

(2009) 07 P&H CK 0180
In the Punjab And Haryana At Chandigarh

Coventry Coil-O-Matic (Haryana) Ltd.	APPELLANT
Vs	
ICICI Bank Ltd.	RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

COMPANIES ACT, 1956 — Section 483

Citation : (2009) 95 SCL 23

Hon'ble Judges : M.M. Kumar, J;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This is an appeal filed u/s 483 of the Companies Act, 1956 (for brevity, "the Act") against the judgment and order dated 29-5-2009 passed by the learned Company Judge, vide which the factum of admission of the Company Petition has been ordered for publication. Along with the appeal miscellaneous application bearing CMA No. 111 of 2009 has also been filed seeking condonation of delay of 26 days in filing the appeal. Learned Company Judge has dismissed Company Application No. 364 of 2009 in Company Petition No. 129 of 2004, filed by the appellant-Company-in-liquidation under rule 9 of the Company Court Rules, 1959, submitting objections against the admission order dated 26-5-2005 (A-3) as well as order of publication dated 7-8-2008 (A-5).

2. Before the learned Company Judge permission was sought to file objections against the admission order dated 26-5-2005 and order of publication made by the Company Court on 7-8-2008. After noticing various stages of litigation, the order passed by a Division Bench and the order of Hon"ble the Supreme Court, learned Company Judge found that there was no ground to interfere as the order dated 7-8-2008 (A-5) had attained finality. It was further noticed that even Hon"ble the Supreme Court did not reserve any liberty for the appellant but merely recorded the fact that the Company-in-liquidation was proposing to move an application before the Company Court. Learned Company Judge also opined that it was one thing for the appellant expressing a wish to the Court that it

wanted to adopt a particular course of action but it was quite another thing for the Court to grant specific permission to move such an objection because there was no express permission granted by the Hon'ble Supreme Court. Accordingly, the learned Company Judge noticed that there was no scope for him to have a re-look at the whole matter regarding advertisement of the factum of admission all over again. Accordingly, the application was dismissed.

3. Ms. Jaishree Thakur, learned Counsel for the cavator-respondents has pointed out that in pursuance of order dated 29-5-2009 (A-1) publication has already been made in the English Daily "Indian Express "(Delhi Edition) and other newspapers, as per the direction issued, although the publication in the Official Gazette is likely to be published.

4. Having heard learned Counsel for the parties, we are of the view that the issue has already attained finality. The grievance of the appellant that no hearing on merit has ever taken place cannot be redressed at such a belated stage. The appellant has been taking the proceedings at every stage in a casual manner highlighting extraordinary delay. The appellant had earlier filed Company Appeal No. 13 of 2008 challenging order of admission dated 26-5-2005, which was dismissed on 1 -8-2008, holding that it was time-barred as it was delayed by 1050 days. The aforesaid order was challenged before the Hon'ble Supreme Court by way of SLP (C) No. 160 of 2009, however, the same was not pressed, as is evident from the perusal of order dated 4-5-2009.

5. On 7-8-2008, learned Company Judge ordered publication of the factum of admission of company petition. That order was also subject-matter of challenge in Company Appeal No. 15 of 2008, which was dismissed on 10-2-2009 (A-6). Even against that order SLP(C) No. 8765 of 2009 has been dismissed on 4-5-2009 with the following observation:

After some hearing learned senior counsel seeks leave to withdraw the petition stating that the petitioner proposes to file an application before the Company Judge opposing publication of the factum of admission of the petition. Accordingly, the SLP is dismissed as withdrawn.

6. It is, thus, evident that both orders of admission dated 26-5-2005 and order dated 7-8-2008 directing publication of factum of admission have attained finality up to the Hon'ble Supreme Court. Even notice has been published in the Indian Express on 22-7-2009.

7. In view of above, we do not find any good ground to interfere in the order of the learned Single Judge.

8. Dismissed.

In view of the fact that the appeal has been dismissed on merit, we do not wish to pass any order in the miscellaneous applications filed along with the appeal including CMA No. 111 of 2009 seeking condonation of delay of 26 days in filing the appeal.