
(2013) 01 CAL CK 0013
In the Calcutta High Court
Case No : C.A. No. 198 of 2012

Dunlop India Limited

APPELLANT

Vs

E.V. Mathai and Sons

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Companies Act, 1956 — Section 397, 398, 441(2), 447, 450

Constitution of India, 1950 — Article 226

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22, 22A, 3(1)(ga)

Transfer of Property Act, 1882 — Section 53, 53(1)

Citation : (2013) 2 CALLT 150

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : Utpal Bose, Mr. Swatarup Banerjee, Mrs. Sudeshna Bagchi and Mrs. Sanchari Chakraborty for Dunlop India Limited, for the Appellant; Ravi Kapur, Ms. Manju Bhuteria, R. Medora and Mr. Meghajit Mukherjee for Madura Coats Limited, Mr. Bimal Kumar Chatterjee and Mr. Siddhartha Chatterjee, for ICICI Bank Limited, Mr. Ranjan Deb Mr. Sourya Sadhan Bose, Indranil Karfa, Jayjit Ganguly, Rudrajit Sarkar, Aniruddha Mitra, Rishad Medora, Rishab Dutt, Ahana Sikdar, Supratim Laha, Ms. Noelle Dey, Rohitendra Deb, Dipak Dey, S.K. Tiwari, Biswanath Chatterjee and Mr. Biswajit Konar, for the other Creditors, Mr. Jishnu Chowdhury and Mr. Arnab Sardar, for the Workers Mr. Anindya Mitra, Advocate-General, Mr. Paritosh Sinha, Debangshu Basak and Mr. Amitava Mitra for the State and Mr. Shiv Chandra Prasad, for the Provident Fund Authority, for the Respondent

Judgement

Sanjib Banerjee, J.—The wheel appears to have turned full circle for this industrial giant of a company whose name was once synonymous with automobile tyres. Dunlop India Limited today stands on the brink, its two manufacturing facilities not having functioned for years and its workers and employees imploring for their dues to come out of the assets of the company upon the company being wound up. Several other creditors have joined in the fray, particularly upon the facts pertaining to some of the company's valuable properties coming to light in an order of this Court of March 26, 2012. Some of

the creditors of the company who had bayed for blood leading up to the official liquidator being appointed as the provisional liquidator of the company by the order of March 26, 2012 are conspicuous either in their absence or in their silence; the two petitioning creditors whose petitions have been advertised have also taken a backseat, but that matters little since the matter has assumed a representative character and even if the original petitioning creditor abandons the claim or the proceedings any other creditor supporting the order of winding-up can be given carriage of the proceedings. The mundane details relating to the several matters that appear in the list need first be recorded before the more meaningful assessment of the only issue as to whether the company should be wound up or not is taken up. C.P. No. 233 of 2008 appears to be the first of the several creditors' winding-up petitions filed against this company in the present lot of matters. Such petition was lodged on June 30, 2008. C.P. No. 295 of 2008 is the second of the petitions in the current crop filed against the company by a creditor. The petition has not been admitted; but the company says the dues of the creditor have been settled. The relevant creditor is not represented. C.P. No. 297 of 2008 is another, yet unadmitted petition. The company again says that the claim of the creditor has been settled, but the creditor is not represented. C.P. No. 304 of 2008 has not yet been admitted; the creditor is represented and the company has not settled the claim. C.P. No. 305 of 2008 is a creditor's petition where, according to the company, the claim has been settled; but the creditor is not represented. The petitioning creditor in C.P. No. 437 of 2008 supports the prayer for winding up the company, like the petitioning creditor in C.P. No. 304 of 2008. The company submits that the claims of the petitioning creditors in C.P. No. 278 of 2009, C.P. No. 279 of 2009, C.P. No. 308 of 2009 and C.P. No. 159 of 2011 have been settled, but the creditors are not represented. The claims of the creditors in C.P. No. 13 of 2009, C.P. No. 438 of 2009 and C.P. No. 73 of 2010 have not been settled and these creditors support the winding up of the company. C.P. No. 159 of 2011 is the most recent of the creditors' winding-up petitions filed against the company. It has been advertised but the company and the creditor say that the matter has been resolved and the creditor no longer seeks to proceed with the petition. In addition to the several petitions which have been taken up together, there are a number of applications in these matters which remain pending. C.A. No. 198 of 2012 is a creditor's application seeking intervention in one of the petitions which has been advertised. C.A. No. 410 of 2009, C.A. No. 28 of 2011, C.A. No. 110 of 2011, C.A. No. 111 of 2011 and C.A. No. 114 of 2011 are applications by the company that have now become infructuous. These applications were filed when the company enjoyed the protection under the West Bengal Relief Undertakings (Special Provisions) Act, 1972. The company no longer enjoys the immunity under such statute. C.A. No. 832 of 2011 is also an infructuous application since the company has sought recall therein of the order of admission relating to C.P. No. 159 of 2011, but the petition has long been advertised. C.A. No. 852 of 2011 and C.A. No. 609 of 2012 are applications by supporting creditors which ought only to have been filed by way of affidavits. C.A. No. 378 of 2012 has been brought by the workers of

the company, primarily those employed at its Sahaganj unit. The latest application, C.A. No. 765 of 2012, is by the company seeking modification of certain subsisting orders to enable the company to pay off the dues of those creditors of the company with whom the company has apparently chosen to settle.

2. Upon affidavit directions being issued in C.P. No. 233 of 2008 on September 11, 2008, the matter went into hibernation following the company having been notified as a relief undertaking within the meaning of the West Bengal Relief Undertakings (Special Provisions) Act, 1972. Nearly three years after C.P. No. 233 of 2008 was instituted and the company had managed to postpone the inevitable, Courtesy the said Act of 1972, the company accepted that pay-up time had arrived and the parties filed terms of settlement in Court on May 4, 2011. The order receiving the terms of settlement noticed a clause therein that upon there being default of payment of any two consecutive instalments or the last instalment, the petition would be advertised in such newspapers that the Court may direct by an order at the relevant time. Within six months of the order receiving the terms of settlement, the company had defaulted in successive months in making payment and the petitioning creditor was back in Court to mention the matter on November 8, 2011. The company chose not to be represented despite notice. The petition was directed to be advertised. A second creditor's petition, C.P. No. 159 of 2011, was also advertised and came up before the company Judge at the post-advertisement stage on November 14, 2011. The company was represented and said that it no longer enjoyed the protection under either the Sick Industrial Companies (Special Provisions) Act, 1985 or the said Act of 1972. The order of November 14, 2011 noticed that the matter had assumed a representative character and the company was restrained from dealing with or disposing of or alienating or encumbering any of its assets without the previous leave of Court. The order recorded the company's admission that none of its industrial units was operational. The company, however, represented that it was making every endeavour to pay off its creditors, including its workers. All pending matters pertaining to the company were directed to appear on November 18, 2011.

3. The entire lot of matters was next taken up on December 9, 2011 when it was recorded that two of the petitions, C.P. No. 233 of 2008 and C.P. No. 159 of 2011, had been advertised and the other petitioners also sought winding-up of the company. Several affidavits of supporting creditors were also received and more creditors sought time to file their affidavits in support of the prayer for winding-up. The order of December 9, 2011 recorded the company's submission that the company had entered into tentative settlements with some creditors but payments had not been released to such creditors since at least one of the creditors' petitions had been advertised. The Court perceived that some settlements, and consequent payments, may have been made prior to any petition being advertised but subsequent to the filing of C.P. No. 233 of 2008 which went on later to be advertised. The Court found, prima facie, that some

payments made to some creditors ran the risk of later being assailed as fraudulent preference. The company admitted that it was indebted to the petitioner in C.P. No. 159 of 2011 in the sum of Rs. 33.61 crore by way of principal and requested the Court to permit the company to make payments in instalments to such petitioner since the other creditors had also to be paid.

4. By the order of December 9, 2011 the Court required the company to inform all its secured creditors that the matters would next be taken up on January 6, 2012. The order also observed that though the company Court could not force a company to formulate a scheme to pay off its creditors, this company had to chalk out a comprehensive plan to deal with its creditors for the Court to be convinced of both the company's intentions and its ability to muster resources to pay its creditors. In almost goading the company to chart out a road map for payment by the company to its creditors to ward off its imminent liquidation in the face of several creditors clamouring for their dues, the Court called upon the company to file a comprehensive affidavit to indicate the details of the company's creditors and their dues; the source of the company's funds to pay off such creditors; the value of the company's assets, particularly the fixed assets; and, the details of the statutory dues of the company based on the demands made by the appropriate authorities.

5. All of the endeavour of the company Court at the immediate post advertisement stage was to afford the company time to tide over a period of crisis and to nudge the company to organise itself to be able to pay off its debts and remain afloat. At the same time, the Court required details of the payments made by the company to its creditors after the institution of C.P. No. 233 of 2008 to be disclosed. It was a clear message to the company and those in control thereof that the Court was willing to grant time for the company to arrange its financial affairs as long as the company conducted itself within the bounds of propriety and did not abuse the Court's generosity in grant of time to pay off a chosen few from whatever funds that were available or could be garnered by the company. But it was only so much that the company Court could do; at the end of the day it was for the company to do what was necessary and not merely bank on the proven delay of the legal system to automatically gain time and rely on sheer passage of months or years to coerce the creditors to submit to a reduced payout. The company may even have mistaken the Court's indulgence afforded to it for lack of teeth and it is possible that the company may by now have acted in breach of the statement it volunteered in Court on December 9, 2011 "to not make payment to any person other than its statutory creditors and employees without leave of Court." On the next appointed day when the several creditors' petitions were taken up on January 6, 2012, the Court's perception as to the conduct of the company is reflected in the opening lines of the order made on such date: that on the basis of the affidavit filed on behalf of the company, there was substantial basis to the joint oral prayers made on behalf of the several creditors that the official liquidator should be appointed as provisional liquidator over all assets and properties of the company. The creditors had brandished a

news article published in the Mumbai edition of the Times of India" on December 16, 2011 entitled "Dunlop puts Worli property on the block." And yet the Court showed patience and indulgence in bowing to the cardinal principle that it would take no notice of a newspaper article unless there was material before it that substantiated the contents thereof. The order of January 6, 2012 reflected the Court's anguish that no details" had been furnished by the company in accordance with the directions contained in the order of December 9, 2011. With considerable diffidence, the Court blandly recorded the excuse proffered by the company that it required more time to scrutinise its books and papers at the Ambattur unit and that it had no access to the records lying at its Sahaganj factory. The Court made no comment on the accounts that ought to have been available at the company's seemingly functional registered office. The order only noted the creditors' failing hope and their apprehension that the company was buying time for alienating its assets or seeking to perfect the alienation thereof. Several creditors alleged that valuable assets of the company had been hived off in favour of its subsidiaries and were in the process of being sold. The Court said no more since such allegations were not on affidavit. The order directed that no payments other than those specifically permitted by the order of December 9, 2011 could be incurred by the company. It recorded the company's assurance that none of the properties had been put up for sale or was being attempted to be sold. It afforded the company a further chance to furnish the details sought earlier by the order of December 9, 2011 and exhorted the company to "disclose the fullest details of all immovable properties owned or controlled by the company that may have been alienated after the initiation of C.P. No. 233 of 2008."

6. The Court allowed the company several weeks to comply with its directions, adjourning the matters on a number of occasions till the creditors, at the end of their tether, pleaded with the Court on March 16, 2012 to not afford the company any further time without indicating a peremptory date. The sentiment of the creditors is reflected in a short order of March 16, 2012 where the Court expressed its disappointment at the repeated adjournments sought by the company and recorded its suspicion that the reason why the company did not wish the matter to be taken up would be evident from the series of orders passed on the creditors' petitions from November 14, 2011. On March 16, 2012 advocates newly engaged by the company claimed not to have the full complement of the papers to appropriately assist the Court. This excuse was put forth after a dramatic submission earlier in the proceedings by advocate on record of the company to be given leave to retire on moral grounds one week only to return the following week.

7. By March 20, 2012, however, an application for the appointment of a provisional liquidator u/s 450 of the Companies Act was heard out and judgment delivered thereon on March 26, 2012. It is necessary to dwell on the judgment. The relevant application was carried by Madura Coats Limited, a creditor which had instituted independent proceedings by way of C.P. No. 13 of 2009 for a

principal claim of over Rs. 2 crore on the basis of the company's admission in a draft rehabilitation scheme presented to the Board for Industrial and Financial Reconstruction (BIFR). Such creditor has lodged a suit elsewhere in this Court for a substantially larger claim where the claim in the winding up petition is not reflected. The order of March 26, 2012 proceeded, as all orders u/s 450 of the Act must, to first assess whether there was an unimpeachable claim before ascertaining whether the circumstances existed for making an exceptional order for the appointment of a provisional liquidator. Upon finding that there did not appear to be any plausible defence to the relevant petitioning creditor's claim, the order of March 26, 2012 alluded to the reference made by the company to the BIFR under the Act of 1985. The reference remained pending from January 19, 1998 with no apparent scheme having been formulated by the BIFR for nearly a decade even as the company, only by virtue of the pendency of the reference, kept its creditors at bay. The controlling shareholding in the company was transferred to the persons now in control thereof in or about the year 2005. In the following financial year, 2006-07, valuable immovable properties of the company were sought to be alienated against little or no consideration at all. The order of March 26, 2012 observed that "(u)pon such villainous exercise being completed under the statutory protection of 1985 Act, the new management in the company sought to shed the protection; for what was till then a shield could very likely have become the sword dangling over the management's head." At the behest of its new management, the company revalued its fixed assets (primarily, the immovable properties other than those in and around its manufacturing facilities) and presented a fait accompli to the BIFR that the company was no longer subject to the BIFR's scrutiny or supervision as the effect of the revaluation of its assets took the company beyond the pale of the 1985 Act. The company had also suggested, in course of the application for appointment of a provisional liquidator, that the alienation of its valuable properties in the year 2006-07 was of no concern to the company Court.

8. It is of some relevance that a sick industrial company is defined in the said Act of 1985 to mean "an industrial company (being a company registered for not less than five years) which has at the end of any financial year accumulated losses equal to or exceeding its entire net worth." Net worth, in terms of section 3(1) (ga) of the said Act, "means the sum total of the paid-up capital and free reserves." The explanation to the relevant definition clause emphasises that "free reserves means all reserves credited out of the profits and share premium account but does not include reserves credited out of re-evaluation of assets, write back of depreciation provisions and amalgamation." It was not the company's case before the BIFR that its net worth became positive on account of any profits earned by the company during the relevant financial year or by reason of any share premium obtained by it, but only on account of revaluation of some of its fixed assets. It is also of relevance that the order of the Appellate Authority for Industrial and Financial Reconstruction (AAIFR) of March 3, 2008 recognising that the company was not subject to the provisions of the said Act of

1985 was not based on its independent opinion but founded on a Madras High Court order that observed that since the net worth of the company was a positive sum of Rs. 242.65 crore for the year ended March 31, 2007, the BIFR "cannot retain its jurisdiction over the petitioner company any further." That order was rendered by the Madras High Court on a petition under Article 226 of the Constitution of India where the company claimed that it was entitled to the protection u/s 22 of the 1985 Act in course of challenging the seizure of certain goods by the customs authorities. It is also of importance to note that the company's previous attempt to have its reference before the BIFR annulled on the ground of its net worth having become positive following the revaluation of some of its assets was repelled by the BIFR by an order of July 23, 2007 and an appeal therefrom was dismissed by the AAIFR on December 4, 2007. It is also the admitted position that during the currency of the reference pertaining to the company before the BIFR, prohibitory orders against the alienation of the company's properties were in place u/s 22A of the said Act of 1985.

9. The order of March 26, 2012 found that four immovable properties of the company had been shown to have been removed from the company's fold and placed in the laps of other companies under the same management by depressing the actual values thereof, receiving almost no consideration against them and by the company transferring--whether a substantial part or the entirety thereof--the shares which it received by way of consideration against the properties to other companies in the same management such that the beneficiary or transferee companies, which had become subsidiaries of the company upon the allotment of shares as consideration, were de-linked from the company. The order noticed that one of the properties that was shown to be of value of Rs. 80 crore was furnished as security for a loan of more than Rs. 600 crore; another of stated value of Rs. 150 crore was offered as security for a loan worth over of Rs. 1,012 crore; and, by the same token, assessed that notwithstanding the stated values of Rs. 60 crore and Rs. 30 crore of the two other immovable properties of the company that had been alienated, their collective worth may have been about Rs. 700 crore. The Court found that properties of value in excess of Rs. 2,300 crore had been removed from the company without the company meeting the debts of its creditors or even offering the unpaid wages and salaries to its workmen and other employees. More importantly, the company received no consideration against the transfers other than some dud shares in newly-formed companies that had no business at all. The following observations from the order of March 26, 2012 are of relevance as they have been left undisturbed by the appeals from such order:

There is no doubt that a company has a right to sell its properties and the prices at which it sells its properties may not be justiciable. But such principle which is founded on the doctrine of indoor management--like the rule as to freedom to extend one's arm as long as it does not touch another's nose--is not absolute; and a company's act of selling its assets should not be opposed to public interest or seen to cause unfair prejudice to another if such other is entitled to complain

of it before a Court of law. The company would have been perfectly justified in selling off its properties to meet its debts and pay off its creditors or its employees and workmen. This company did not take such a mundane road. Instead, it effected the transfers, or most of them, when its creditors had no access to it or its properties by virtue of the protection that it enjoyed under the said Act of 1985 and the company did not use the money to pay off its creditors; its management used the company for the cash cow that it was for self aggrandisement and to the detriment and prejudice of its creditors, employees and workmen. Whether or not the transactions were in breach of the provisions of the said Act of 1985, they are good enough grounds to be cited to seek the appointment of a provisional liquidator over the company. It must not be lost sight of that Dunlop India Limited is a listed company and its controlling shareholding may not even constitute fifty percent of its paid-up capital. Since the four immovable properties have been alienated from the company and parked with entities under the exclusive control of the group holding the controlling shareholding in the company, such act would also amount to gross mismanagement qua the other shareholders of the company and be seen as a fraud on such other shareholders.

....

The element of public interest which has been judicially recognized to have been incorporated in the manner in which the company Court's discretion u/s 450 of the Companies Act is to be exercised has statutory support, inter alia, in sections 397 and 398 of the Companies Act that deal with oppression and mismanagement, respectively. The consideration as to public interest will be even more relevant if the company is a listed company. Dunlop India Limited was once a blue-chip money that now appears to be in the clutches of a marauding bunch of corporate predators which is single-mindedly devoted to stripping the company bare of its assets while leaving the company creditors, employees and workmen in the lurch.

The company has made no attempt--none at all--to show that the said four transactions were necessary or they were made in the interest of the company or for the purpose of augmenting resources to discharge the company's debts. Indeed, the company's resources were not enhanced upon the company being denuded of the four properties. As noticed above, two of the creditor's winding-up petitions against the company have been admitted and advertised and a third has been pending from before a reference relating to the company was made to the BIFR. u/s 441(2) of the Companies Act, the winding up of a company by the Court is deemed to commence at the time of the presentation of the petition for the winding up. Section 447 of the Companies Act provides that an order for winding up of a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made out on a joint petition of a creditor and of a contributory. Section 531 of the Companies Act prescribes that any transfer of property, moveable or immovable or delivery of goods, payment,

execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly. Section 53 of the Transfer of Property Act defines fraudulent transfer. Sub-section (1) of section 53 of such Act prescribes that every transfer of immovable property made with intent to defeat or delay the creditors of the transferors shall be avoidable at the option of any creditor so defeated or delayed. The provision permits a suit to be instituted by a creditor of the transferor in representative capacity for the benefit of all the creditors. That section 53(1) of such Act does not affect any law relating to insolvency only implies that it does not derogate from any law relating to insolvency. There is, therefore, the recognition on the general law of this country for a creditor to regard the transfer of an immovable property by the debtor to be fraudulent in some circumstances.

....

In a society governed by the Constitution which spells out its aspirations and even a sense of morality, no constitutional functionary--far less a Court owing not only allegiance but its existence to it--can condone the acts of graft that have come to light. The company and its management may appear to be unconcerned upon the discovery of the brazen acts of defalcation, doubtless inspired by the perception of corruption elsewhere in the society; but even without elevating the discussion to a moral high ground, it is apparent that the assets of the company are in serious jeopardy in the hands of those at present responsible for protecting the same. If the workmen of the company have a paramount charge over its assets for their dues and stand at par with the secured creditors of company even in respect of the secured assets, the immediate appointment of a provisional liquidator is called for over the company with full authority as liquidator.

10. The order of March 26, 2012 referred to an affidavit filed by the company where it was stated that there were 850 workmen at its Sahaganj factory and 550 workmen at its Ambattur manufacturing facility; the company had another 100 managerial or administrative employees on its rolls. The order recorded that the Sahaganj workmen had not been paid their wages after July, 2011 and the Ambattur workmen after January, 2012. The order noticed that despite the company coming out of the purview of the said Act of 1985 in dubious circumstances, it sought and obtained a similar immunity against its creditors under the said State Act of 1972 for the periods October 22, 2008 to April 26, 2009; June 10, 2009 to December 9, 2009; December 10, 2009 to June 9, 2010; and, June 17, 2010 to December 16, 2010. At the time that the application for appointment of a provisional liquidator was taken up, the company had offered to

pay the Sahaganj workmen their August, 21 dues "to show its bona fides." The operative part of the order of August 26, 2012 provided as follows:

C.A. No. 34 of 2012 is allowed by appointing the official liquidator as the provisional liquidator over and in respect of Dunlop India Limited with full powers as liquidator under the Companies Act, 1956. The provisional liquidator will take every step that is permissible to not only protect the assets and interests of the company and its creditors, employees and workmen, but will also take all steps in accordance with law to forthwith recover and arrest the further alienation of the four immovable properties that were fraudulently transferred by the company in the year 2006-07 or thereabouts as referred to above. The company will pay costs assessed at 3,000 GM to the petitioning-creditor. The company and its directors, managers and all concerned will remain obliged to forthwith ensure that all books, records, documents, assets and properties of the company are made available for the effective control, and protection thereof and of the company's interests, by the official liquidator. All decisions of the company will be subject to the approval of the official liquidator. Since the four transactions entered into by the company in the year 2006-07 or thereabouts were fraudulent, the title therein may not be deemed to have passed at all from the company.

11. Two sets of appeals were preferred from the order of March 26, 2012, one by the company and another by ICICI Bank Limited. The company's appeal, APO No. 129 of 2012, was disposed of by an order of July 19, 2012. Though the appellate order observed that it could not "support the findings of the learned Trial Judge that the aforesaid transfer which have taken place before presentation of winding up as being fraudulent and invalid in the insolvency jurisdiction", it held as follows:

Therefore, we are of the prima/facie view that strong case of indebtedness has been made out. Equally strong case has been made out about the act of waste of the present management. They are not trustworthy nor do they inspire any confidence in the mind of the Court to keep the properties with them with free hands. But when we take note of argument of Learned Advocate General, we find State Government is keen to lend support for putting back the company in running. Hence judgment and order of learned Trial Judge appointing Official Liquidator as Provisional Liquidator for taking full control and management of the company is not warranted at this stage.

Thus in the interest of all creditors accepting the suggestion of learned Advocate General, a chance ought to be given to the appellant, but with guarded manner. We think that following order will subserve interest of justice. We have already by way of interim order appointed Official Liquidator as Special Officer in lieu of provisional liquidator. We, therefore, confirm the said order which has been passed earlier, in addition thereto we direct the Official Liquidator to make inventory of all the books of account of the company and the Special Officer shall pay monthly visit and preserve in all respect upon taking symbolic possession to

preserve all the properties. However symbolic possession of the Special Officer will not prejudice the present management of the company to take lawful steps for the revival of the company but the company will not approach BIFR once again without leave of the learned Trial Judge. In view of this order we do not think that any relief should be granted in the cross-objection simply such relief cannot be granted in the proceeding initiated by Madura at this stage.

In the appeal of ICICI Bank Limited, APO No. 132 of 2012, the appellate Court concluded as follows by a separate order dated July 19, 2012:

Under those circumstances we think that the direction given by the learned Trial Judge at the instance of the appellant cannot be deleted. However reading the judgment and order of the learned Trial Judge we feel that it will be great injustice if observation recorded and direction given by the learned Trial Judge are allowed remain in the impugned judgment and order. Admittedly the parties who might be affected were not heard nor any notice was given. We therefore clarify those observation and direction will not be binding factor on any person at the moment simply, the learned Trial Judge at this stage has no jurisdiction. In the event the aforesaid two alleged mortgages are sought to be enforced by any person interested prior notice therefor should be given upon the Special Officer appointed by this Court who on receipt of the same will be entitled to approach the learned Company Judge to seek leave to take appropriate legal measure as may be advised and as may be directed. Therefore, we do not find any reason to grant any relief on this appeal. We make it clear that it would be open for the appellant to take steps in accordance with law; obviously notice of such action shall be given to the Special Officer in the event aforesaid transferred properties are sought to be roped in. Thus this appeal is disposed of with above observation and finding and direction.

12. The several creditors' winding-up petitions that appeared continually before the company Court after the order of March 26, 2012 were adjourned pending the outcome of the appeals from the order of March 26, 2012, though there was no strict necessity to defer the same. The company Court afforded time and opportunity to the company to ensure that a credible repayment plan was presented for taking care of not only the debts of the creditors who were before Court, but also of the workers and other employees who could not be individually expected to approach the Court. Even after the appellate Court observed in the order of July 19, 2012 that a strong case had been made out as to the acts of waste of the present management of the company and that the persons in the present management were "not trustworthy nor do they inspire any confidence in the mind of the Court", the company Court waited patiently for the company to devise a credible plan to liquidate the claims of its creditors, including its workmen and other employees. During such period, the company applied by way of C.A. No. 585 of 2012 seeking stay of C.P. No. 13 of 2009 on the ground that an appeal had been belatedly attempted to be preferred from an order passed in a suit relating to a part of the claim of the petitioning creditor. Such application

was dismissed as premature without considering the matter on merits since such consideration would have arisen if the attempted appeal had been taken on record. On September 11, 2012, the several creditors' petitions were taken up and notices were directed to be served on ICICI Bank Limited and the State Government since ICICI Bank Limited had felt aggrieved by the order of March 26, 2012 which was made in its absence; and it appeared from the appellate order of July 19, 2012 that the state government had indicated before the appellate Court that it was "keen to lend support for putting back the company in running." Both the State and ICICI Bank Limited were represented on the adjourned date, but the matter was again adjourned and, on October 9, 2012, the Court's dismay at the company's failure to present an acceptable scheme for payment to its creditors was recorded in the following words as a further adjournment of nearly two months was granted:

The company has made several attempts to stall the hearing of these matters, some proper and some of them slightly improper. However, since the matters pertain to the possible civil death of a company which has been in existence for nearly a century and they involve the interests of a large number of persons, the company's unjustified request for an adjournment of the matter is acceded to. It has been submitted on behalf of the company that a scheme to pay off its creditors has been filed with the Bombay Stock Exchange since the company continues to be listed under that stock exchange. The company says that such scheme has been filed on September 24, 2012 and the stock exchange's approval or deemed approval should come within 30 days of the filing thereof.

The company should ensure that the matters are ready for hearing on all aspects when they appear next on December 4, 2012. No further adjournment will be granted to the company.

13. Thereafter, applications or supporting affidavits came to be filed by the workers and other employees of the company. The matters were adjourned from time to time to enable the company to assess the claims of the workers and to finally bring a plausible proposal for disbursement of money to its creditors. The company Court waited for about 14 months since the two petitions were advertised for the company to present an alternative to the Court so that it would not be necessary to wind up the company; but the company has neither furnished any particulars or accounts that remain in the company's possession, nor has the company indicated whether it has the resources to meet its debts. It appears that the only endeavour of the company has been to stall the inevitable and hope to put in as much time as possible between its alienation of the four valuable properties and the ultimate order of winding-up. Indeed, despite the Court's entreaties, the company has made no attempt to make any submission either on the quality of the claims of the several creditors who seek to have the company wound up or on other facts that should weigh with the Court to exercise its discretion and not wind up the company despite its apparent inability to pay its creditors. The matters were finally taken up for hearing on January 28, 2013.

14. The company admits that there has been no production at its manufacturing facilities at Sahaganj and Ambattur for several years and has been completely closed for more than a year. The company also admits that notwithstanding its settlement with a number of creditors, it is evident that the majority creditors in value press for the company to be wound up. According to the company, it has scrutinised its records relating to the claims made by the Sahaganj workers and, though the exercise is incomplete, a principal sum of Rs. 10.33 crore appears to be due to such workers. The company is unable to furnish any details regarding the claims of its other employees and workers. It is submitted on behalf of the workers and employees who have joined in by way of an application in the present proceedings that their principal claim is in excess of Rs. 74 crore. The 25 other employees who have filed a supporting affidavit claim a further principal sum in excess of Rs. 1 crore. The workers and other employees of the company have pressed for the immediate winding-up of the company so that a part of their dues may be met from the sale of the meagre assets of the company that now remain. The company, however, seeks the adjournment of all the matters against a promised phased payment of Rs. 50 lakh per month to its workers. The company is unable to disclose the source of its funds to make such payments to the workers or the payments promised to the other creditors. 15. Of the creditors other than the workers and employees of the company who are represented in Court, the petitioner in C.P. No. 438 of 2009 with a principal claim of about Rs. 66 lakh, the petitioner in C.P. No. 304 of 2008 with a principal claim of about Rs. 1.40 crore, a supporting creditor, Global Entrade, which has a principal claim in excess of Rs. 1.28 crore, another supporting creditor, Indian Roadways Corporation Limited, with a principal claim in excess of Rs. 1.80 crore, the petitioner in C.P. No. 438 of 2008 with a principal claim in excess of Rs. 4.5 lakh, the petitioner in C.P. No. 13 of 2009 with a principal claim in excess of Rs. 2.03 crore, the petitioner in C.P. No. 73 of 2010 with a principal claim in excess of Rs. 87 lakh, supporting creditor Smiffs Capital Markets Limited with a principal claim in excess of Rs. 8 crore and another supporting creditor, Transport Corporation of India Limited, with a principal claim in excess of Rs. 31.84 lakh have all unequivocally expressed their desire in Court that the company should immediately be wound up and no further opportunity be afforded to it to fritter away its remaining assets.

16. There is no creditor represented in Court that opposes the winding-up of the company despite the question being asked several times by Court in course of the hearing. However, several petitioning and supporting creditors no longer press their claims or their petitions in view of the company having apparently reached some arrangement with them.

17. The company's offer to pay Rs. 50 lakh per month to its workers is laced with a condition that it must have a chance to open its manufacturing facilities and the Court must facilitate the same. The State Government says that the land which is blocked in the unproductive Sahaganj unit of the company should be freed for industrial activity thereat and the State Government is open to either

the company commencing industrial activity thereat or any subsequent purchaser of the company's assets doing so. It must be recorded that several parleys were held between the representatives of the State Government and the company for opening the Sahaganj unit, but nothing has come of the conciliation proceedings following the company's staunch refusal to put any concrete proposal on the table for the payment of the workers' dues. The State Government refers to the affidavit that it has filed in course of the present proceedings and says that its electricity utility has a claim of Rs. 11.20 crore in respect of the Sahaganj factory; the West Bengal Development Corporation Limited has a claim of Rs. 14 crore; and, a sum in excess of Rs. 7.95 crore is due by way of land revenue apart from sales tax dues in excess of Rs. 40 crore. The provident fund authorities suggest that a sizeable sum in crores is due from the company, though the quantification of the amount has not been made. The appearing workers of the company have handed over a letter dated January 11, 2013 issued by the joint director of the Employees State Insurance Corporation that an amount in excess of Rs. 46.27 lakh is due from the company as at December 31, 2012.

18. The company suggests that it has reached a settlement with its creditors who had come to Court and who have a combined principal claim of about Rs. 32 crore. The company has made no attempt to detract from the claims of the various creditors who are represented in Court and seek the winding-up of the company. Since the company's manufacturing facilities are not operational and the company does not demonstrate that they are likely to be opened or any manufacturing activity conducted thereat in the near future, there is no indication of how the massive debts of the company would be met. Despite directions, the annual accounts of the company have not been produced. It must also not be forgotten that the net worth of the company effectively remains negative since it only revalued its assets to create the illusion of a positive net worth on paper to slip out of the BIFR, but there were no profits or share premia to back the apparent improvement in the company's net worth position.

19. No workmen or employee of the company has appeared to resist the order of winding-up. The conduct of those in management of the company in fraudulently selling off assets conservatively estimated at Rs. 2,300 crore makes it just and equitable for the company to be wound up. The company has been unable to show any prospects of it carrying on any business in the near or the distant future. The company's inability to pay its debts is established and no ground is shown for the company Court to exercise its discretion to not wind up the company despite its obvious insolvency.

20. ICICI Bank Limited has only submitted that it has no role to play in the present proceedings as it has had no transaction with the company and has no opinion on whether the company should be wound up or not.

21. It is necessary to record a minor matter as this may only be the first episode of the corporate scandal that is Dunlop India Limited. A letter had been

addressed apparently on behalf of the company expressing the company's reservations for this Judge to hear these matters. Regrettably, the then Chief Justice had deemed it proper to forward the letter, through a battery of officials in the administration, to the Judge. Counsel for the company has, however, expressed full confidence in this Judge dealing with the matters despite the factum of such letter being brought to the notice of counsel.

22. And so it is the end of the road for the once giant in the automobile tyre manufacturing industry. Company Dunlop India Limited is directed to be wound up with immediate effect under the provisions of the Companies Act, 1956. The official liquidator will forthwith take charge of all books, records, documents, assets and transactions of the company, now in liquidation. The official liquidator will form a special team to handle the assets and matters pertaining to this company in liquidation and will ensure that statements of affairs are promptly filed by all persons liable therefor, including the person or persons forming the controlling mind of the company prior to its liquidation. The official liquidator will immediately take steps to ensure that the assets transferred by the company in derogation of the prohibitory orders of the BIFR are brought back to the company's fold and made available for realisation of the creditors' dues. The official liquidator will also cause reputed auditors to be appointed at the appropriate stage to inquire into the acts and conducts of those in management of the company prior to its liquidation and institute misfeasance proceedings, if necessary, without any undue delay.

23. This order of winding-up is passed on C.P. No. 233 of 2008 which is the earliest of the petitions in the present lot and has also been advertised. Madura Coats Limited will cause the gist of this order to be published in the same newspapers in which C.P. No. 233 of 2008 was advertised within the time stipulated in the rules. C.P. No. 295 of 2008, C.P. No. 297 of 2008, C.P. No. 304 of 2008, C.P. No. 305 of 2008, C.P. No. 437 of 2008, C.P. No. 13 of 2009, C.P. No. 278 of 2009, C.P. No. 279 of 2009, C.P. No. 308 of 2009, C.P. No. 438 of 2009, C.P. No. 73 of 2010, C.P. No. 159 of 2011 and C.P. No. 513 of 2011 are disposed of along with all the affidavits filed on behalf of the other creditors of the company, now in liquidation, with liberty to all the creditors of the company in liquidation to press their claims before the official liquidator in accordance with law. C.A. No. 410 of 2009, C.A. No. 28 of 2011, C.A. No. 110 of 2011, C.A. No. 111 of 2011, C.A. No. 114 of 2011 and C.A. No. 832 of 2011 are dismissed as infructuous. C.A. No. 852 of 2011, C.A. No. 198 of 2012. C.A. No. 378 of 2012 and C.A. No. 609 of 2012 are disposed of with liberty to the applicants to press their claims before the official liquidator in accordance with law. C.A. No. 765 of 2012 is dismissed in view of the company having been directed to be wound up. There will be no order as to costs.

Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Later:

The company seeks a stay of the operation of this order which is declined.