(2001) 02 P&H CK 0113

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 226 of 1999

H.S. Oberoi and Associates — APPELLANT

Vs

Punjab Wireless Systems Limited and Others — RESPONDENT

Date of Decision : 01-02-2001

Acts Referred:
Companies Act, 1956 — Section 433, 434, 450

Citation : (2003) 115 CompCas 326

Hon'ble Judges : J.S. Khehar, J

Bench : Single Bench

Advocate : Amit Sethi, for the Appellant; Anand Chhiber, Puneet Kansal, Radhika Suri, for the Respondent

Judgement

J.S. Khehar, J.—The petitioner has filed the instant petition under Sections 433 and 439 of the Companies Act, 1956, for the winding up of the respondent-company.

2. The claim of the petitioner is based on the fact that the petitioner as a contractor in the field of civil works, interior and general construction has been engaged by the respondent-company since 1996, for carrying out various civil works and interior works at different offices and sites of the respondent-company. To authenticate that works were assigned by the respondent-company for execution to the petitioner, illustratively the petitioner has placed on record annexures P-1, P-3 and P-5, which are letters of intent for execution of various works at various sites. In response to the letters of intent annexures P-1, P-3 and P-5, the respondent-company is stated to have issued letters annexures P-2, P-4 and P-6 respectively affirming satisfactory completion of works.

3. Having completed the various works assigned by the respondent-company to the petitioner, the petitioner raised bills demanding payment after due execution. On the receipt of the said bills, the respondent-company is stated to have paid certain amounts to the petitioner. In this behalf, it is pointed out that the respondent-company has maintained a running account depicting the amount

payable by the respondent-company to the petitioner wherein the details of various payments already made to the petitioner have also been indicated. According to the running account, by March, 1998, a sum of Rs. 8,76,498.89 was payable by the respondent-company to the petitioner. The petitioner has also placed on record annexure P-7, i.e., the ledger maintained by the respondent-company with respect to the dues payable to the petitioner. The aforesaid ledger depicts a sum of Rs. 8,76,498.89 as payable by the respondent-company to the petitioner.

4. It is the case of the petitioner that he repeatedly requested the respondent-company to release the balance payment. On each occasion, when the petitioner approached the respondent-company, he was informed that the respondent-company was in a financial crisis. He was, however, assured that the amount payable would be released when funds became available. On account of the efforts made by the petitioner to recover his dues, it is stated that a sum of Rs. 50,000 was released by the respondent-company to the petitioner in January, 1999. On account of the release of the aforesaid amount, a sum of Rs. 8,26,498.89 remained outstanding apart from interest with effect from April 1, 1998, till the date of realisation. In August, 1999, when the petitioner felt that the respondent-company would not discharge its liability by honouring its commitments to the petitioner, he addressed a statutory notice dated August 11, 1999, to the respondent-company. In the statutory notice u/s 434 of the Companies Act, 1956, the petitioner demanded the principal amount of Rs. 8,26,498.89 along with interest calculated at the rate of 18 per cent. per annum from March 31, 1998, onwards till the date of payment within three weeks from the date of receipt of the aforesaid notice.

5. The aforesaid notice was duly served. Despite the service of the aforesaid notice, when the petitioner received no further payments from the respondent-company, he concluded that the respondent-company was unable to pay its debts and accordingly filed the instant winding up petition in September, 1999.

6. This court issued notice of motion to the respondent-company on September 24, 1999, requiring it to show cause why the instant winding up petition be not admitted. On the receipt of the show-cause notice, a written statement was filed on February 10, 2000. The written statement acknowledges that a sum of Rs. 8,26,498.89 was due and outstanding as per the ledger account of the respondent-company to the petitioner. A photocopy of the ledger account was also appended to the written statement as annexure R-1. It is, therefore, obvious that in the written statement, the respondent-company has accepted its liability of Rs. 8,26,498.89 towards the petitioner. In the instant winding up petition, the petitioner has claimed interest at the rate of 24 per cent. per annum with effect from April 1, 1998, till the date of realisation of the principal amount.

7. During the pendency of the instant winding up petition, the petitioner moved C. A. No. 705 of 1999 u/s 450 of the Companies Act, 1956, praying for the appointment of the provisional liquidator. Reply to the aforesaid application was

filed by the respondent-company. This court vide its order dated July 27, 2000 (having arrived at the conclusion that there was absolutely no possibility for the revival of the respondent-company) accepted the prayer of the petitioner for appointment of a provisional liquidator, to take into his custody assets of the respondent-company. It would be pertinent to mention that the order of this court appointing the provisional liquidator, wherein this court had arrived at the conclusion that there was absolutely no possibility for the revival of the respondent-company in the background of extensive losses suffered by it, was assailed by filing Company Appeal No. 24 of 2000 impugning the order passed in C. A. No. 705 of 1999. The same was, however, dismissed on August 10, 2000.

8. In the interregnum, an application under Order 1, Rule 10 of the CPC was filed by Punwire Executive Welfare Association (Regd.), Punwire Marts Employees Union (Regd.) and Punjab Wireless System Employees Union (Regd.) through their respective general secretaries. It was stated in the said application that the aforesaid unions had more than 1,200 employees of the respondent-company on their rolls. It was submitted that in the case of the acceptance of the instant winding up petition, the employees of the respondent-company would be adversely affected and it was essential to afford them an opportunity of hearing. The prayer for impleadment was accepted. Accordingly, the aforesaid unions came to be arrayed as respondents Nos. 2, 3 and 4. A detailed written statement dated September 6, 2000, was filed by the added respondents.

9. After hearing learned counsel for the respondent-company as well as the employees unions, this court vide its order dated November 16, 2000, directed the publication of the factum of admission of the instant winding up petition in the Indian Express (Chandigarh edition) and in the Dainik Tribune as also in the Official Gazette of the State of Punjab. The petitioner through an affidavit dated December 21, 2000, affirmed the publication in terms of the directions passed by this court on November 16, 2000.

10. When the instant winding up petition came up for hearing on December 22, 2000, Mr. L. M. Suri, senior advocate appearing for the employees unions brought to the notice of the court that a petition for special leave to appeal has been filed in the Supreme Court challenging the order of appointment of the provisional liquidator passed in C. A. No. 705 of 1999 as well as the order passed in Company Appeal No. 24 of 2000 (whereby the order of appointment of the provisional liquidator had been affirmed). Learned counsel prayed for an adjournment of the proceedings in the instant case to await the decision of the apex court. The aforesaid request was opposed not only by learned counsel appearing for the petitioner in the instant case, but also by learned counsel appearing in a large number of winding up petitions filed against the respondent-company. Be that as it may, the proceedings in the instant case were deferred to January 18, 2001.

11. The same request was repeated by learned counsel for the employees'' unions again on January 18, 2001, by requesting that the matter be again

deferred since the petition for special leave to appeal had not come up for consideration before the Supreme Court. At this juncture, the adjournment sought by learned counsel for the employees'' union was vehemently opposed by the petitioner asserting that the wage bill of the employees was to the tune of Rs. 1,00,00,000 every month and as such the deferment of the instant case was adversely affecting the creditors. Faced with the said opposition, Mr. L.M. Suri, senior advocate requested for an adjournment to February 1, 2001, and stated that in case no order was passed by the apex court by the said date, he would not request for any further adjournment. Accordingly, final arguments on the instant winding up petition were deferred to February 1, 2001 (i.e., today). It is in the aforesaid circumstances that the instant petition has been taken up today for arguments.

12. Learned counsel for the petitioner has emphasised that despite the personal efforts made by the petitioner, the respondent-company did not repay the petitioner''s admitted debt. Thereafter, despite the statutory notice issued on August 11, 1999, the respondent-company did not pay a single penny compelling the petitioner to approach this court through the instant winding up petition. Even after the filing of the winding up petition, nothing whatsoever has been paid to the petitioner by the respondent-company. It is submitted that these facts by themselves show the inability of the respondent-company to discharge its financial liability. Besides the aforesaid, learned counsel for the petitioner has drawn the pointed attention of this court to the factual position noticed in the order by which the official liquidator was appointed as the provisional liquidator on July 27, 2000, as also the order dated November 16, 2000, by which the factum of admission of this petition was directed to be published. In this behalf, the following factual position has been brought to the notice of this court :

(i) The associate vice president of the respondent-company admitted to this court a liability of Rs. 500 crores (which includes its losses and debts), during the course of submissions in C. A. No. 705 of 1999.

(ii) No scheme has been put forward by the respondent-company ever since the filing of the petition for winding up (in spite of the passage of more than one and half years) for its revival. It is suggested that there is no scheme at all at present for its revival.

(iii) All efforts made by the respondent-company to raise a loan from the State Government have failed to fructify. No financial agency is coming forward to help the respondent-company out of its mess.

(iv) Ever since the filing of a large number (about fifty in all) of winding up petitions (including the instant petition), the respondent-company has not paid even a single penny to any of its creditors. This shows that there is nothing with the respondent-company to discharge its debts.

(v) Employees in the respondent-company have not been paid their wages for more than one and a half years. Officers have not been paid their salary for over

22 months. Liability on this account alone is more than Rs. 20 crores.

(vi) Ever since the filing of the winding up petitions, in spite of the express direction of this court, the managing director has never presented himself. No other director has ever responded to any petition or application filed in connection with the respondent-company. The responsible management comprising the managing director of the company as well as the executive director in charge have ceased to hold the reigns of the company. No one has been appointed in a substantive capacity to replace those against whom allegations have been made. In other words, the affairs of the company are in the hands of a management which is ad hoc in nature.

(vii) Allegations levelled against the management for having led this company to its disaster are totally unrebutted in the reply filed by the respondent-company as well as the submissions made during the course of arguments. According to the averments made in the written statement, the only action initiated after the discovery of losses as mentioned hereinabove is that PSIDC, i.e., the promoter company of Punjab Wireless Systems Limited, has ordered investigation into the affairs of the company for the last five years by Price Waterhouse Coopers. However, no report has been submitted by the aforesaid agency till date. The PSIDC has also appointed Mrs. Justice H. K. Sandhu (Retd.) to look into the affairs of the company and to fix responsibilities. Various FIRs have also been filed in respect of the manipulations and fraud at the hands of some of the employees of the respondent-company. These enquiries serve no interest of the creditors. However, no worthwhile effort is being made for its revival.

(viii) The respondent-company has no unencumbered assets whatsoever. In this behalf, it is pointed out that even Dr. P.S. Mundra, Associate Vice-President, had admitted during the course of hearing in C. A. No. 705 of 1999 that the entire property of the respondent-company stands pledged or mortgaged against loans taken by the respondent-company.

(ix) After the official liquidator was appointed as the provisional liquidator vide order dated July 27, 2000, a report has been filed by him. A perusal of the aforesaid report reveals that a large number of claims from various unsecured creditors had been received by him up to October 20, 2000. The report depicts the claims at the behest of 239 creditors. As per the said claims, a sum of more than Rs. 283.01 crores is stated to be payable by the respondent-company to the said creditors. During the course of arguments, the official liquidator brought to the notice of this court that further claims have also poured in since then.

13. Mr. Anand Chhiber, advocate, representing the respondent-company and Ms. Radhika Suri, advocate, representing the employees'' unions could not controvert any of the aforesaid assertions. It is, therefore, obvious that the present situation is the same as it existed at the time of directing the publication of the factum of admission on November 16, 2000, without any change whatsoever. Not a single penny has been paid, nor is there any likelihood of its being paid in the

future. It is, therefore, clear that the respondent-company is unable to pay its debts. In the aforesaid circumstances, there is no alternative with this court except to order the winding up of the respondent-company, i.e., Punjab Wireless Systems Limited. The ingredients contained in Section 433(e) and (f) of the Companies Act, 1956, stand satisfied. Accordingly, the prayer for winding up of the respondent-company is allowed ; Punjab Wireless Systems Limited is accordingly ordered to be wound up.

14. The official liquidator attached to this court, who was appointed as the provisional liquidator is now appointed as the liquidator with immediate effect. The official liquidator shall take over the assets, statutory books and records of the company forthwith. Notice of the order of winding up be published in the Indian Express, Chandigarh and the Dainik Tribune, Chandigarh without any loss of time. Publication be effected in the Official Gazette of the State of Punjab.