
(1966) 07 KL CK 0022
In the High Court Of Kerala
Case No : Company Petition No. 22 of 1965

A.P. Pothen

APPELLANT

Vs

Hindustan Trading Corporation Private Ltd. and Others

RESPONDENT

Date of Decision : 22-07-1966

Acts Referred:

Companies Act, 1956 — Section 291, 293, 425, 433, 439

Citation : (1967) 37 CompCas 266

Hon'ble Judges : P.T. Raman Nayar, J

Bench : Single Bench

Advocate : C.K. Sivasankara Panicker and P.G. Parameswara Panicker, for the Appellant; M.Ramanatha Pillai and K. Kurien Joseph, for the Respondent

Final Decision : Dismissed

Judgement

P.T. Raman Nayar, J.—This is a contributory's winding up petition brought under the just and equitable clause on the ground that the substratum of the company is gone.

2. The petition is opposed by the company, a private limited company, which had only six members at the time of the presentation of the petition. All of them are before court. Two, including the petitioner, holding 1996 out of a total of 4,000 shares, are in favour of the winding up while the remaining four, holding 2004 shares, are opposed to it. A contributory coming under the just and equitable clause has generally an uphill task, for, the statute establishes a domestic tribunal as between the members and the company and thus enables the members themselves by passing the requisite resolutions to determine whether there shall be a voluntary liquidation or whether the court shall be asked to make a compulsory order. The petitioner's course is not made any the less steep by the circumstances that the majority of the members holding the majority of the shares are opposed to the winding up. He will have to make out very strong grounds indeed if he is to succeed.

3. Far from this being the case, it seems to me that, even if the allegations made in the petition are accepted, they would hardly justify a winding up order. What is said is that as a result of differences with regard to the management of the company, and the circumstance that the company was running at a loss, the petitioner and the other members who supports him, "did not wish to risk any more of their property in the company" and that "as a result of the discussion all the members came to a tentative proposal to voluntarily wind up the affairs of the company." As a step towards this, the company held an extraordinary general meeting on the 15th March, 1965 at which it was unanimously resolved that all of its assets should be sold. However, with a view to prevent the necessary resolutions being passed, the directors, who had apparently changed their mind about the winding up, were proposing to issue fresh shares so as to secure a majority on their side 1,800 shares have been issued since the presentation of this petition. But, as we have seen, even ignoring this issue, there is a majority opposed to the winding up. Even on the basis of the shareholding as at the time of the general meeting of 15th March, 1965, there would be a majority opposed to the winding up so that it does not appear that there was at any time any chance of the special resolution necessary for either a voluntary or compulsory winding up being passed. And, even if it be that the members had in mind a winding up when they resolved to sell all the assets of the company, nothing prevents them from changing their mind and deciding to continue the company if that is possible. The company owned six undertakings. Of these, only two have been sold, and, even if it be as alleged by the petitioner these were the most substantial of the undertakings, that would not be a sufficient ground for a winding up order. The company was not formed for taking over and running any particular undertaking. It can still continue to run its four remaining undertakings and its objects are wide enough for it to take up new ventures. Even where the sole undertaking of a company has been actually sold, it cannot be said that its substratum has disappeared so long as there is some other business which it can carry on coming within the objects stated In its memorandum: In re" Kitson & Co., Ltd., 1946 1 All ER 435 and Re Taldia Rubber Co., Ltd.. 1946 2 All ER 763. Hence, even if counsel for the petitioner were right in his submission that the board was bound by the resolution of the 15th March, 1965 to sell all the six undertakings of the company, it would still not be a case where the substratum of the company has disappeared. But counsel is wrong since, under the articles of the Company, the management is vested in the Board and there is nothing in the Companies Act, or in the articles, or in the regulations, which requires the board to abide by the directions of the company in general meeting in the matter of the sale of the assets of the Company. The power to sell the assets of the company is vested in the board, and, if the board feels that it is not in the interests of the company to sell its assets, it is not bound to do so, notwithstanding that the company in general meeting has resolved that they should be sold. (Automatic Self- Cleansing Filter Syndicate Co., Ltd. v. Cuninghame (1006) 2 Ch. 34. John Shaw & Sons (Salford) Ltd. v. Shaw. 1935-2 KB 113 , and Murarka Paint and Varnish Works Ltd. Vs. Mohanlal

Murarka and Others, , the last mentioned of which refers to a large number of decided cases on the point).

(4) I might add that it is by no means established that the resolution of the 15th March 1965 was passed with a view to put an end to the company. Ext. R-8, the requisition for the extraordinary general meeting. Ext. R-3, the notice of the meeting, and Ext. R-9, the explanatory statement attached to the notice, suggest that the idea was to sell one of the assets of the company, namely, the Cherupanni Rubber Estate and or other estates belonging to the company for the purpose of clearing its liabilities since there was little prospect of clearing the liabilities from the profits earned. There seems to be much substance in the case put forward by the company that the resolution authorising the sale of all the assets was designed to enable the board to choose and sell such of the assets as would find a good and ready market for the limited purpose of clearing the liabilities of the company and not for the purpose of winding up the company. But, as I have already said, even if it be that, on the 15th March, 1965, the members of the company thought that it would be advisable to wind up the company there Is nothing to prevent them from changing their mind as, obviously on the very showing of the petitioner, the majority of them have done.

5. One circumstance is sufficient to show that the petition is not bona fide but for some ulterior end. The case put forward in the petition is that the company had ceased to make a profit, that its assets were just sufficient to meet its liabilities, and that the petitioner and his friend were no longer prepared to risk their property in the company. Their property in the company consists of the shares held by them. If the averments in the petition were true these shares would be worth very little, and, in any event, not more than their face value. Members who were opposed to the winding up offered to buy the shares of both the petitioner and his friend at twice their face value. This offer was rejected by the petitioner who demanded three times the face value, accompanying the demand with a counter offer to buy the shares of the members who were opposed to the winding up at the same price This winding up petition, it seems fairly obvious, is an abuse of the process of the court being designed for the purpose of putting pressure so as to gain control over the affairs of the company.

6. I dismiss the petition with costs. This, of course, means that the injunction granted in Application No. 507 of 1965 is no longer in force Advocate"s fee Rs 250.