(2011) 03 AHC CK 0404

In the Allahabad High Court

Case No : Special Appeal No. 425 of 2011

Ashok Kumar Sharma, Proprietor of A.K. Builders and Supplier and Another — APPELLANT

Vs

Triveni Engineering and Industries and Another — RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

- Allahabad High Court Rules, 1952 — Rule 5
- Civil Procedure Code, 1908 (CPC) — Section 148A
- Companies (Court) Rules, 1959 — Rule 6, 67
- Companies Act, 1956 — Section 391, 391(1), 391(7), 392, 393

Citation : (2011) 163 CompCas 409 : (2011) 2 CompLJ 236

Hon'ble Judges : Sunil Ambwani, J;Kashinath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Shri Prashant Kumar, learned Counsel for the Appellant. Shri R.P. Agarwal appears for the Respondents-companies.

2. The Appellant is unsecured creditor of Triveni Engineering & Industries Limited (demerged company), Respondent No. 1.

3. This special appeal has been filed under Chapter VIII, Rule 5, of the Allahabad High Court Rules, 1952, against the order dated 18.2.2011 passed by hon''ble Company Judge, sitting singly, rejecting Petitioner''s application for recalling the order dated 9.9.2010 u/s 391 of the Companies Act, 1956 read with Rule 67 of the Companies (Court) Rules, 1959 by which directions were issued to convene the meetings of the shareholders and the creditors of the company for considering the scheme of demerger by which the company proposed to demerge its business and made certain provisions with regard to assets and liabilities, with Triveni Turbine Limited (Resulting Company)-Respondent No. 2.

4. Shri R.P. Agarwal has raised preliminary objections to the maintainability of the special appeal. He submits that the order rejecting the application for

recalling the order convening the meeting for considering the scheme of demerger dated 9.9.2010 is not a judgment. The order has not decided any case, or any of the rights of the parties. It is not a final order in any proceedings. The application u/s 391 is still pending in which objections filed by the Appellant to the convening of meetings have been heard and that the judgment was reserved on 17.3.2011. He submits that Sub-section (7) of Section 391, giving a right of appeal to any aggrieved person against the order passed u/s 391, was deleted by the Companies (Second Amendment) Act, 2002. The appeal is not thus maintainable under Sub-section (7) of Section 391, or u/s 483, which provides for appeal in the matters of orders made in the proceedings of winding up of the company.

5. The Companies (Second Amendment) Act, 2002 had come into force w.e.f. 13.12.2000. The provisions of constituting Tribunals were, however, stayed, and that recently an order has been passed by Hon''ble Supreme Court for reconsidering the provisions of constituting the Tribunals under the amended Act.

6. In the present case, by the order dated 18.2.2011 under challenge, learned Single Judge has observed that though the Appellant had a right to file a caveat u/s 148A CPC as by Rule 6 of Companies (Court) Rules, 1959, the provisions of the Code of Civil Procedure, 1908, have been made applicable, the Appellant, as unsecured creditors at the stage of chamber''s summons under Rule 67 of the Companies (Court) Rules 1959, did not have any caveatable interest. He held that the order u/s 391(1) does not affect the right of any person, and thus no prejudice has been caused to the Appellant to challenge the order. Learned judge has relied upon Chembra Orchard Produce Ltd. and Others Vs. Regional Director of Company Affairs and Another, in which the Supreme Court has held that if hearing is required to be given to contributors, creditors and shareholders at the initial stage in considering application u/s 391 to 394 of the act, the entire scheme would become unworkable.

7. Shri Prashant Kumar submits that though the chamber''s summons are to be heard ex-parte, if a caveat is filed, a person having interest in the affairs of the company can make objections to the making of the order u/s 391(1) for convening meetings, and that to that extent the Appellant had a caveatable interest and had a right to be heard at the stage of issuing orders for convening meetings.

8. The impugned order refers to the proceedings u/s 391(1) of the Act. The Company Judge was satisfied that the conditions of Section 391 were complied with, before issuing orders for convening a meeting to consider the scheme of the demerger. The summons for convening the meeting were advertised in daily newspapers ''Statesman'' published from Delhi and ''Amor Ujala'' published from Meerut. The meetings have been held in which the Petitioner did not participate. The objections that the Appellant having its head office at Lucknow did not acquire knowledge of the summons by its publication in the newspapers at New Delhi and Meerut have been heard by learned Company Judge and the orders are

reserved.

9. Shri Prashant Kumar informs the court that the Appellant has also filed a creditor''s winding up petition on 07.2.2011 to wind up the company, which is likely to be heard shortly.

10. We are of the opinion that learned Single Judge did not commit any error in law, in rejecting the application for recalling the order dated 9.9.2010. The Appellant''s rights have been protected by hearing his objections in the proceedings for confirmation of the scheme of demerger. At this stage, by the impugned order, the Appellant''s rights have not been affected nor any prejudice has been caused to him in any manner.

11. The special appeal is dismissed.