

(1984) 12 GUJ CK 0005

In the Gujarat High Court

Case No : Company Application No. 209 of 1984 in Company Petition No. 163 of 1984

In Re: Commercial Ahmedabad Mills Co. Ltd.

Date of Decision : 06-12-1984

Acts Referred:

Companies Act, 1956 — Section 4, 4(1), 53(2), 536(2)

Citation : (1986) 60 CompCas 717

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Judgement

S.B. Majmudar, J.—This application is moved u/s 536(2) of the Companies Act, 1956, by the Commercial Ahmedabad Mills Co. Ltd. for getting clearance from this court regarding certain borrowings, advances, credit limits and facilities that are being given to the applicant company by State Bank of India, Commercial Branch, Ahmedabad, as well as Industrial Development Bank of India and Industrial Reconstruction Corporation of India, Calcutta, on the ground that these are bona fide transactions which the company has to enter into in the normal course of its business and for the purpose of meeting the obligations of the company and for the purpose of keeping the business of the company going.

2. In order to highlight the nature of the request made by the applicant company in the present proceedings, it is necessary to note a few relevant facts leading to the present proceedings. The applicant company owns a textile unit which is known as Commercial Ahmedabad Mills Co. Ltd. in this city and it is engaged in the manufacture of cotton and blended textiles. The company ran into difficulties somewhere in the beginning months of this year. The result was that the Ahmedabad Electricity Co. Ltd. disconnected supply of electricity to the company. Consequently, the company was compelled to close down its textile unit on May 19, 1984. At that time, the company was giving employment to about 2,300 workers, it being a composite textile unit. One of the unpaid creditors of the company filed Company Petition No. 163 of 1984 requesting this court to wind up the applicant company. Notice was ordered to be issued in the said company petition. In the meantime, the management of the company went on

endeavouring its best to restart operations of the company. For that purpose, the management of the company approached the company's bankers, State Bank of India, Commercial Branch, Ahmedabad, and the Industrial Development Bank of India. Similarly, the management of the company also took up the matter with the Government of Gujarat to obtain its assistance to restart the mill immediately. The Government of Gujarat gave certain concessions to the company, such as deferment from electricity duty, determent of sales tax, etc. Not only that, the State Government declared the company as a relief undertaking under the provisions of the Bombay Relief Undertakings (Special Provisions) Act, 1958. The State Government also issued a notification in exercise of the powers conferred by sub-clause (iv) of clause (a) of sub-section (1) of section 4 of the said Act directing that in relation to the textile unit of the applicant company which is declared to be a relief undertaking as mentioned above, all rights, privileges, obligations, liabilities (except liabilities of banks), secured or unsecured before the said undertaking was declared to be a relief undertaking under the said notification and any remedy for enforcement thereof, shall be suspended and all proceedings relating thereto pending before any court, tribunal, officer or authority shall be stayed with effect from August 14, 1984. In view of the aforesaid notification which is annexed as annexure "A" to this application, further proceedings in Company Petition No. 163 of 1984 have remained stayed.

3. In the meantime, as stated above, the company went on making efforts to restart its unit. In the month of June/July, 1984, the IDBI came out with a helping hand and sanctioned to the applicant company, after consulting other financial institutions, viz., SBI and the Government of Gujarat, a term loan of Rs. 43 lakhs for labour rationalisation and another term loan of Rs. 55 lakhs for the proposed modernisation scheme of the company. Both these loans were sanctioned under the Project Financing Participation Certificate Scheme in participation with the Industrial Financial Corporation of India, Industrial Credit and Investment Corporation of India Limited and Industrial Reconstruction Corporation of India Ltd.

4. So far as the State Bank of India is concerned, vide its letter dated June 11, 1984, it conveyed to the company that the State Bank had accepted in principle the package recommended by the working group set up by the Central Government and was agreeable to make available to the company various facilities, inter alia, on certain terms and conditions, subject to the package being approved by the Reserve Bank of India. Accordingly, the State Bank of India agreed to grant Rs. 98 lakhs which will carry concessional interest at 13 1/2%. It also agreed to give the following financial facilities to the applicant company :

Rs. (in lakhs) Demand cash credit limit 208 Usance bills discounting 160 Funded interest account 137 Working capital term loan 152 Short-term loan for labour rationalisation 18 Letters of credit limit 155 Ordinary guarantee limit 200

5. Thus, substantial amounts are being made available by the State Bank of

India as well as IDBI to the applicant company with a view to putting it once again on its legs. The company has moved this court by way of the present proceedings with a view to seeing that in future, it cannot be urged by any one that pending the winding up petition, at this stage, the company had entered into financial transactions which may be branded as vulnerable on any account. Thus, by way of a abundant caution, the present application is moved by the applicant company.

6. Mr. S. I. Nanavati for the applicant company heavily relied upon a precedent in this connection which is supplied by a decision of the Division Bench of this court in Company Application No. 95 of 1984 in Company Petition No. 105 of 1983, decided by B. K. Mehta and D. H. Shukla JJ. on July 3, 1984, the detailed reasons for the decision being subsequently given on November 13, 1984 (since reported as *In re Navjivan Mills Ltd.* [1986] 59 Comp Cas 201). In the said proceedings, the Division Bench of this court was concerned with grant of permission u/s 536(2) of the Companies Act to enable the concerned company, viz., Navjivan Mills, to get financial assistance from various financial agencies pending the petition. It is also pertinent to note that even before the Division Bench in the aforesaid case, the winding up petition against the company stood stayed on account of a similar notification issued by the State of Gujarat under the Bombay Relief Undertakings (Special Provisions) Act, 1958. It is, therefore, obvious that in suitable cases despite such notification holding the field, the court has ample jurisdiction u/s 536(2) of the Companies Act to grant necessary clearance to the applicant company facing winding up petition in this court. It may be noted at this stage that even though factually, it was brought to the notice of the Division Bench that relief undertaking notification was already issued against the company in winding up and the company petition was stayed, the Division Bench on the facts of that case thought it fit to exercise the jurisdiction u/s 536(2) of the Act so that the company can be put on its legs effectively, which would naturally bring large scale employment to the workers who would otherwise be starving and facing unemployment. Even though the point was not raised and considered, it can be presumed that the Division Bench was of the view that the alleged stay of winding up petition on account of the issuance of the notification under the Relief Undertakings Act would not come in the way of the court in passing appropriate orders u/s 536(2) of the Companies Act. In my view, apart from the aforesaid assumption by the Division Bench, the notification in question cannot come in the way of entertaining the present application. All that the notification u/s 4 stated is that the applicant's undertaking is declared to be a relief undertaking and all right, privileges, obligations, liabilities (except liabilities of banks), secured or unsecured before the said undertaking was declared to be a relief undertaking was declared to be a relief undertaking, and any remedy for enforcement thereof shall be suspended and all proceedings relating thereto before any court, tribunal, officer or authority shall be stayed for the given period. It is, therefore, obvious that if any proceedings are initiated against the company for enforcement of any pre-

existing rights of the applicant and for enforcement of any pre-existing corresponding obligations of the company, they will remain stayed ruling the currency of the notification u/s 4(1) (a) (iv) of the Relief Undertakings Act. The present application is not of that type. It is not any proceeding relating to enforcement of any right against the company or for enforcement of any obligation of the company. On the contrary, it is an application by the company itself seeking clearance to financial transactions with the financiers so that, in future, these transactions may not be attacked as void or illegal only on account of the fact that a winding up petition has been filed against the company and it has remained stayed, which may, in future contingencies, stand allowed with the result that the winding up order may relate back to the date of the winding up petition. Keeping in view all these future contingencies, the applicant is trying to play safe. Rather the financiers are trying to play safe, otherwise, they are not willing to advance financial assistance to the company, as naturally, they would not like to play with fire any more. Such application by the applicant company u/s 53(2), therefore, in my view, can be entertained and decided on merits despite the notification u/s 4(1) (a) (iv) of the Relief Undertakings Act. The assumption underlying the decision of the Division Bench on the same line, therefore, stands well supported by the nature of the notification u/s 4 of the Relief Undertakings Act and does not run in any way counter to the scheme of the said provisions. There is, therefore, no hesitation in entertaining this application on merits.

7. So far as merits of the application are concerned, it must be stated that because the company petition stood stayed pursuant to the notification under the Bombay Relief Undertakings Act, as mentioned earlier, the concerned petitioning creditors and other creditors were required to be informed about the filing of the present application. Hence, by my order date November 20, 1984, I directed public notice to be published about filing of the present application in the local dailies, Gujarat Samachar and Times of India, latest by November 23, 1984, and objections, if any, were to be invited from any one who wanted to file objections to the granting of the present application. Accordingly, notice of filing of this application was duly published. No written objections have been filed by any one opposing this application. However, Mr. Y. N. Oza for some of the petitioning creditors whose petitions against the company have stood stayed and Mr. Shelat representing other body of similarly situated petitioning creditors have put forward their submissions in opposition to the present application. I may briefly note their objection.

8. It was submitted that once the company petitions have stood stayed on account of the notification, the present application would not be maintainable. I have already considered this objection in the earlier part of this judgment. I, therefore, need not repeat my reasons once over again at this stage. Suffice it to state that on the language of the notification at annexure "A", no such application as the present one as filed by the applicant company itself with a view to effectively restarting the mills, is contra-indicated. This objection, therefore, stands overruled.

9. It was next contended that such an application would not lie u/s 536(2) of the Act. This objection squarely stands answered against the objectors in view of the Division Bench judgment of this court in Company Application No. 95 of 1984 in Company Petition No. 105 of 1983 referred to above. A similar contention was raised in the said proceedings and was repelled by the Division Bench. This objection also, therefore, does not survive.

10. Coming to the objections on the merits of this application, it was, firstly, contended that the present application is merely a camouflage and that the promoters are financially sound enough to canalise finance from any other source. But instead of doing so, they are resorting to the present modus operandi of drawing upon the financing institutions like SBI and IDBI. It was also submitted that detailed requirements of execution of necessary documentation as put forward by the IDBI as per the letter at annexure "B" have not been complied with and, consequently, the present application must be treated to be premature. So far as these objections are concerned, they must be stated to be rejected. So far as the objection regarding application being a camouflage goes, it must be noted that if the promoters are otherwise financially sound, unsecured creditors need not get worried at all. But even assuming that they are not in a position to generate sufficient finance from other sources, it cannot, therefore, necessarily follow that they cannot be permitted to borrow from financing institutions who are ready to advance them financial assistance on their executing necessary documents and on their getting clearance from this court in the present proceedings. It must be kept in view that financial assistance which is sought for from SBI and IDBI is a part of the package deal which has been entered into after a consensus was arrived at amongst the workers' representatives, State of Gujarat and the financial institutions vis-a-vis the promoters who want to restart the mills. The financial institutions have agreed to advance this financial assistance strictly with a view to restarting the mills and putting the mills on rails. If that happens, not only will it regenerate huge employment prospects which can bring smiles on the faces of a number of unemployed workers and their families but it can also open up better prospects even for the unsecured creditors themselves. It is better to have a silver lining in the sky rather than have a totally dark sky all round. Grant of the present application which is to bring substantial finance for running the mills is going to help all concerned including even the unsecured creditors. They would certainly be better off than what they are today vi-a-vis the mill company which is at present in dolldrums. It is, therefore, not possible to agree with the submission of the objectors that it is merely a camouflage and, therefore, the application should be rejected. That contention, on the facts of this case, appears to be too pessimistic and unrealistic and must be rejected off hand.

11. So far as other objections are concerned, they centre round certain procedural requirements as found from the letter at annexure "B" addressed by the IDBI to the chairman of the mill Company. It is dated June 11, 1984. Mr. Oza, placing reliance on para 8 of the said letter, pointed out that the acceptance

letter was to be sent by the mill company to the IDBI 30 days from the date of the receipt of the letter and that there was nothing in the application to show that such letter was sent. Mr. S. I. Navavati for the applicant company on instructions from the secretary of the mill company stated before me that this objection is unfounded and that such a letter was duly written to the IDBI. It must be kept in view that Mr. B. R. Shah, who represented IDBI before me, did not make any such grievance about any non-compliance with the requisition made by the IDBI as reflected by the letter at annexure "B". In short, it was not his contention that any of the procedural requirements have not been duly complied with by the applicant company. It is, therefore, too late for the petitioning creditors to contend that these procedural requirements have not been followed. It goes without saying that if these procedural requirements were not followed, the concerned financing agency would never have agreed to advance loans which they have agreed to advance.

12. Mr. Oza next contended that the draft resolution was to be passed by the board of directors of the company as mentioned in para 9 of the letter at annexure "B" and the does not seem to have been passed. Even on this point, Mr. S. I. Nanavati for the applicant company stated on instructions that this resolution is already passed in September, 1984, so far as SBI is concerned, and so far as IDBI is concerned, the resolution is in process and will be duly passed.

13. It was next contended that so far as advances to be made by IDBI are concerned, in para 5 of the Appendix, a provision regarding promoters' contribution has been laid down and it is stated that before availing of assistance from IDBI, the promoters shall raise, to the satisfaction of IDBI, unsecured interest-free subordinated loans of Rs. 22 lakhs or such higher amount as may be necessary towards financing the rehabilitation-cum-modernisation scheme, over and above any amounts that may have been brought in till the date. Besides, the promoters and the company shall bring in a further sum of Rs. 75 lakhs over a period of two years from sale of surplus land at Ahmedabad which would be available consequent on scrapping of looms, ring frames and demolition of administrative block. Mr. Oza submitted that there is no indication in the application that such contribution was forthcoming from the promoters. Mr. S. I. Nanavati submitted, on instructions, that contribution worth Rs. 4.5 lakhs has already been raised and from time to time, further contribution will be made as and when additional financial withdrawals are made, subject to a limit of 10% which will be the liability of the promoters for contribution vis-a-vis loans taken and advances made to the company by these financial institutions.

14. Mr. Oza then made a grievance regarding provision of guarantee as found in para 7 of the Appendix. So far as this condition is concerned, it is stated in para 7 that the company shall procure and furnish joint and several irrevocable and unconditional personal guarantee from Dr. Mohanlal Piramal and such other promoters/directors as may be decided by IDBI for the payment of interest and repayment of loan installments, without IDBI having to take recourse to the

security of the loan. Mr. S. I. Nanavati stated that a personal guarantee is already given by Dr. Mohanlal Piramal to SBI and a similar guarantee will be given by him to IDBI as agreed to and it is on that basis only that finance will be made available by the financing institutions to the petitioner-company. Mr. Oza then submitted that para 11 of the Appendix provides for sale of surplus land and sale proceeds thereof for the proposed rehabilitation-cum-modernisation at Ahmedabad. Mr. Oza submitted that at present, no such efforts seem to have been made by the company. Mr. Nanavati for the company as well as Mr. Shukla, representatives of TLA, made it clear that, at present, the company has no surplus land but after this package deal goes through, some of the administrative blocks may be demolished after scrapping of looms, ring frames, etc., as agreed to by way of a phased programme by the workers, and in that eventuality, occasion for sale of surplus land would arise and for that purpose, two years" period has been provided. It is, therefore, obvious that it is a long-term programme and there is no question of sale of any surplus land by the company at present before getting the advances in question. As and when that eventuality happens, the procedure laid down by clause 7 will obviously have to be followed. Mr. Oza next submitted that an agreement with the Textile Labour Association had to be entered into by the company as mentioned in para 9 of the petition. A copy of such agreement is annexed "D" to the application. Therefore, this objection does not survive.

15. It, therefore, appears clear that there are no valid grounds why the request made by the applicant company should not be granted at this stage. The objections raised by Mr. Oza and Mr. Shelat stand overruled. In my view, granting of this application may go a long way in supplying necessary oxygen to this otherwise hopelessly sick unit and prospects of all the creditors including even unsecured creditors would be brightened by granting this application and they would certainly be better off than what they are today. It has also to be kept in view that the financial assistance for which clearance is sought for by the company in the present application is strictly to be utilised for the running of the mills and for making it a more viable unit. The purpose, therefore, is a bona fide commercial purpose and there is nothing oblique underlying the purpose. In these circumstances, this application deserves to be granted in the interest of all concerned. Company Application No. 209 of 1984, therefore, stands allowed. Prayer (a) shall stand granted as under :

It is declared that in the event of an order being made for the winding-up of the applicant company, utilisation of the borrowings, advances, credit limits and facilities given by SBI, Commercial Branch, Ahmedabad, and what may be given by SBI, Commercial Branch, Ahmedabad, Industrial Development Bank of India, Bombay, and Industrial Reconstruction Corporation of India Limited, Calcutta, Industrial Finance Corporation of India and Industrial Credit and Investment Corporation of India shall be treated as bona fide transactions entered into between SBI, IDBI, IRCI, IFCI and ICICI, on the one hand and the applicant company on the other, and that shall be treated to be in the normal course of

business of the applicant company, for the purpose of meeting the obligations of the company and for the purpose of keeping the business of the company going. They are declared as authorised, valid and binding on the company and the petitioning creditors. The application of the company u/s 536(2) of the Companies Act shall stand granted as aforesaid. It is, however, clarified at this state that the applicant company shall not utilise and/or disburse the funds provided by SBI, IDBI, IRCI, IFCI and ICICI, pursuant to the present order towards the satisfaction of past dues of a none or more of other creditors of the applicant company. Hence, disposal of any property or assets which may be effected by the company pending final hearing and disposal of the winding-up petition as aforesaid to or in favour of IDBI or SBI, IRCI, IFCI and ICICI, pursuant to the present order shall be avoided if the winding-up order is made, if at all, against the company in such petition.

16. It is clarified that the amount of Rs. 20,00,000 which was permitted to be advanced by SBI pursuant to my earlier order dated November 23, 1984, in Company Application No. 210 of 1984 shall be treated to be part and parcel of the advances which are being sanctioned pursuant to the present order which is the final order. Mr. Oza at this stage requested me to stay the operation of my present order for one week. In my view, looking to the facts and circumstances which are discussed in detail above, it is not necessary to grant any stay as requested by Mr. Oza. No prejudice is going to be caused to the petitioning creditors who are unsecured creditors if more finance is made available to the company which will make the mill company which is a debtor of unsecured creditors a healthier debtor than what it is today.