
(2007) 02 BOM CK 0003

In the Bombay High Court

Case No : C.P. No. 472 of 2006 in C.A. No. 527 of 2006 in C.P. No. 404 of 1986

Brij Mohan Grover

APPELLANT

Vs

Official Liquidator, High Court and Another

RESPONDENT

Date of Decision : 20-02-2007

Acts Referred:

Bombay High Court (Original Side) Rules, 1980 — Rule 138

Citation : (2009) 149 CompCas 380

Hon'ble Judges : R.S. Mohite, J

Bench : Single Bench

Advocate : A.Y. Bookwalla, Shrikant Mehta and Roshan Kshatrashah, instructed by Malvi Ranchoddas and Co, for the Appellant; Sanjay Udeshi and Londhe, Sanjay Udeshi and instructed by Co., Shramik Utkarsha Sabha, Jane Cox, Bannet D'cousta, Shramik Mahasangh, Fredun D'vtre and Rajesh Shah, Rajesh Shah and instructed by Co. for Pratik Apparels P. Ltd. and BLR Knits P. Ltd., D.D. Madan and Neeta Rajda, instructed by DSR Associates for Bali Properties Ltd., Madhuri Gaikwad and C.J. Jay, Pankaj Kapoor, instructed by for Regional Director and K.V. Gautam, Deputy official liquidator, Present in person, for the Respondent

Judgement

R.S. Mohite, J.—The matter is moved for speaking to the minutes of my judgment and order dated December 22, 2006 and January 15, 2007, Brij Mohan Grover Vs. O.L. High Court of Bombay, by the advocate for BLR Knits (Pvt.) Ltd.

2. Heard all advocates present. Counsel appearing for the petitioner and the secured creditor have raised an objection to the grant of corrections as sought for. My attention is drawn to Rule 138 of the Bombay High Court (Original Side) Rules, 1980. It is contended that, under the said rule, the minutes of any order signed by the judge is required to be kept in the Board Department for inspection of the parties for a period of three days from the date of the issue of the minutes. Any party desiring to inspect the minutes shall be entitled to do so on making an oral application to the person in charge of the Board Department and any party who disputes the correctness of the minutes as recorded or objects to the minutes on any other ground may, within four days after the expiry of the

period of inspection, apply to the Prothonotary and Senior Master to place the matter before the judge for speaking to the minutes. In my view, apart from the fact that this rule falls in the chapter dealing with chamber judge's orders, the same would apply only where correction in the minutes of the order are sought. In the present case, what is sought are some corrections in the body of the judgment and order. Apart from this, this being a procedural rule, it cannot come in the way of making necessary corrections. It was also sought to be contended by both counsel that a praecipe for speaking to the minutes cannot be filed by BLR Knits (Pvt.) Ltd. It has been pointed out by the advocate for the BLR Knits (Pvt.) Ltd. that they are the sponsor as contemplated by the scheme submitted by the "sabha". By the judgment and order, they are required to deposit huge amounts and are to run the textile unit contemplated by the sanctioned scheme. That they have deposited over 15.5 crores in this court. In my view, it is therefore, rightly contended that they have locus to move this praecipe.

3. A general objection is also raised by counsel appearing for the petitioner as well as the secured creditor that the corrections sought should be by way of company application to which they would like to file replies. In this regard, I find all except one of the reliefs sought are either correctable errors or consequential clarifications/directions which flow from the sanctioned scheme and this would be permissible while speaking to the minutes. There is one exception regarding execution of conveyance which modification is seriously contested. For this modification, I am granting liberty to file a separate company application before the regular bench.

4. The workers union "sabha", which appears in pursuance of notice, supports the application. Counsel appearing for other workers union "mahasangh" states that they are not opposing any correction which would not extend the time frame during which the workers can expect to receive payments.

5. The first correction which is sought is that at page No. 9 in paragraph 14 the words "affidavit dated October 12, 2006" See pages 688 (para. 15) and 687 (para. 13) of 139 Comp Cas. I should be substituted with the words "affidavit dated September 27, 2006". I have no hesitation in allowing this correction because what is dealt with in paragraph 14 are the contents of the affidavit dated September 27, 2006. The affidavit dated October 12, 2006, is dealt with subsequently in paragraph 15 of the judgment.

6. The second correction pertains to the change in the following words occurring at page 8 paragraph 13 of the judgment--"The petition filed by the petitioner stated that property in respect of which the scheme was being proposed was land with structures thereon situated at Thane and that the value of the said land and structures was Rs. 52,07,50,000" See pages 688 (para. 15) and 687 (para. 13) of 139 Comp Cas. It is contended that these words ought to be read in the manner as suggested in the praecipe. In my view the said words were meant to convey what was stated in paragraph 20 of the petition and therefore, they are corrected by substituting the exact words occurring in paragraph 20 of the

petition. The aforesaid words will therefore, by substitution, be now read as follows:

The petition filed by the petitioner, inter alia, stated that if all the aforesaid properties (as specified in paragraph 19 of the petition) are sold, it would yield a gross amount of about Rs. 52,07,50,000.

7. The third correction which is sought is of words which occur at page 26 paragraph 31 of the judgment. The sentence--"The scheme is also more advantageous to the secured creditor particularly as it contemplates down payment of the entire valuation of the property as calculated by the petitioner of the land and structures at Thane which is the subject-matter of the scheme" See pages 697 (para. 34) and 704 (para. 44(B)(i) of 139 Comp Cas should now as a consequence of the grant of the earlier correction be substituted by the following words.

8. "Scheme is more advantageous to the secured creditor particularly as it contemplates down payment of the entire value of the property of the company, as calculated and enumerated by the petitioner in paragraph 20 of the petition."

9. The fourth correction which is sought is for the addition of a further direction in the following terms after paragraph 40(B)(1) See pages 697 (para. 34) and 704 (para. 44(B)(i) of 139 Comp Cas of the judgment and order--"On deposit of the aforesaid amount, the official liquidator/court receiver is directed to handover the possession of the properties of the company to the sponsor". This is objected to by counsel appearing for the petitioner as well as the secured creditors on the ground that the court receiver cannot be directed by the company court to hand over possession. Counsel appearing for BLR Knits brings to my notice that the court receiver was present and heard in the court when the matter was being heard and his presence is recorded in the cause title. He states that if the grant of possession is delayed, then the entire scheme as sanctioned will immediately fail. He brings to my notice that in compliance of my judgment and order, already an amount of Rs. 15,53,21,235 has been deposited in court on January 25, 2007. Counsel appearing for the two workers unions state that the payments due to the workers under the judgment and order of this Court should not be delayed any further. Counsel for the petitioner and the secured creditor state that under the sanctioned scheme, BLR Knits will only be entitled to the possession of 20,000 sq. ft. In my view, the affidavit as filed on behalf of the sabha and their sponsor clearly contemplate the construction of a textile unit within a period of 18 months from the date of receipt of the possession and the scheme clearly contemplates grant of possession to the sponsor. Any delay in this regard will frustrate the scheme and render the same inoperative and unworkable. However, the correction which is sought cannot be allowed after paragraph 40(B)(i) and as contended in the alternative by counsel appearing for the secured creditors, can only be granted after paragraph 40(B)(iii). Accordingly, it is clarified that on compliance of Clauses (i), (ii) and (iii) of Clause (B) of paragraph 40 of my judgment and order, the sponsor will be entitled to get possession of all the

properties of the company covered by the scheme from the hands of any officer of this Court who holds such possession. Consequently, though, no such specific correction is sought for, in my view, in paragraph 40(B)(iv) the words "18 months from the date of this order" (page 704 (para. 44(B)(iv)) of 139 Comp Cas) will, by substitution, be read as "18 months from their obtaining possession of the companies factory premises at Thane". Similarly, paragraph 40 which follows at page 41 will be renumbered as paragraph 40A.

10. The next prayer pertains to the official liquidator being directed to execute conveyance in favour of BLR Knits (Pvt.) Ltd. after final payment of total amount of Rs. 52,07,50,000, being the total value of the assets as covered by the scheme. It is contended that the grant of such conveyance is necessary as the full price of the assets is being paid and for other purposes such as obtaining the clearances for constructing the textile unit. That the requirement for grant of such conveyance flows from an affidavit filed on behalf of the sponsor on October 12, 2006, which is already on record. This prayer is strongly objected to by counsel appearing for the petitioner as well as the secured creditor on the ground that it falls beyond the scope of speaking to the minutes and seeks to introduce a new element and a modification in the scheme. In my view, a separate application may be filed in this regard before the regular court and liberty is granted for doing so.

11. The next correction sought is on the second line of paragraph 40(C). The same pertains to deposit, by the secured creditor, of the appropriately stamped and duly registered assignment deed, executed by the Central Bank of India before withdrawal of the amount of Rs. 52,07,50,000 is permitted by the secured creditor. In my view, unconditional withdrawal can only be made by the secured creditor if they file an affidavit accepting the scheme and withdrawing their Suit No. 3290 of 1986 unconditionally, whereas, the conditional withdrawal is permitted on providing solvent security to the satisfaction of the Prothonotary and Senior Master of this court. In my view this correction is not necessary.

12. The last correction sought is for the substitution of the word "petitioner" (page 705 (para 45) of 139 Comp Cas) by words "sabha/sponsor" which occur in page 41, in paragraph 41. In my view, this correction is correctly sought. The word "petitioner" will now read as "sabha/sponsor".

13. With aforesaid corrections/liberty, praecipe for speaking to the minutes is disposed of.