(1986) 07 MP CK 0042

In the Madhya Pradesh High Court

Case No : Company Petition No. 10 of 1985

Gendalal Bhaggaji and Another — APPELLANT

Vs

Shree Sajjan Mills Ltd. — RESPONDENT

Date of Decision : 24-07-1986

Acts Referred:
Companies Act, 1956 — Section 446, 529, 529A, 530, 530(1)

Citation : (1989) 65 CompCas 480

Hon'ble Judges : P.D. Mulye, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

P.D. Mulye, J.—This order shall govern the disposal of I.A. No. 2032 of 1986, filed on behalf of the President, Mill Mazdoor Sangh, Ratlam, u/s 530(1)(b) of the Companies Act, 1956.

2. The petitioner firm, Gendalal Bhaggaji, has filed a winding-up petition against the respondent company under Sections 433 434 and 439 of the Companies Act, 1956, as the respondent company is unable to pay its debts. On notice of show cause having been issued to the respondent company as to why the petition for winding up be not admitted, the respondent company, by their reply, have shown cause.

3. The petitioner filed I.A. No. 949 of 1986 for appointment of a provisional liquidator, notice of which was given to counsel for the respondent company.

4. By an order passed by this court on April 4, 1986, the official liquidator was appointed as the provisional liquidator as the said prayer for appointment of a provisional liquidator was not opposed by learned counsel for the respondent.

5. The provisional liquidator submitted his report dated May 8, 1986, whereby he submitted that he had taken charge of the respondent company. By the said report, the provisional liquidator has pointed out that the fixed assets of the

company including land, building, plant and machinery have been either mortgaged/hypothecated to the Industrial Development Bank of India, Bombay, and M.P. Financial Corporation, Indore ; that the company''s entire movable assets have been hypothecated/charged to, the State Bank of India, Ratlam, by way of first charge, and the said bank had its second charge over the fixed assets of the company. Further, according to the provisionalliquidator, the State Bank of India has financed the respondent company and a sum of Rs. 792 lakhs approximately was outstanding at the date of appointment of the provisional liquidator. He has further submitted that the liability of the Industrial Development Bank of India and the M.P. Financial Corpora-tion is to the tune of Rs. 200 lakhs, the contingent liability payable to M. P. Electricity Board is around Rs. 125 lakhs and thus there is a total liability exceeding Rs. 1,000 lakhs.

6. By the said report, he has also pointed out that the said mill is closed since November, 1985, and that it has stopped its production ; that the management has not paid wages to the labourers and have also not served necessary notice of closure. He has also submitted that as the labourers have not been paid their wages, the situation there is very much tense and the workers of the mill are on a hunger strike; that wages/salaries of workers to the tune of Rs. 17 lakhs approximately are due. He has further prayed that the respondent company has employed 3,200 workmen, besides the staff, and that as a result of the closure of the mill, the provisional liquidator was also gheraoed. In short, according to the report, it appears that the respondent company is heavily indebted and is not in a position to pay its liabilities.

7. On the basis of the report of the provisional liquidator, notice was also issued to the State Bank of India and the official liquidator was also permitted to explore the possibility of restarting the business of the company. Subsequently, by an order passed by this court on May 29, 1986, it was ordered that the pledged and hypothecated cloth bales of the respondent company with the State Bank of India shall be sold by the State Bank of India in co-operation with the provisional liquidator as also with the respondent company or their authorised representatives within a period of three months by private negotiation and the sale proceeds received therefrom shall be deposited by the State Bank of India, Ratlam, in the account of the company until further orders.

8. So far as the unfinished goods, which were lying in the mill premises, such as yarn, unfinished cloth, etc., were concerned, the official liquidator was directed to prepare an inventory thereof with the co-operation of the respondent company or their authorised representatives as also with the cO''Operation of the State Bank of India, Ratlam, which was to be prepared within a period of one month.

9. The President, Mill Mazdoor Sangh, Ratlam, submitted an application dated May 25, 1986, to the effect that the Labour Commissioner has passed a decree for Rs. 9,99,955.45 against the respondent-mill for wages payable to the workers of the mill.

10. In the meanwhile, the branch manager of the State Bank of India, Ratlam, also filed an application I.A. No. 1770 of 1986 u/s 446 of the Companies Act with a prayer that the proceedings pending before the Tahsildar, Ratlam, for recovery be stayed.

11. Counsel for the respondent company also submitted his objections dated May 25, 1986, to the report submitted by the provisional liquidator dated May 8, 1986.

12. It is in these circumstances, that the President, Mill Mazdoor Sangh, Ratlam, has filed I.A. No. 2032 of 1986 u/s 530(1)(b) of the Companies Act, 1956, with a prayer that the Tahsildar who, on the basis of the decree passed by the Labour Commissioner, has attached the goods belonging to the company, may be permitted to sell the same and the workers be paid their wages out of the sale proceeds so realised.

13. This application is opposed on behalf of the State Bank of India mainly on the ground that as no winding-up order has yet been passed by this court and that, admittedly, all the movable goods are hypothecated or pledged with the State Bank of India, the Tahsildar cannot be permitted to sell the attached goods even though they may have been attached prior to the appointment of the provisional liquidator.

14. Learned counsel for the provisional liquidator has supported the submissions made on behalf of the State Bank of India.

15. Learned counsel for the President, Mill Mazdoor Sangh, Ratlam, Shri M.L. Dhupar, submitted that the Companies Act, 1956, has been amended by Act No. 35 of 1985, and, accordingly, Section 529 has been amended, Section 529A has been inserted and Section 530 has also been amended, which are quoted below :

" 4. Amendment of Section 529.---In.section 529 of the principal Act,--

(a) in Sub-section (1), the following proviso shall be inserted at the end, namely:--

Provided that the security of every secured creditor shaH be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen''s portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security,--

(a) the liquidator shall be entitled to represent the workmen and enforce such charge ;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of the workmen''s dues ; and

(c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen''s portion in his security, whichever is less, shall rank pari passu with the workmen''s dues for the purposes of Section 529A.";

(b) in Sub-section (2),--

(i) in the proviso, for the words "pay the expenses", the words " pay his portion of the expenses " shall be substituted ;

(ii) after the proviso, the following Explanation shall be inserted, namely :--

"Explanation.--For the purpose of this proviso, the portion of expenses incurred by the liquidator for the preservation of security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen''s portion in relation to the security bears to the value of the security." ;

(c) after Sub-section (2), the following sub-section shall be inserted, namely ;--

''(3) For the purposes of this section, Section 529A and Section 530,--

(a) " workmen " in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947);

(b) " workmen''s dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:--

(i) all wages or salary including wages payable for time or piece-work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947) ;

(ii) all accrued holiday remuneration becoming payable to any workman, "or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of the winding-up order or resolution ;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in Section 14 of the Workmen''s Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company ;

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company ;

(c) "workmen''s portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen''s dues bears to the aggregate of--

(i) the amount of workmen''s dues ; and

(ii) the amounts of the debts due to the secured creditors.

ILLUSTRATION

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen''s dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen''s dues and of the amounts of debts due to secured creditors is Rs. 4,00,000. The workmen''s portion of the security is, therefore, one-fourth of the value of the security, that is, Rs. 25,000.''.

5. Insertion of new Section 529A.--After Section 529 of the principal Act, the following section shall be inserted, namely :--

" 529A. Overriding preferential payments.--(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company--

(a) workmen''s dues ; and

(b) debts due to secured creditors to the extent such debts rank under Clause (c) of the proviso to Sub-section (1) of Section 529 pan passu with such dues ; shall be paid in priority to all other debts.

(2) The debts payable under Clause (a) and Clause (b) of Sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion.".

6. Amendment of Section 530.--In Section 530 of the principal Act,--.

(a) in Sub-section (1),--

(i) in the opening portion, for the words "there shall be paid", the words, figures and letter " subject to the provisions of Section 529A, there shall be paid " shall be substituted ;

(ii) in Clause (b), the words, figures and letter "and any compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes Act, 1947 (14 of 1947)" shall be omitted.

(b) in Sub-section (2), the proviso shall be omitted ;

(c) in Sub-section (8),--

(i) in Clause (b), the word " and " occurring at the end shall be omitted ;

(ii) after Clause (b), the following clause shall be inserted, namely:--

''(bb) the expression "employee" does not include a workman; and ''."

16. Relying on the amended provision, learned counsel for the President, Mill Mazdoor Sangh, submitted that, admittedly, a large and substantial amount by way of wages is due to the labourers in respect of which a decree has already been passed. He also submitted that even though the secured creditor like the State Bank of India is outside the purview of the Companies Act, still, as a result of the amendment, the workers of the respondent-mill have got priority in respect of their wages which they are entitled to realise in proportion. He, therefore, submitted that in case the bank has any grievance against the decree passed, it has to approach the Tahsildar for submitting its objections before him regarding the attached goods. He further submitted that, in such a'' situation, the attached goods should be permitted to be auctioned by the Tahsildar.

17. As against this, learned counsel for the State Bank of India, relying on the decisions in M.K. Ranganathan v. Govt. of Madras [1955] 25 Comp Cas 344 (SC), Bank of Bihar v. State of Bihar [1971] 41 Comp Cas 591 (SC) as also Bank of India Vs. Binod Steel Ltd. and Another, , submitted that the entire movable goods and properties of the respondent-company having been hypothecated or pledged with the said bank, the said applicant, President, Mill Mazdoor Sangh, has no right to take away the goods or its price Relying on the decisions in Star Engineering Works Ltd, v. Official Liquidator of the Krishnakumar Mills Co. Ltd. [1977] 47 Comp Cas 30 (Guj) and Punjab National Bank v. Punjab Finance Pvt. Ltd. [1973] 43 Comp Cas 350 (P& H), he submitted that as no winding up order has yet been passed, the question of priorities of the workers does not arise especially when they have not submitted any application as contemplated by Section 446 of the Companies Act seeking leave of this court. He, therefore, submitted that even on that count, the application deserves to be dismissed. Learned counsel also submitted that the bank was not a party before the Labour Commissioner and u/s 33C of the Industrial Disputes Act, the so-called decree passed by the Labour Commissioner is not enforceable in law.

18. Learned counsel for the provisional liquidator supported the submissions made by learned counsel for the State Bank of India.

19. The submissions made by learned counsel for the State Bank of India has, no doubt, some force, but it was not disputed by the bank as also by learned counsel for the respondent company that the mill is closed for the last several months ; that there are huge liabilities which the respondent company has not been in a position to discharge ; that the production is at a standstill ; that the mill is not working ; that the staff has left as also the responsible officials of the mill and it was also not disputed that the labourers have actually gheraoed the mill premises and that the unfinished goods are also lying in the mill premises open to sky, which are being damaged owing to their being exposed to rains as also the fact that this has also created a law and order problem for the administration as the provisional liquidator is also not allowed to function properly.

20. In National Textile Workers'' Union and Others Vs. P.R. Ramakrishnan and

Others, , it has been held (headnote of AIR) :

" The workers of a company are entitled to appear at the hearing of the winding-up petition whether to support or to oppose it so long as no winding-up order is made by the court. The workers have a locus standi to appear and be heard in the winding-up petition both before the winding-up petition is admitted and an order for advertisement is made as also after the admission and advertisement of the winding up petition until an order is made for winding-up the company. If a winding-up order is made and the workers are aggrieved by it, they would also be entitled to prefer an appeal and contend in the appeal that no winding-up order should have been made by the company judge. But when a winding-up order is made and it has become final, the workers ordinarily would not have any right to participate in any proceeding in the course of winding up the company though there may be rare cases where, in a proceeding in the course of winding up, the interest of the workers may be involved and in such a case it may be possible to contend that the workers must be heard before an order is made by the court. Even when an application for appointment of a provisional liquidator is made by the petitioner in a winding-up petition, the workers would have a right to be heard if they so wish because the appointment of a provisional liquidator may adversely affect the interest of the workers. But neither the petitioner nor the court would be under any obligation to give notice of such application to the workers. It would be for the workers to apply for being heard and if they do so, they would be entitled to appear and be heard on the application for appointment of provisional liquidator."

21. In the said decision, it has further been held that (headnote of AIR) :

"The workers, therefore, have a special place in a socialist pattern of society. They are not. mere vendors of toil, they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much as capital--nay, very much more. In view of the Preamble, the Directive Principles of State Policy and particularly introduction of Article 43A, it is idle to contend that the workers should have no voice in the determination of the question whether the enterprise should continue to run or be shut down under an order of the court."

22. It has further been held that (headnote of AIR) :

" It is no doubt true that Section 439 confers the right to present a winding-up petition only on certain specifically enumerated persons and the workers are not included in that enumeration and, therefore, obviously, the workers have no right to prefer a petition for winding-up of a company. But from this exclusion of the workers from the right to present a winding-up petition, it does not follow as a necessary consequence that the workers have no right to appear and be heard in a winding-up petition filed by one or more of the persons specified in Section 439."

23. Similarly, in The Official Liquidator Vs. Dharti Dhan (P) Ltd., , it has been held

that the power to stay proceedings is discretionary as Section 446(2)(d) also relates to any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding-up of the company.

24. I am, therefore, of the opinion that in such a situation, this is a fit case where the workers should be given the benefit of their decree in execution of which the assets of the company have been attached. It is, no doubt true that the President, Mill Mazdoor Sangh, has not made a specific prayer u/s 446 of the Companies Act seeking leave and it also is not in dispute that a winding-up order has not yet been passed. However, having regard to the peculiar facts and circumstances of the case, coupled with the fact that in order to save further deterioration of the attached goods, which are lying open in the mill premises exposed to rains, this case comes under special and exceptional circumstances. It is not yet known what is the exact amount which the State Bank of India has to recover from the respondent company. However, no harm is likely to be caused even to the bank in case the Tahsildar, Ratlam, is allowed to sell the goods which he has already attached, as learned counsel for the State Bank of India also submitted that in the present situation at the mill premises, even the bank officials are not allowed to enter therein by the workers.

25. The application, therefore, succeeds partly. The Tahsildar, Ratlam, is permitted to sell the attached goods in the presence of the provisional liquidator by public auction and the sale proceeds so realised shall be kept by the Tahsildar, Ratlam, with the provisional liquidator, who shall keep the same in deposit in his name in a nationalised bank until further orders.

26. The application is disposed of accordingly.

