
(1983) 10 DEL CK 0030
In the Delhi High Court
Case No : C.P. No. 119 of 1978

Bhagwan Singh and Sons P. Ltd.

APPELLANT

Vs

Kalawati and others

RESPONDENT

Date of Decision : 03-10-1983

Acts Referred:

Citation : (1986) 60 CompCas 94

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Judgement

D.R. Khanna, J.—This is a petition moved u/s 391 of the Companies Act, 1956 (hereinafter called "the Act"), by Bhagwan Dass and Sons P. Ltd. for sanction of a scheme of arrangement approved by the creditors and shareholders at meetings held on April 25, 1978. Thereby the unsecured liabilities were approved to be paid at 50% of their value in yearly Installments of 10% covering a period of five years. The rest of 50% liabilities have to be treated as wiped off.

2. The company was incorporated in the year 1960 for doing the business of manufacture and dealings in electrical equipments. It has its business premises in Connaught Place, New Delhi. The company is otherwise close-knit with Jaswant Singh as its managing director and his wife, Mohinder Kaur, as director. The shareholders are relations or friends. The subscribed capital is Rs. 1,30,000.

3. It is averred in the petition that the company had to face considerable difficulties from the very inception. In the year 1963, it was said to have been defrauded by a concern known as "Blood Bank" of Rs. 47,000. Subsequently, there were disputes between Jaswant Singh and his two other brothers who were also shareholders. Some proceedings under sections 397 and 398 of the Act were commenced. They were, however, compromised by about 1968 when Jaswant Singh purchased the shares of his brothers and the latter walked out.

4. The company is at present indebted to the Grindlays Bank Ltd. for Rs. 70,000 and has also been suffering losses from time to time and they amounted to

about Rs. 2 lakhs till 1973. In the meanwhile, three creditors of the company obtained decrees. In June 1977, another creditor, M/s. Unico Engineers, filed a winding up petition on the ground of non-payment of the amount due to them. At present, the company is said to be gradually improving its affairs and trying to clear up the liabilities but is not in a position to do so entirely.

5. As such, a petition u/s 391 of the Act (C.P. No. 58 of 1977) was moved for summoning the meetings of the shareholders and the creditors for approval of the scheme of arrangement. The court then directed the holding of those meetings and appointed a chairman to preside over them. Amongst the shareholders, Jaswant Singh and his wife, Mohinder Kaur, alone were present, their shareholding being of the value of Rs. 54,800. They approved the scheme in this meeting held on April 25, 1978. In the other meeting of the creditors, Jaswant Singh appeared for himself and as proxy of seven other creditors. The other four present were M/s. Kirti Enterprises, Smt. Kalavati, Smt. Satyawati and Smt. Pramod Kumar. They opposed the scheme. Since Jaswant Singh had the other creditors from whom he held the proxy were creditors to the extent of Rs. 1,65,737 as against the amount of Rs. 24,000 due to the other four, the scheme was declared to have been approved by a majority of creditors claiming more than 75% of the amounts.

6. It was thereafter that the present petition (C.P. No. 119 of 1978) was moved by the company for sanction of the scheme as approved by the shareholders and the creditors. Along with this, annexure "C" has been attached giving the details of the creditors and the loans taken by the company. They total Rs. 33,581 and Rs. 62,076 respectively. The same shows that the main creditors (Rs. 26,851) is Jas Electric and Mfg. Co. which is a concern of Jaswant Singh, managing director himself. M/s. Kirti Enterprises were due Rs. 3,000 but this has in the meanwhile been settled by the company and the liability discharged. The other creditors are of small amounts, each of less than Rs. 1,000 excepting M/s. Kwality Electric Stores to whom Rs. 1,406.50 was due. M/s. Unico Engineers who had earlier filed winding up petition was due Rs. 557.93 only, and this the respondents have pleaded was entirely a collusive affair in order to create a semblance of financial difficulties.

7. Annexure "C" separately shows the details of the loans which the company had taken. They show that Rs. 17,766.70 is due to Mohinder Kaur, who is the wife of the managing director. Rs. 25,000 is due to Mrs. Hobo Talwar, Mrs. Richa Talwar and Mrs. Prabhu Dayal, all of whom had given proxy in favor of Jaswant Singh for attending and voting in the meeting of creditors. The respondents have contended that they are close relations of Jaswant Singh and possibly the shareholders of the company as well. The only other three are Mrs. Kalawati, Mrs. Pramod Kumar and Mrs. Satyawati who hold decree for Rs. 10,000, 5,000 and 5,000, respectively, in their favor against the company. These are the respondents in the present proceedings and they vehemently oppose the sanction of the scheme.

8. These respondents have contended that the scheme of arrangement is collusive and mala fide and is designed to deprive the genuine creditors of their dues. This has been termed as a device to cheat them. The company, it is pointed out, has been running regular business in Connaught Place, New Delhi, and as per annexure "A" attached with the petition, its yearly net profit since 1975 onwards ranges between Rs. 20,000 and Rs. 30,000. At present, the respondents have got the goods of the company attached in execution of their decrees, but the company managed to get the winding up petition moved from a collusive creditor, namely, M/s. Unico Engineers, to whom a small amount of Rs. 557.93 only was due. The respondents claim that they are the genuine creditors, and that the so-called creditors have been set up collusively to defeat their claims.

9. It may also be mentioned that Shri Rameshwar Das Gupta, proprietor of M/s. Kirti Enterprises, had as well filed a reply assailing the scheme of arrangement as mala fide as according to him the company was carrying on a flourishing business and is admittedly making profits. His claim, as stated above, was subsequently settled by the company.

10. Jaswant Singh, who is the managing director of the company, is at present in the Middle East and running business there. The respondents state that the same is quite flourishing.

11. With this background of the facts and circumstances of the case, I have heard the parties and given my due consideration to the whole matter. At the outset, it must be stated that this petition is manifestly delayed and is liable to be rejected on this short ground. The meetings of the creditors and the shareholders were held on April 25, 1978, approving the scheme of arrangement, and the report of the Chairman submitted on May 23, 1978. The present petition for obtaining sanction of the court of that scheme should have been moved within seven days of the filing of the report by the chairman, vide rule 79 of the Companies (Court) Rules, 1959. This was not done and instead this petition was moved on November 15, 1978. The reason given for the delay is that the managing director of the company had gone abroad and his return had been unavoidably delayed. However, it is noteworthy that this petition is signed by Smt. Mohinder Kaur, director who was throughout in India. There was thus nothing which prevented her from moving this petition within seven days of the filing of the report by the chairman. In fact, such a petition, after the approval of the scheme by the shareholders and the creditors, does not require any further instructions or investigation, and it is as such that a short period of seven days has been prescribed under the Rules.

12. That apart, this petition is liable to be rejected on another ground. The proviso to section 391(2) of the Companies Act lays down that no order sanctioning any compromise or arrangement shall be made by the court unless the court is satisfied that the company has disclosed to the court all material facts relating to the company such as the latest financial position of the

company, the latest auditor's report on the accounts of the company, etc. This has to be up to the stage when the petition becomes due for sanction. The company has, however, failed to do so. It has chosen to file balance-sheets up to March, 1980, and has not cared to submit the latest balance-sheet, profit and loss account, list of shareholders and shares held by them and the auditor's report, though required to do so in the course of arguments last month. The company has thus withheld the full materials facts and its latest financial position. All this information was not only necessary for ascertaining whether the so called other creditors are actually the shareholders of the company, but also for finding, in view of annexure "A" attached to the petition mentioning that the yearly net profit of the company from 1975 onward has been ranging between Rs. 20,000 and Rs. 30,000, how much of the past losses have been wiped off.

13. On merits as well, I find that this petition is mala fide and motivated primarily to defeat the claims of three respondents, Mrs. Kalawati, Mrs. Satyavati and Mrs. Pramod Kumar who have obtained decrees on the basis of hundis executed by the company. They are the only third party creditors, the rest being the directors, shareholders or their relations. Some of them are due nominal amounts below Rs. 1,000, and one such was Unico Engineers who had brought the winding up petition earlier apparently in collusion with the company for creating ground for proposing a scheme of arrangement. As noted above, the business premises of the company is located in Connaught Place which is one of the most sought after commercial areas. The managing director has also been away to the Middle East running business there, and the circumstance that he has been there for quite some time corroborates the contention of the respondents that he has good business there. Rather the respondents have asserted that the modus operandi adopted by the company has been to pass on the profitable dealings to the directors individually and saddle the company with unprofitable transactions. The company at present is admittedly making profits and there is, Therefore, no justifiable reason to allow it to disown these small claims of about Rs. 20,000 of these three bona fide creditors.

14. As regards the happenings in 1963 and 1968 with regard to the dealings with concern known as "Blood Bank", and the parting of company between Jaswant Singh and his brothers and the proceedings under sections 397 and 398 of the Companies Act, they took place long back and cannot have any bearing on the decrees now obtained by the three creditors in October, 1976. The sole purpose of the scheme appears to be to defeat the claim of these creditors by 50 per cent., get released the attachment of goods that they have got effected, and pay the rest in dribblets covering a period of five years.

15. I have, Therefore, the least hesitation in rejecting the schemed and dismissing the petition moved u/s 391 of the Companies Act. The three objectors will be entitled to costs of these proceedings which are assessed at Rs. 1,000.