
(1985) 08 P&H CK 0069
In the Punjab And Haryana At Chandigarh
Case No : Company Appeal No. 8 of 1985

Cement Controller of India	Vs	APPELLANT
Dalmia Dadri Cement (P.) Ltd. and Others (now under Control of Cement Corporation of India)		RESPONDENT

Date of Decision : 20-08-1985

Acts Referred:

Companies (Court) Rules, 1959 — Rule 292
Companies Act, 1956 — Section 433

Citation : (1985) 08 P&H CK 0069

Hon'ble Judges : Prem Chand Jain, C.J.; D.V. Sehgal, J

Bench : Division Bench

Advocate : Ashok Aggarwal, for the Appellant; R.S. Mittal, Senior Advocate and N.K. Khosla, for the Respondent

Judgement

D.V. Sehgal, J.—This company appeal arises out of the order dated January 18, 1985, of the learned single judge accepting an application (C.A. No. 111 of 1984) of the workmen-respondents and directing the Cement Controller of India (the appellant herein) to pay the balance amount of wages to the workmen-respondents with regard to the period from May 16, 1980, to June 22, 1981, within a period of three months.

2. It is necessary to recapitulate the facts of the case. The Cement Controller of India, the appellant, presented a company petition u/s 433(e) read with sections 434 and 439 of the Companies Act, 1956, with a prayer for winding up the Dalmia Dadri Cement Private Limited (hereinafter called " the company ") on the ground that the company, owed to the appellant a huge amount and that the company was unable to pay its debts. This petition was duly registered as Company Petition No. 43 of 1979. On yet another prayer made by the appellant through Company Application No. 76 of 1979, the learned single judge appointed the deputy official liquidator as the provisional liquidator in May, 1980, and directed him to take charge of the plant and machinery of the company, which he did. The provisional liquidator retained the services of 95 workmen in the interest

of the company with a view to maintain the plant and machinery of the company and to look after and guard the same. The provisional liquidator found that no liquidated assets were available with the company. Consequently, on his request, the appellant provided a sum of Rs. 5 lakhs to him for meeting the expenses in connection with the winding up of the company. Out of these funds, he paid 50 per cent, of the wages to the workmen-respondents who were retained by him for the maintenance of plant and machinery, etc., of the company. He also deposited contributions towards provident fund, employees' state insurance, etc., calculated on the basis of full monthly wages of these workmen.

3. The provisional liquidator exhausted the funds initially provided by the appellant and moved Company Application No. 110 of 1980 for a direction to the appellant to provide another sum of Rs. 4 lakhs as an advance. This amount was also provided by the appellant as is evident from the order dated May 28, 1981, of the learned single judge. The aforesaid amount of Rs. 9 lakhs was apparently made available by the appellant with a view to meet the preliminary expenses in connection with the winding up of the company and the appellant as the creditor was entitled to be paid back the amount so advanced out of the assets of the company in priority to the debts of the company in accordance with Rule 292 of the Companies (Court) Rules, 1959 (hereinafter called "the Rules"). It may be stated here that the appellant made an application (C. A. No. 286 of 1981) on April 30, 1981, stating that since the Government of India was taking action for the rehabilitation of the company, the appellant should be allowed to withdraw the main petition for its winding up. This application was allowed and Company Petition No. 43 of 1979 was ultimately dismissed on October 20, 1981.

4. It is worth mentioning here that the undertakings of the company, and the right, title and interest of the company in relation to its undertakings stood transferred to, and vested in the Central Government with effect from June 23, 1981, by virtue of Section 3 of the Dalmia Dadri Cement Limited (Acquisition and Transfer of Undertakings) Act, 1981 (hereinafter called "the Act"). It was provided in Section 7 of the Act that for the transfer to and vesting in the Central Government, u/s 3 of the Act, of the undertakings of the company and the right, title and interest of the company in relation to its undertakings, there shall be paid by the Central Government to the company, in cash and in the manner specified in Chapter VI of the Act, an amount of Rs. 84,87,000. Section 8 of the Act provided that the amount specified in Section 7 shall carry simple interest at the rate of 4% per annum till the date of its payment by the Central Government to the Commissioner of Payments. Section 6(1) of the Act laid down that the undertakings, etc., of the company, which had vested in the Central Government u/s 3, shall instead of continuing to vest in the Central Government vest in the Cement Corporation (hereinafter called "the Corporation") on a date, not being a date earlier than the appointed day, i.e., June 23, 1981. Section 10(2) of the Act laid down that on the vesting of the management of the undertakings of the company in the Corporation, the official liquidator of the company or any other person, who had, on the appointed day, in his possession or custody or under his

control any books, documents or other papers relating to the undertakings of the company immediately before such vesting or appointment .would be bound to deliver the said books, documents or other papers to the Corporation or to such person as the Central Government or the Corporation, as the case may be, may specify in this behalf. Section 12 of the Act, inter alia, provided that every person who had been, immediately before the appointed day, i.e., June 23, 1981, employed in any of the undertakings of the company shall become on and from the appointed day an employee of the Central Government; and where the undertakings of the company were directed to vest in the Corporation, an employee of that Corporation on and from the date of such vesting. It was further provided that notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other person employed in any undertaking of the company to the Central Government or the Corporation shall not entitle such officer or other employee to any compensation under the Act or under any other law for the time being in force and no such claim shall be entertained by any Court, Tribunal or other authority. Section 12(3) of the Act provided that where, under the terms of any contract of service or otherwise, any person, whose services become transferred to the Central Government or the Corporation by reason of the provisions of the Act is entitled to any arrears of salary or wages or any payments for any leave not availed of or any other payment, not being a payment by way of gratuity or pension, such person may enforce his claim against the company but not against the Central Government or the Corporation. A Commissioner of Payments was appointed under the provisions of Section 14 of the Act for the purpose of disbursing the amounts payable to the company. Section 17 of the Act provided that every person having a claim against the company shall prefer such claim before the Commissioner of Payments within 30 days from the specified date. The Commissioner of Payments was vested with the power to* entertain any claim made within a further period of 30 days in certain given circumstances and not thereafter. Section 18 of the Act laid down the principles and priorities on the basis of which the claims preferred before the Commissioner of Payments were to be satisfied. Clause (a) of Section 18 read with Clause (a) of the Schedule to the Act makes it clear that wages, salaries and other dues payable to the employees of the company were the first priority for the discharge of the liabilities of the company.

5. Eighty-two workmen-respondents are out of the 95 workmen who were retained in employment by the provisional liquidator for the maintenance of the plant and machinery and to guard the properties of the company during the winding up operations. They moved an application dated July 16, 1984 (C.A. No. 111 of 1984), before the learned single judge stating therein that during the course of their employment with the company under the control of the provisional liquidator, they had been paid 50% of their wages and the balance 50% of their wages yet remained payable to them. These workmen-respondents, therefore, made a prayer that the Cement Controller of India, the appellant, at whose

instance the provisional liquidator was appointed, or the Cement Corporation of India, who had taken over the undertakings of the company, be issued necessary directions for the payment of the remaining 50% of their wages to them, which amounted to Rs. 6,84,730. This application was accepted and the Cement Controller of India was directed to make the payment. That is how the present appeal has been filed for setting aside that order.

6. We have heard learned counsel for the parties. Mr. Ashok Aggarwal, learned counsel for the appellant, has contended that the appellant came to the court as a creditor, as a huge sum of money was due to it from the company which was unable to pay its debts, and consequently a petition u/s 433(e) read with sections 434 and 439 of the Companies Act, 1956, for the winding up of the company was filed. No doubt, it was on the prayer of the appellant that the provisional liquidator was appointed and, as stated earlier, a sum of Rs. 9 lakhs was advanced by the appellant to him to meet the preliminary expenses in connection with the winding up of the company but the amount so advanced was to be paid back to the appellant out of the assets of the company in priority to the debts of the company under Rule 292 of the Companies (Court) Rules, 1959. At any rate, the appellant applied to the court for withdrawal of the winding-up petition on April 30, 1981. On the coming into force of the Act, the rights, title and interest of the company in relation to its undertakings stood transferred to and vested in the Central Government. The Central Government in turn directed vesting of the same in the Corporation with effect from June 23, 1981. A sum of Rs. 84,87,000 was the amount determined u/s 7 of the Act for the transfer to and vesting in the Central Government of the undertakings of the company and the rights, title and interest of the company. The workmen-respondents could enforce their claim for wages against the company u/s 12(3) of the Act but not against the Cement Controller of India, the appellant, who came to the court as a creditor of the company with a prayer for its winding up.

7. Mr. Aggarwal has further contended that in fact, in view of the provisions of sections 12(3) and 17 of the Act, the workmen-respondents had already preferred their claims for the arrears of salary in question before the Commissioner of Payments and that the learned single judge could not direct the appellant, a creditor of the company, to pay the arrears of salary in question.

8. Mr. R.S. Mittal, learned counsel for the workmen-respondents, on the other hand, contended that the workmen-respondents were retained by the provisional liquidator for the maintenance of the plant and machinery and to guard the property of the company under the orders of the court. He proceeds to contend that it is a well-settled principle that an order of a court cannot harm anyone. On the basis of this principle, he urges that the order of the learned single judge making the appellant liable to pay the balance amount of wages of the workmen-respondents with regard to the period from May 16, 1980, to June 22, 1981, was just and ought to be maintained.

9. We have been unable to persuade ourselves to accept the contention of

learned counsel for the workmen-respondents. It would be unjust to burden the appellant with the balance amount of the wages payable to the respondents for the period from May 16, 1980, to June 22, 1981, when they were working"under the provisional liquidator. The appellant came to the court as a creditor to realise the amount which the company owed to it and filed a petition for the winding up of the company u/s 433(e) read with sections 434 and 439 of the Companies Act, 1956. The appellant no doubt advanced a sum of Rs. 9 lakhs as detailed above to enable the provisional liquidator to meet the preliminary expenses in connection with the winding up operations which amount the appellant was entitled to get back in priority to the debts of the company but by no stretch of imagination could it be held that it was the appellant who had been responsible for the employment of the workmen-respondents from May 16, 1980, to June 22, 1981, and was liable to pay their wages. The principle that an order of a court could not harm anyone is inapplicable in the circumstances of the present case because of the supervening event of the coming into force of the Act with effect from June 23, 1981. As already stated, u/s 12(3) of the Act, for the arrears of salary or wages, the workmen have a right to enforce their claim against the company and for satisfying such claims, the Commissioner of Payments has been appointed u/s 14 of the Act and a sum of Rs. 84,87,000 has been made available to him for satisfying claims against the company including the claims for wages of the workmen. In fact, as provided by Section 18(a) read with Clause (a) of the Schedule to the Act, satisfying the claims for wages of the workmen has to be given the first priority by the Commissioner of Payments.

10. It is not in dispute that the workmen-respondents had in fact preferred their claims for payment of arrears of wages in question well in time before the Commissioner of Payments. Mr. R.S. Mittal, however, points out that after the order dated January 18, 1985, of the learned single judge, the workmen-respondents had withdrawn their claims before the Commissioner of Payments, in spite of the fact that by an interim order dated May 7, 1985, a Division Bench of this court had directed the Commissioner of Payments to keep intact with him a sum of Rs. 7 lakhs till further orders. Mr. R.S. Mittal further points out that the workmen-respondents had, by filing a contempt petition against the appellant, forced it to make payment of the balance amount of wages in question.

11. Taking into consideration all the facts and circumstances mentioned above, we set aside the order dated January 18, 1985, of the learned single judge and direct the workmen-respondents to refund to the appellant the balance amount of wages in question which they have realised within a period of three months from today. We are told that most of the workmen-respondents are now in the employment of the Corporation. If they fail to refund the amount to the appellant, as directed above, the said amount shall be recovered from their wages in reasonable instalments by the Corporation and paid to the appellant. To afford justice in accordance with law to the workmen-respondents, we direct that the claim applications for the balance amount of wages preferred by them before the Commissioner of Payments, which had been withdrawn, shall stand revived

and the Commissioner of Payments shall satisfy the claims of the workmen-respondents in accordance with law out of the amount of Rs. 7 lakhs which he was directed to keep intact, vide interim order dated May 7, 1985, of a Division Bench of this court. There shall be no order as to costs.

12. Copies of this judgment shall be sent to the Commissioner of Payments and the Corporation for compliance.