(2010) 07 CAL CK 0029

In the Calcutta High Court

Case No : C.P. No. 368 of 2009 and C.A. No. 526 of 2008

Buxa Dooars Tea Company (India) Ltd. and Another APPELLANT

Vs

Buxa Dooars Tea Company (India) Ltd. (in Liqn.) RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:
Companies Act, 1956 — Section 391

Citation : (2011) 1 BC 556 : (2010) 3 CALLT 625

Hon'ble Judges : I.P. Mukherjee, J

Bench : Single Bench

Advocate : Amit Gupta, Anil Gupta, K.C. Garg, K.N. Mukherjee, K.V. Viswanathan, Madhusudan Sarkar and Susanta Dutta, P.C. Sen, Shyamal Sarkar, R.R. Sen, U.S. Menon and R.K. Jain, Soma Chatterjee and Tonmoy Kar, for the Appellant; M.C. Ghosh and Mithua Sen, for the Respondent

Judgement

I.P. Mukherjee, J.—The company in question is Buxa Dooars Tea Company (India) Limited (in liquidation). By an order of this Court dated 1st March, 2006 the company was directed to be wound up. The Official Liquidator has taken possession of its assets.

2. This is an application by some contributories of the company for sanctioning of a scheme for carrying on business that was carried on by the company, as if it had not been wound up. The scheme relates to two tea gardens of the company (in liquidation), being Kalchini and Raimatang tea gardens. Pursuant to an order of this Court dated 8th September, 2008 in C.A. 526 of 2008, separate meetings of members and creditors of the company (in liquidation) were held. It is submitted before me that notice of the meeting was given to all statutory creditors. In the said separate meetings, by the required majority, the scheme were adopted.

3. The question now is about approval of the scheme.

4. It is submitted that two affidavits have been filed by workers'' unions,

supporting the scheme. They are also represented by Counsel. Two secured creditors namely, Bank of Baroda and Tea Board are also represented by Counsel. They do not have any objection to the said scheme, provided the terms of the scheme are carried out. Two unsecured creditors are also represented to signify their consent. Consent has also been signified by the learned Counsel appearing for the Agricultural Income Tax Authorities.

5. However, this scheme has been opposed by the Official Liquidator. Learned Counsel for the Official Liquidator submits that--(1) the scheme does not take care of the interests of the workers, (2) the scheme provides for sale of the machinery in the tea garden and their replacement by new machinery. If the old machinery are sold and subsequently not replaced, that might result in loss of assets to the company, (3) third party interests might be created in implementation of the scheme which would increase the liability of the company.

6. Mr. Anil Gupta, learned Counsel appearing for the Provident Fund Authorities, submits that their dues are about 12 crores. Further, learned Counsel for the Income Tax Department submits that income tax dues of the company in liquidation from assessment years 1991-92 amount to about Rs. 28,10,199/-, till 1st March, 2006.

7. It is quite plain that language of Section 391 includes within its fold, a company which is being wound up. Therefore, a scheme can be proposed by contributories of a company in liquidation or its creditors or both. Further, in the case of Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., the Supreme Court in Paragraphs 28 and 28A has made a detailed analysis of the law relating to compromise or arrangement between companies or between a company and its creditors and members. In Paragraph 28A the Supreme Court has said as follows:

The Court certainty would not act as a Court of Appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently the Company Court''s jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire. The supervisory jurisdiction of the Company Court can also be culled out from the provisions of Section 392 of the Act.

8. In Section 392 the Court has the power to supervise such arrangement or scheme.

9.I have perused the scheme. I have also considered in detail the respective arguments of the parties. First of all, when two workers'' Unions represented by Counsel file an affidavit supporting the scheme and it is represented in Court that such workers'' unions represent 80% of the workmen, I find it hard to believe that the workmen have any objection to the scheme. It is not shown to me upto now that the office bearers of the unions had affirmed the affidavits without consulting the workmen or against their interests.

10. As far as provident fund dues are concerned, Mr. Sen has shown me page 12 of the supplementary affidavit where the provident fund authorities by their letter dated 13th May, 2010 had made a claim of about Rs. 3 crores. According to the chart submitted by Mr. Gupta, it is more than Rs. 12 croes. The scheme provides for payment projected over seven or eight years of provident fund liability.

11. Since Section 392 provides for supervision of the scheme by the Court, this Court takes into account the views of the Official Liquidator.

12. I do take into account all those submissions for the purposes of supervising the Scheme in question. Therefore, since a substantial majority of the contributories and secured creditors of the company (in liquidation) are in favour of the Scheme, I am of the opinion that the Scheme should be given a chance to take effect. It is to be seen over a period of time whether the Scheme works out or not but there is no case at the moment to reject the Scheme outright. Since the Scheme relates only to the above two gardens, at the moment, the Official Liquidator will relinquish the possession of those two gardens in favour of the applicants. The applicants will revive and run the company in accordance with such Scheme. The registered office has already been disclaimed by the Official Liquidator in favour of its owner. Movable assets, located there have been sold. Therefore, the two tea gardens are the only real assets of the company (in liquidation). However, for the time being, I pass an order in terms of prayers (a), (b), (e), (i) and (j) of the petition.

13. This order is conditional upon the applicants depositing a sum of Rs. 5 lacs with the Income Tax department ad hoc, without prejudice to the rights and conditions of the parties. The applicants will also furnish quarterly statements of accounts to the Official Liquidator.

14. Liberty is given to the Provident Fund Commissioner, Jalpaiguri to make an application for modification of the Scheme regarding payment of provident fund dues but for the time being, I am not making any modification to the provisions contained in the Scheme.

15. The Official Liquidator will be at liberty to visit the tea gardens himself or depute an officer to make periodic visits to the tea garden and inspect the records of the company so as to be satisfied that there is no breach of the terms of the above Scheme. Further, it is made clear that the applicants or the company will not transfer or encumber the said fixed assets.

16. In the event the Petitioners supply a legible computerised printout of the scheme and the schedule of assets in acceptable form to the department, the

department will append such computerised printout, upon verification, to the certified copy of the order without insisting on a handwritten copy thereof.

17. The applicants will pay the Official Liquidator Rs. 3 lacs to enable him to pay all the outstandings on account of security costs. The Official Liquidator will furnish the necessary accounts to the applicants'' Advocate on record.

This application is allowed to the above extent. Liberty to apply.

All parties concerned are to act on assigned photo copy of this order on the usual undertakings.

