

(2013) 07 DEL CK 0432

In the Delhi High Court

Case No : Co. Application (M) 83 of 2013 in Co. Petition 321 of 2001

Gati Cargo Management Services

APPELLANT

Vs

SBL Industries Ltd.

RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Companies Act, 1956 — Section 235, 236, 237, 238, 239

Citation : (2014) 182 CompCas 46

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Advocate : Arun Kathpalia and Mr. Amit Goel, for the Appellant; Barun Kumar Sinha, Ms. Pratibha Sinha and Mr. Rajiv Bahl, for Official Liquidator, for the Respondent

Final Decision : Allowed

Judgement

R.V. Easwar, J.—This is a first motion joint application filed u/s 391 to 394 of the Companies Act, 1956 ("Act", for short) in connection with the scheme of arrangement and compromise proposed between the company by name S.B.L. Industries Ltd. (in liquidation) and its creditors. The scheme is propounded by P.C. Sen, the Ex-management and Director company, who holds substantial shares in the company and for issuing directions for holding the meetings of the shareholders and various classes of creditors. The company, which is now under liquidation was incorporated as a public limited company on 26.12.1960. The registered office of the company at the time of passing the winding up order was situated at Delhi.

2. The main objects of the company as set out in its memorandum of association, in brief, are to carry on the business as manufactures and dealers of all kinds of engineering goods including ball, roller and tapered bearings and all kinds of mechanical, electrical and scientific appliances, instruments, apparatus, tools, contrivances and accessories. The company manufactured ball bearings in its factory at Ranchi since incorporation. During the initial period of 30 years, the

business was successful; however, from the late 80s the company started suffering losses. It was declared as a sick unit and financial rehabilitation package was sanctioned by the BIFR in February, 1990. For some years thereafter there was improvement in the performance of the company but again from 1997/98, the company started suffering losses and eventually commercial operations ceased in August, 2001 due to shortage of working capital.

3. In 2001, M/s. Gati Cargo Management Services, one of the creditors of the company, filed company petition No. 321 of 2001 for winding up and by order dated 23rd January, 2006, the company was ordered to be wound up and an official liquidator was appointed by this Court. He took possession of the premises and assets of the company and initiated liquidation proceedings. In the year 2007, the company paid the dues of Gati, whereupon Gati withdrew the liquidation proceedings.

4. The ex-management, of which P.C. Sen was part, and held substantial shares of the company, expressed an intention to revive the company with the backing of a strategic investor. He proposes to file a scheme of arrangement and compromise with secured, unsecured and other creditors. He has proposed the refurbishing of the building, plant and machinery and other assets of the company and thus to revive the manufacturing operations at the company's factory in Ranchi.

5. The details of the authorised, issued, subscribed and paid-up capital are given in the application along with a copy of the audited balance sheet as on 21.3.2005.

6. The strategic investor, who was prepared to assist the ex-management in the revival of the company has already paid an amount of Rs. 13 crores to the State Bank of India. The preference shareholders holding shares for Rs. 24,75,00,000/- issued a letter to P.C. Sen (ex-management) on 14.3.2012) transferring their shares in its favour. It is stated in the application that in view of the above developments, the company proposes to pay off all creditors within a period of 6 to 12 months from the acceptance of the proposal by this Court and to complete the refurbishment and the recommencement of the manufacturing operations within the said period, or at any rate, within a maximum period of 24 months. It is further averred in the application that the scheme is in the interest of the company, the shareholders and the creditors inasmuch as their dues will be paid by entering into a compromise and arrangement with them which will enable the company to recommence the operations. It is stated that the scheme is ultimately in public interest as it would revive the economic activity, generate revenues for the State and provide employment. The fresh funds generated by the revived business, it is stated, will be ploughed back so that the financial health of the company improves.

7. Copy of the scheme of arrangement is annexed to the application and marked as Annexure A5.

8. It has further been stated that no investigation/proceedings have been

instituted or are pending u/s 235 to 251 of the Act or under any other provisions of the Act against the company. The proposed scheme of arrangement, it is stated, would take effect from the day mentioned therein but would be effective from the last day on which the requisite approvals, consent and sanctions are duly obtained and a certified copy of the order of the Court sanctioning the scheme is filed within the concerned Registrar of Companies as required by the Act.

9. The company has prayed for issue of the following directions:-

- i. To order and issue notice for meeting of secured creditors classified as class I creditors; and
 - ii. To order and issue notice for meeting of statutory liabilities creditors classified as class II creditors; and
 - iii. To order and issue notice for meeting of unsecured creditors classified as class III creditors; and
 - iv. To order and issue notice for meeting of equity shareholders u/s 391 and 393 of the Companies Act, 1956;
 - v. To grant exemption from calling of the meeting of preference shareholders u/s 391 and 393 of the Companies Act 1956;
 - vi. To issue the publication of Notice by Advertisement in newspapers in respect of the convening, holding and conducting the meeting proposed above and dispense with the meetings proposed above and dispense with the publication of the said notices in the Gazette;
 - vii. To fix the quorum for the above meetings;
- b. The Hon"ble Court may pass any further order/orders as may be deemed fit and proper in the facts and circumstances of this case.

10. I have heard Mr. Arun Kathpalia for the company. He submitted that prayer (v) may be modified to the effect that no exemption be given and a direction may be issued for calling of the meeting of the preference shareholders under sections 391 and 393 of the Act.

11. Mr. B K Sinha, who appears for the workmen took a preliminary objection to the maintainability of the application and submitted that the interest of the workers would be prejudiced if the scheme of arrangement is sanctioned by this Court. He pointed out that P.C. Sen is trying to take advantage of the potential and extensive lands owned by the company, which is not in the public interest. He further pointed that the transfer of shares by SRF Ltd. to P.C. Sen on 14.3.2012 is a motivated transaction merely to benefit some vested interests; it is also illegal since the permission of the official liquidator ought to have been taken for the same as the company is under liquidation. He further argued that the acquisition of shares by P.C. Sen in the year 1999 was itself a sham

transaction and if that is proved, the entire scheme of arrangement would fall flat. He submitted that he should be heard on behalf of the workmen at this stage itself.

12. Mr. Kathpalia appearing for the company opposed the contentions of Mr. B.K. Sinha appearing for the workmen and pointed out that at the first motion stage no such right to object inheres in the workmen and that whatever rights they have to object to the scheme may be voiced at the second motion stage and before the winding up order is passed. He pointed that the statutory provisions do not contemplate any hearing to be given to the workers at the first motion stage.

13. On a careful consideration of the objections raised by Mr. Sinha appearing for the workmen and the arguments of Mr. Kathpalia appearing for the company, I am of the view that at the first motion stage the workmen have no right to be heard. Section 391(1) of the Act says that where a compromise or arrangement is proposed between a company and its creditors or any class of them or between a company and its members or any class of them, the Court may, on the application of the company order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such a manner as the Court directs. Rule 67 of the Companies (Court) Rules, 1959 is relevant. Elaborate provisions have been made in Rules 67 to 87 in connection with the compromise or arrangement u/s 391 to 394.

Rule 67 is as follows:

Summons for directions to convene a meeting

An application u/s 391(1) for an order convening a meeting of creditors and/or members or any class of them shall be by a Judge's summons supported by an affidavit. A copy of the proposed compromise or arrangement shall be annexed to the affidavit as an exhibit thereto. Save as provided in rule 68 hereunder, the summons shall be moved ex parte. The summons shall be in Form No. 33, and the affidavit in support thereof in Form No. 34.

The Rule is quite clear when it says that the summons shall be moved ex-parte except in a case where Rule 68 applies. Rule 68 provides in a case where the company itself did not apply for the compromise or arrangement, in such a case, a copy of the summons shall be served on the company. If the company is being wound up, the summons shall be served on the liquidator. This is the only exception to Rule 67. I am not concerned with the situation contemplated by Rule 68. Under Rule 67, the summons shall be moved ex-parte. This means that at the first motion stage, when the summons have been filed and is duly supported by an affidavit, the Court is entitled to issue directions ex-parte and no other party is entitled to be heard at that stage. Rule 69 lists the type of directions that can be issued at the hearing of the summons. The list of directions is as under:

Upon the hearing of the summons or any adjourned hearing thereof, the Judge shall, unless he thinks fit for any reason to dismiss the summons, give such directions as he may think necessary in respect of the following matters:-

- (1) determining the class or classes of creditors and/or members whose meeting or meetings have to be held for considering the proposed compromise or arrangement;
- (2) fixing the time and place of such meeting or meetings;
- (3) appointing a chairman or chairmen for the meeting or meetings to be held, as the case may be;
- (4) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting by proxy;
- (5) determining the values of the creditors and/or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held;
- (6) notice to be given of the meeting or meetings and advertisement of such notice;
- (7) the time within which the chairman of the meeting is to report to the Court the result of the meeting, and such other matters as the Court may deem necessary.

The order made on the summons shall be in Form No. 35 with such variations as may be necessary.

My attention was not drawn by Mr. Sinha to any Rule in the Companies (Court) Rules mandating the Company Court to direct, at the first motion stage, that the workmen ought to be heard in relation to their objections to the maintainability of the application. The reason is simple. Dues payable to workmen are treated on par with dues payable to secured creditors and in this sense the workmen are treated on par with secured creditors. If the workmen have any objection to the scheme or compromise, they can voice the same in the meeting of the secured creditors to be held under the directions of the Company Court. They also have a right to voice their objections at the second motion stage and this right was not seriously contested by the learned counsel for the applicant. Thus, in the absence of any statutory provision and having regard to the fact that the workmen, as part of the secured creditors, can voice their objections in the secured creditors' meeting and also at the second motion stage, I reject the objection raised by Mr. Sinha for the workmen maintainability of the application.

14. I accordingly issue the following directions:

- i. The Company has 3 secured creditors classified as Class I creditors. A prayer has been made for convening the meeting of the secured creditors. Consequently, I direct that a meeting of the secured creditors of the Company shall be held on 17th August 2013 at 11.00 A.M. at Hotel Krishna Residency, Plot

No. 2, Sector 12B, Dwarka, New Delhi - 110078.

ii. Ms. Kajal Gupta, Advocate, Mob. No. 9958160778, is appointed as the Chairperson and Mr. Sanjeev Dobhal, Court Officer, Mob. No. 9958891620, is appointed as the Alternate Chairperson for the meeting of secured creditors of the Applicant company. They would be paid a fee of Rs. 50,000/- each. Mr. Bashishth Narain Bharti, Mob. No. 9958085949 and Mr. Jagat Singh, Mob. No. 9968583706, officials to this Court shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs. 10,000/- each for this purpose.

iii. The quorum of the meeting of the secured creditors is fixed as follows:

iv. It is also directed that if the quorum is not present at the commencement of the meeting, the meeting would be adjourned for 30 minutes and thereafter the persons present in the meeting, who would not be less than one, would be treated as proper quorum.

v. The Company has 5 statutory liabilities creditors classified as Class II Creditors. A prayer has been made for convening the meeting of the statutory liabilities creditors. Consequently, I direct that a meeting of the statutory liabilities creditors of the Company shall be held on 17th August 2013 at 12.30 P.M. at Hotel Krishna Residency, Plot No. 2, Sector 12B, Dwarka, New Delhi - 110078.

vi. Ms Pratiti Rungta, Advocate, Mob. No. 9899984879, is appointed as the Chairperson and Mr. R. Gopalan, Court Officer, Mob. No. 9910390965, is appointed as the Alternate Chairperson for the meeting of the statutory liabilities creditors of the Applicant company. They would be paid a fee of Rs. 50,000/-. Ms. Garima Madan, Mob. No. 9871895157 and Mr. Jitender Kumar, Mob. No. 9717922519, officials to this Court shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs. 10,000/- each for this purpose.

vii. The quorum of the meeting of the statutory liabilities creditors is fixed as follows:

viii. It is also directed that if the quorum is not present at the commencement of the meeting, the meeting would be adjourned for 30 minutes and thereafter the persons present in the meeting, who would not be less than one, would be treated as proper quorum.

ix. The Company has 136 unsecured creditors classified as Class III Creditors. A prayer has been made for convening the meeting of the unsecured creditors. Consequently, I direct that a meeting of the unsecured creditors of the Company shall be held on 17th August 2013 at 2.00 P.M. at Hotel Krishna Residency, Plot No. 2, Sector 12B, Dwarka, New Delhi - 110078.

x. Mr. Navneet Goyal, Advocate, Mob. No. 9811224831, is appointed as the

Chairperson and Ms. Rubal Bansal, Advocate, Mob. No. 9873755301, is appointed as the Alternate Chairperson for the meeting of unsecured creditors of the Applicant company. They would be paid a fee of Rs. 50,000/- each. Mr. Vijender, Mob. No. 9582066939 and Mr. Ram Kumar, Mob. No. 9873081316, officials to this Court shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs. 10,000/- each for this purpose.

xi. The quorum of the meeting of the unsecured creditors is fixed as follows:

xii. It is also directed that if the quorum is not present at the commencement of the meeting, the meeting would be adjourned for 30 minutes and thereafter the persons present in the meeting, who would not be less than five, would be treated as proper quorum.

xiii. The Company has the equity shareholders holding 14,74,140 equity shares. A prayer has been made for convening the meeting of the equity shareholders. Consequently, I direct that a meeting of the equity shareholders of the Company shall be held on 17th August 2013 at 3.30 P.M. at Hotel Krishna Residency, Plot No. 2, Sector 12B, Dwarka, New Delhi - 110078.

xiv. Mr. Ashish Makhija, Advocate, Mob. No. 9810128356, is appointed as the Chairperson and Ms. Varnika Singh, Advocate, Mob. No. 9810134593, is appointed as the Alternate Chairperson for the meeting of the equity shareholders of the Applicant company. They would be paid a fee of Rs. 50,000/- each. Ms. Ranju Bhalla, Mob. No. 9971372789 and Ms. Manjeet Kaur, Mob. No. 9899941293, officials to this Court shall provide secretarial assistance to the Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs. 10,000/- each for this purpose.

xv. The quorum of the meeting of the equity shareholders is fixed as follows:

xvi. It is also directed that if the quorum is not present at the commencement of the meeting, the meeting would be adjourned for 30 minutes and thereafter the persons present in the meeting, who would not be less than 5% in number, would be treated as proper quorum.

xvii. The Company has the preference shareholders holding 2,47,50,000 preference shares. A prayer has been made for convening the meeting of the preference shareholders. Consequently, I direct that a meeting of the preference shareholders of the Company shall be held on 17th August 2013 at 4.30 P.M. at Hotel Krishna Residency, Plot No. 2, Sector 12B, Dwarka, New Delhi - 110078

xviii. Mr. Y.P. Singh, Advocate, Mob. No. 9953711028, is appointed as the Chairperson and Mr. Mukesh Kumar, Company Secretary, Mob. No. 9990620949, is appointed as the Alternate Chairperson for the meeting of the preference shareholders of the Applicant company. They would be paid a fee of Rs. 50,000/- each. Mr. S. Prem Kumar, Mob. No. 9910652606 and Mr. Hariom Singh, Mob. No. 9971843622, officials to this Court shall provide secretarial assistance to the

Chairperson and the Alternate Chairperson. They shall be paid a fee of Rs. 10,000/- each for this purpose.

xix. The quorum of the meeting of the preference shareholders is fixed as follows:

xx. It is also directed that if the quorum is not present at the commencement of the meeting, the meeting would be adjourned for 30 minutes and thereafter the persons present in the meeting, who would not be less than 5% in number, would be treated as proper quorum.

xxi. The Applicant company is also directed to publish advance notices of the aforesaid meetings in "The Economic Times" (English) and "Jansatta" (Hindi). The advertisements shall be published at least 21 days in advance before the scheduled date of the meeting.

xxii. Individual notice of the proposed meetings would be sent by ordinary post at least 21 days in advance before the scheduled date of the meeting. The Chairpersons will ensure that dispatch is made under his/her supervision or under the supervision of his/her authorized representative.

xxiii. The Chairpersons/Alternate Chairpersons shall file their reports within seven days of the conclusion of the respective meetings.

The application stands allowed in the aforesaid terms.

Order be given dasti.