
(2008) 08 SC CK 0096

In the Supreme Court Of India

Case No : Civil Appeal No. 2801 of 2002

DCM Financial Services Ltd.

APPELLANT

Vs

Neel Kamal Plastics Ltd. and Another

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Companies Act, 1956 — Section 433, 434, 466, 529A, 530

Citation : (2008) 4 BC 280 : (2008) 145 CompCas 179 : (2008) 4 CompLJ 257 : (2008) 4 CTC 524 : (2008) 9 JT 198 : (2009) 2 LW 423 : (2008) 11 SCALE 330 : (2008) 86 SCL 127 : (2008) 2 UJ 1215

Hon'ble Judges : P. Sathasivam, J;Aftab Alam, J

Bench : Division Bench

Advocate : Rajesh Srivastava, for the Appellant; Mandeep Singh Vinaik, Vandana Sehgal, Rohan Thawani, Hardeep Singh Anand and P.N. Puri, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This appeal is directed against the orders passed by the Punjab & Haryana High Court asking the appellant to deposit in court the sum of Rs. one crore that it had received in connection with the sale of the property of M/s. Pure Drinks (New Delhi) Ltd. (respondent No. 2), for the liquidation of which a proceeding remains pending in the High Court. The first order in this regard was passed by a learned Single Judge on 14 March, 2000 on an application made by Neel Kamal Plastics Ltd. (respondent No. 1), one of the several creditors of the second respondent, M/s. Pure Drinks (New Delhi) Ltd. (hereinafter referred to as 'the Debtor Company'). By this order the appellant was directed to deposit the aforesaid amount in twelve equal monthly installments of Rs. 8.5 lakhs beginning 15 April, 2000. Against the order passed by the learned Single, the appellant preferred an appeal before the Division Bench of the Court u/s 483 read with Section 466 of the Companies Act, 1956. The Division Bench affirmed the order of the Single Judge and dismissed the appeal vide order dated 3 December, 2001 in Company Appeal No. 12 of 2000. The present appeal is directed against the

order passed by the Division Bench.

2. The Debtor Company has a number of creditors. Some of its creditors instituted proceedings for recovery of their dues before different courts and authorities, including the Punjab & Haryana High Court, the Delhi High Court and the Debts Recovery Tribunal, Delhi. The Debtor Company and the other parties to those proceedings, apparently guided by expediency and motivated by self interest did not consider it their duty to report to the concerned Court/Tribunal about the analogous proceedings before other Courts. As a result, orders came to be passed by courts that do not seem to be harmonious or completely consistent with each other. The overall picture, therefore, appears to be somewhat murky and confused. For disposing of this appeal, however, it is not necessary to go into all the details and we shall take note of only certain facts which are admitted by the parties or are, in any event, undeniable.

3. The appellant, not being successful in recovering its dues from the Debtor Company, moved the Punjab & Haryana High Court in Company Petition No. 16 of 1997 for putting M/s. Pure Drinks (New Delhi) Ltd. to liquidation in terms of Sections 433 and 434 of the Companies Act. On 20 February, 1997, the Court passed the following order in that case:

Notice to show as to why the petition for winding up be not admitted.

To come up on April 3, 1997

The respondents shall not alienate or dispose of nay property except in the regular course of business without the permission of the Court.

(emphasis added)

4. On August 28, 1997 the court admitted the Company Petition and directed for its advertisement in the Official Gazette of the State of Punjab besides two newspapers. The Debtor Company, after unsuccessfully seeking review took the order in appeal before a Division Bench. It is significant to note that in that appeal (Company Appeal N. 25 of 1997), the Debtor Company, also filed an application (CM No. 11 of 1998) seeking permission to dispose of its assets at A-30, Mohan Cooperative Industrial Area, Mathura Road, New Delhi. The appeal, along with the application for permission to sell was dismissed by order dated 21 December, 1998. The Debtor Company then brought the matter to this Court in SLP No. 1032 of 1999. The SLP was dismissed as withdrawn by order dated 3 February, 1998.

5. While the matter in the Punjab & Haryana High Court rested at this stage, in another proceeding instituted before the Debts Recovery Tribunal, Delhi at the instance of Punjab & Sind Bank the Debtor Company was able to sell its property A-30, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi to one Motor and General Finance Ltd. (hereinafter referred to as 'MGF' Ltd.) on certain terms as to the disbursement of the sale proceeds as directed by the DRT. The sale of the property by the Debtor Company was objected to by some interested

persons and the matter went to the Delhi High Court and in due course the Company Petition pending before the Punjab & Haryana High Court and the orders restraining the Debtor Company from alienating any of its properties also came to light.

6. In yet another suit instituted before the Delhi High Court (Civil Suit No. 2311/93) M/s. Pure Drinks (Calcutta) Limited, a sister concern of the Debtor Company sold its property A-31, Mohan Cooperative Industrial Estate, New Delhi to the common vendor MGF Ltd. At this stage it appears that the Debtor Company, MGF Ltd. and the present appellant came to some sort of an arrangement and MGF Ltd. agreed to pay to the appellant a sum of Rs. 1.95 crores out of the consideration money for A-31, Mohan Cooperative Industrial Estate. It does not need much imagination to see that the Debtor Company and MGF Ltd. agreed to pay the large amount to the appellant simply in order to ward off the consequences that might arise from the breach of the restraint order passed by the Punjab & Haryana High Court on 20 February, 1997. This arrangement was reported to the Company Judge in the Punjab & Haryana High Court and it finds mention in the order passed in Company Petition No. 16 of 1997 on 28 January, 1997.

7. On 17 March, 1999, the Punjab & Haryana High Court was told that the Delhi High Court had permitted sale of the properties of the Debtor Company and its sister concern, namely Pure Drinks (Calcutta) Ltd. on condition that out of the sale proceeds payment would first be made to the Income Tax Department and the balance would be disbursed following the directions of the Delhi Court. It was further stated that a request was made to the Delhi Court for permission for payment of Rs. 1.95 crores from the sale proceeds to the appellant towards its dues against the Debtor Company and the matter was to come before that Court on 24 March 1999. The Punjab and Haryana High Court recorded the statements made before it in the order passed on that date and the adjourned the matter as prayed on behalf of the parties.

8. Later on the Debtor Company filed applications both before the Punjab and Haryana High Court and the Delhi High Court seeking a direction allowing MGF Ltd. to pay the sum of Rs. 1.95 crores directly to the appellant. The appellant filed another application (Company Application No. 441/99) before the Punjab and Haryana High Court for vacating the restraint order dated 20 February, 1997. On hearing the parties and taking note of the fact that out of the sale proceeds of the property A-31, Mohan Cooperative Industrial Estate, New Delhi, two post dated cheques of Rs. one crore and Rs. 95 lakhs respectively had been handed over to the appellant's counsel the Company Judge vacated the interim order dated 20 February, 1997. On 1 September, 1999 the following order was passed in Company Petition No. 16 of 1997:

In Company Petition No. 16 of 1999 an order had already been passed for winding up of the Respondent but it was deferred for final publication. This Court had stayed the sale of property including No. A-30, Mohan Cooperative Industrial

Estate, Mathura Road, New Delhi. It appears that despite the said order the property had been sold and the sale had since been confirmed by Delhi High Court. M/s. Motor and General Finance is the purchaser of the property.

Out of the total sale proceeds from A-31, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi, two post dated cheques of Rs. one crore dated 3.9.1999 (No. 719854) and the other dated 2.11.1999 for Rs. 95 lacs (No. 719855) has been handed over to the applicant's counsel in Court. The applicant's counsel has accepted the said cheques without prejudice to its contentions against M/s. Pure Drinks Limited, New Delhi-Respondent.

Keeping in view the above said fact and the events referred to above that the sale has been confirmed by the Delhi High Court and that the parties namely the applicant, M/s Motor General Finance Ltd. and the Respondent have no objection, it is directed that the stay that had been granted against the Respondent would stand vacated as against the above said property only in CP No. 16 of 1997. In view of the confirmation by the Delhi High Court, of the sale, there is no need thus to pass any order.

(emphasis added)

9. It is significant to note here that the Delhi High Court declined the request to allow MGF Ltd to make any payment to any one else other than the Income Tax Department and insisted that after payment to the Income Tax Department the balance amount of Rs. 3,66,64,995/- be deposited with the Registrar of that Court within two weeks from its order dated 7 October, 1999. Against the order dated 7 October, 1999 MGF Ltd. filed an appeal before the Division Bench of the Delhi High Court and by an interim order it was directed to deposit Rs. 2,66,69,995/- apparently because Rs. one crore was already paid to the appellant. It is not clear from the records what final order was passed in the appeal by the Division Bench.

10. This bilateral arrangement between the parties was thus formalized by the Punjab and Haryana High Court and the appellant, at whose instance the proceedings for liquidation of the Debtor Company had commenced was able to secure from it a very substantial amount under a private arrangement, involving the breach of the Court's order and at the expense of the creditors of the Debtor Company. At this stage, however, M/s. Neelkamal Plastics, respondent No. 1, put a spanner in the neat arrangement arrived at between the appellant and the Debtor Company. It filed an application (Company Application No. 459/99) u/s 433 of the Companies Act seeking a direction to restrain the Debtor Company from making any payment to any creditor in preference to the creditor making the application. It also sought a direction to the appellant to refund the amount of Rs. 1.95 crore paid to it for and on behalf of the Debtor Company and further to restrain the appellant from encashing the cheques received by it from MGF Ltd. In its application respondent No. 1 tried to point out to the Court that the payment of Rs. 1.95 crore by MGF Ltd. to the appellant was not sanctioned by

the Delhi High Court and it was in fact contrary to the Delhi High Court order dated 4 March, 1999. On notice being issued both the Debtor Company and the appellant filed their rejoinders resisting the prayers made by respondent No. 1 on all conceivable grounds. On hearing the parties the Company Judge first passed order dated 26 October, 1999. By this order the Company Judge directed that the appellant would encash the cheque of Rs. 95 lakhs only on the condition that the money would be immediately deposited in the Delhi High Court. (The other cheque of Rs. 1 crore had already been encashed by then). The Court also issued notice to the parties in Company Petition No. 16 of 1997 and MGF Ltd. to show cause why order dated 1 September, 1999, lifting the earlier restraint order, be not recalled; parties were permitted to file supplementary replies. As an interim measure MGF Ltd. was restrained from selling, alienating or creating any charge on A-30 Mohan Cooperative, Industrial Estate, Mathura Road, New Delhi. The order dated 26 October, 1999 makes it clear that the Punjab & Haryana High Court, on being apprised of all the facts, took the view that the order dated 1 September, 1999 was obtained from it on a complete misrepresentation of the orders passed by the Delhi High Court. On 14 March 2000 the Company Judge passed the final order in the matter. The relevant extract from the order is as follows:

As regards the rest of the amount of Rs. One crore, it is abundantly clear from reproduced paragraph above that when Company Application 441 of 1999 was preferred in this Court, reference was made to the statement made by the learned Senior Counsel for MGF. It only conveyed that Delhi High Court has no (sic) conveyed otherwise. The order of Delhi High Court has been reproduced above. It reveals otherwise. There was a clear direction by Delhi High Court that entire amount has to be deposited with the Registrar of Delhi High Court. The same had not to be paid to DCM Company. A copy of order passed by Delhi High Court dated 2.9.1999 has also been appended. It indicates that before the Delhi High Court it was stated on behalf of MGF that order dated 4.3.1999 had not been correctly understood by MGF. The Delhi High Court recorded that it is difficult to accept the submission. These facts clearly show that the payment that was made to DCM Company was contrary to the direction of the Court. It was undue preference given to one creditor.

*** *** *** The position that emerges is that the amount of Rs. One crore has been utilized. Obviously correct facts were not brought to the notice of the Court. The result is that DCM company cannot take/advantage and retain the amount. It is true that the amount is stated to have been utilized for clearing certain liabilities. But while striking a balance, direction has to be issued to deposit the said amount in this Court. Keeping in view the difficulty, it is directed that w.e.f. 15.4.2000 DCM Company will deposit the entire amount in twelve equal installments of Rs. 8.5 lacs. It should continue to deposit the said installments month by month till the entire amount is deposited with the Registrar of the Court.

The order was taken in appeal. The Division Bench examined the whole matter in all its myriad detail and by order dated 3 December, 2001 firmly affirmed the order passed by the Company judge.

11. We have before us the appeal against this order of the Punjab and Haryana High Court.

12. Mr. Rajesh Srivastava, learned Counsel appearing for the appellant, submitted that the direction asking the appellant to deposit the amount of Rs. one crore in Court was quite illegal, unjust and unreasonable. Learned Counsel assailed the High Court's direction mainly on two grounds. He first submitted that under a private arrangement between the two, the appellant had received the amount from MGF Ltd. which was not even a party to the Company Petition pending before the Punjab & Haryana High Court. Further, the amount that was paid to the appellant was a part of the consideration money that MGF Ltd. was to pay to M/s. Pure Drinks (Calcutta) Ltd. which too was not a party before the Punjab & Haryana High Court. Thus, the whole transaction had taken place outside the purview of proceedings before the Punjab and Haryana High Court. It was, therefore, not open to the High Court to ask the appellant to deposit in Court the money received by it from MGF Ltd. Learned Counsel next submitted that in any event such a direction could not be made on an application by respondent No. 1 because M/S Neelkamal Plastics Ltd. had received over Rs. 13 lakhs from the Debtor Company and it was thus itself extended a fraudulent preference by the Debtor Company.

13. We see no substance or merit in either of the two submissions. The submissions made by Mr. Srivastava tend to present the matter in an over simplified way and completely overlook the provisions of the Companies Act. It is misconceived and fallacious to suggest that the appellant received a sum of Rs. 1.95 crores from MGF Ltd. in a transaction falling outside the purview of the Company Petition pending before the Punjab & Haryana High Court. It is misleading to say that the money received by the appellant was part of the consideration money payable to M/s. Pure Drinks (Calcutta) Ltd. and it had no connection with the Debtor Company. In the facts and circumstances of the case, it is not the source of money that is important but what is important is the cause on the basis of which the appellant was able to get the money from MGF Ltd. The payment of the large sum by MGF Ltd. to the appellant was not gratuitous. It was evidently intended to patch up the brazen breach of the Court's orders committed by the Debtor Company and MGF Ltd. in effecting the sale of A-30, Mohan Cooperative Industrial Estate, Mathura Road, New Delhi. The payment was thus directly within the purview of the Company Petition pending before the Punjab & Haryana High Court.

14. In this connection it should also be borne in mind that the proceedings for liquidation of a company under the Companies Act are not the same as an intra-partes suit for recovery of money. In a money suit it may indeed be open to the plaintiff to accept any money outside the court from or on behalf of the

defendant towards the full or partial satisfaction of his claim in the suit and to report the payment to the court for passing appropriate orders. But such is not the position in a proceeding for liquidation of the company. Once a proceeding gets underway under the Companies Act, the party at whose instance the proceeding is initiated does not enjoy any preferential claim and any proceeds from the sale of the assets of the company must be disposed of in terms of the scheme as provided under Sections 529A and 530 of the Companies Act.

15. Having regard to the provisions of the Companies Act it is plain and clear to us that the money received by the appellant from MGF Ltd. was legally bound to come to the court. The Court was in error in allowing the payment to the appellant by its earlier order dated 1 September, 1999 and later it rightly recalled that order and directed the appellant to deposit the money in court.

16. As to the other point that respondent No. 2, the applicant, had itself received over Rs. 13 lakhs from the Debtor Company and it was, therefore, not open to it to object to the appellant too getting its due from the Debtor Company, the obvious answer is that one wrong would not justify another of the same kind. But the submission does not even appear to be factually correct. In the order coming under appeal the High Court dealt with the point and made the following observation:

The argument of Shri Ranjit Kumar that Respondent No. 1 could not have questioned the payment made by M/s. MGF Ltd. to the appellant because it had received Rs. 13.20 lakhs from Respondent No. 2 after filing of winding up petition sounds attractive but does not merit acceptance because perusal of the record shows that Respondent No. 1 had received payment from Respondent No. 1 (sic Respondent No. 2) between November 1998 and 19.7.1999 amounting to Rs. 10,95,000/- (last cheque dated 11.8.1989) of Rs. 2,25,000/- was not encashed by Respondent No. 1 before the passing of the second order of advertisement. We are further of the view that the acceptance of payment of Respondent No. 1 from Respondent No. 2 is not sufficient to preclude it from bringing to the notice of the learned Company Judge that order dated 1.9.1999 had been obtained by the parties by suppressing material facts and playing fraud with the Court.

17. This is the complete answer to the submission made on behalf of the appellant.

18. We thus find no substance or merit in this appeal. It is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.