to. Under Rule 163 the liquidator is duty bound, either to accept or reject the proof in support of the claim filed by the creditors either in whole or in part. Every decision of the liquidator accepting or rejecting a proof, either wholly or in part has to be communicated to the creditor concerned by post under postal certificate where the proof is admitted and by registered post for acknowledgment where the proof is rejected. The order passed under Rule 163 is made appealable under Rule 164. Shri Kapoor did not determine or decide the claim of the creditor-petitioners in the past ten years which has affected prejudicially the rights of the creditors. Shri Munishwari Puri, learned counsel appearing for the liquidator, argued that the liquidator was pursuing the cases vigorously on behalf of the company and that in fact he was able to obtain a decree in the sum of Rs. 8,50,000 along with interest at the rate of 12 per cent, against the State of Jammu and Kashmir in C. P. No. 35 of 1975. The total amount due to the company under this decree along with interest comes to Rs. 26,00,000 approximately and this shows that the liquidator had taken steps to generate funds so that the claim of the creditors may be cleared off. No doubt, in C. P. No. 35 of 1975, a decree in favour of the company in the sum of Rs. 8,50,000 along with interest at the rate of 12 per cent. has been passed but this does not absolve the liquidator from performing his statutory functions as enjoined in Rules 143 to 163 and 167. Shri Kapoor has failed to discharge his duties as liquidator inasmuch as he has failed to take certain steps which he was statutorily required to take which shows that he is not taking any active interest in processing the claims of the creditors and their settlement. Orders passed under Rule 163 are appealable under Rule 164 and non-action on the part of the liquidator to determine the rights Rules (sic) has rightly given rise to an apprehension in the minds of the creditors that their interest and that of the company in liquidation is not safe in the hands of Shri Kapoor and further that an official liquidator be appointed in his place to conduct the affairs of the company in liquidation under the supervision of this court.

9. The next submission of Mr. Munishwari Puri is that a similar petition (C. P. No. 7 of 1982) filed by the United Commercial Bank for the removal of Shri Kapoor and for the appointment of the official liquidator in his place has already been dismissed on February 22, 1990, on similar grounds and the present application should also be dismissed. I do not find any substance in this submission of Shri Munishwari Puri either. C. P. No. 7 of 1982 proceeded on altogether different

points. The points involved in the present petition were neither alleged nor canvassed in C. P. No. 7 of 1982. Dismissal of C. P. No. 7 of 1982 is thus no bar to the maintainability of the present petition.

10. For the reasons mentioned above, this petition is allowed and Shri B. K. Kapoor is ordered to be removed as liquidator of the company in liquidation under voluntary winding up and the official liquidator is appointed to be the liquidator for winding up of the company subject to the supervision of the court in the interests of justice.

