

(2002) 07 DEL CK 0059

In the Delhi High Court

Case No : C. As. 402, 450 and 1882 of 2001 and 661 of 2002 in CP 159/96

In Re: Electronics Ltd. (In Liqn)

Date of Decision : 24-07-2002

Acts Referred:

Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 445(3), 446, 456(2)
Industrial Disputes Act, 1947 — Section 2, 25F, 25FFF, 25FFF(1), 25K

Citation : (2004) 119 CompCas 821 : (2002) 64 DRJ 402

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Geeta Sharma, for O.L., Sanjay Parikh and R. Chandrachud, for Electronics Kamgar Union, Rakesh Tikku, in C.As. 402/2001, 450/2001 and 1882/200, for the Appellant;

Judgement

Vikramajit Sen, J.

C.A. 402/2001.

1. This application has been filed on behalf of fifty-two persons who are ex-workmen/ex-officers of the Company praying that they be imp leaded as party to the liquidation proceedings and be heard therein. The application, which has been filed on 5.3.2001, has been moved through Shri Rakesh Tikku, Advocate. From a perusal of the file it is evident that all these persons have already been heard. Application is accordingly allowed. Fifty-two persons whose names are contained in Annexure "A" shall be deemed to be the parties to the present proceedings. Keeping in view the stage at which the present petition is, filing of fresh Memo of Parties etc. is dismissed.

C.M. 450/2001.

2. M/s. Electronics India (In Liquidation) was ordered to be wound-up in terms of Order dated 20.5.1998 passed by Anil Dev Singh, J.

3. CA 450/2001 was filed in March, 2001 under Rule 9 of the Company Court Rules praying for the maintenance of status quo in respect of several quarters in

the occupation of sundry ex-employees of M/s. Electronics Ltd. (in Liquidation). Possession of some of the other premises of the Company was taken over by the Official Liquidator as is evident from the Order passed on 7.7.1999 in CA No. 811/1999. Thereafter by Orders dated 18.4.2000, the property, land, building, plant and machinery of the Company was ordered to be put up for sale. The Reserve Price was fixed at Rs. 6,47,600/- (Rs. six crore forty seven lakh seventeen thousand and six hundred only) in consonance with the valuation made by the Union Bank of India, and concurred with by the Official Liquidator. It will be relevant to mention that Mr. Ramamurti had entered appearance on behalf of the Workers Union and Mr. Sanjay parikh with Mr. Ramamurti had entered appearance on behalf of the Electronics Kamgar Union. The present applicants must Therefore be deemed to have knowledge of the proceedings in this Court. In any event, it is not their case that they had no knowledge prior to the filing of the present application.

4. C.A. 1218/2000 was thereafter filed by the Union Bank of India seeking orders for putting up for sale all the servant quarters occupied by the present applicants. The Official Liquidator reported on the next date of hearing, i.e. 6.9.2000 that it could not take over possession of these staff quarters as they were occupied by a section of the erstwhile employees. The following orders were passed on 4.12.2000 which are self-explanatory.

"4/12/2000

Present: Mr. J. Lal with Ms.

Y. Tarapore for the applicant

Ms. Geeta Sharma for the O.L.

Mr. D.P. Ojha, Deputy old in

Person

CA 1218/2000 in CP 159/96

The prayer in this application is for recalling this Court's order dated 18th April,, 2000 and for directing sale of all the four properties mentioned in the present application. As per the reply filed by the O.L. two of the above mentioned four properties are in the possession of the O.L. They are the factory premises situated at 25, N.I.T. Faridabad and the property situated at plot No. B-3, Central Green, N.I.T., Faridabad. The remaining two properties i.e. 48 staff quarters at C-Block, Sundera Housing Colony, near N.I.T. Faridabad and 2-F, Officers' flat admeasuring 923 sq. mtrs. Tikona Park are in the possession of the employees of the company in liquidation. On 6th September, 2000, learned counsel for the O.L. had submitted that only after evicting the employees and taking over possession of the properties, the O.L. could take steps for sale of the properties. Hence, by order dated 6th September, 2000, the old was directed to take urgent and immediate steps for getting the employees evicted and taking possession of the

properties. However, it would appear that no such steps were taken by the O.L.

Let the O.L. take effective steps for getting the employees evicted in accordance with law. The O.L. is authorised to seek police assistance, if necessary.

Copy of the order be given dusty to the counsel for the O.L.

Renotify on 7th March, 2001.

Sd/ Cyriac Joseph, J."

5. It was in these circumstances that the present application was filed, quite palpably after considerable delay. On 15.3.2001 the applicant had been ordered to place on record copies of the Rules for allotment of the workers and also a copy of the judgment in CA No. 26/1994.

6. It is evident from the following extract of the Order that detailed hearings had taken place on 19th November, 2001, and due consideration had been given to the issue of the vacation of the staff-quarters. The absence of any remonstrations at that stage is indeed conspicuous, and the applications ought to be precluded from voicing any grievance or opposition thereto after the passage of so much time.

".....M/s. Electronics Ltd. is also the owner of a block of 48 flats bearing No. 1-C, Sundra Housing Colony, NIT, Faridabad. The occupants of these flats are given time up to 30th June, 2002 to vacate the flats peacefully and hand over vacant possession of the same to the Official Liquidator. In case they do not vacate these flats on or before 30th June, 2002, the Official Liquidator will be entitled to take police assistance and to forcibly evict the occupants in terms of the order dated 4th December, 2000.

In case the occupants of these flats are prepared to peacefully vacate the premises in their occupation, they may file undertakings to this effect within a period of two months from today.

M/s. Electronics Ltd. is also the owner of premises bearing No. 2-F/555, Tikona Park, NIT, Faridabad. This property consists of four flats. The orders passed with regard to the aforesaid 48 flats in Sundra Housing Colony are equally applicable to these four flats also and no further orders are required to be passed in this regard. It may, however, be mentioned that these four flats are said to be vacant.

It is made clear that in case the occupants of the flats in Sundra Housing Colony (as well as in Tikona Park) voluntarily vacate the flats in their possession, they should and over the keys of the flats to the Official Liquidator or to a person authorized by the Official Liquidator so that no third person enters into the premises.....

19th November, 2001."

7. The above Order was passed in the presence of counsel for the present applicants and has not been assailed in appeal. Instead C.A. No. 1882/2001 has

been filed seeking a modification in this Order. There is no justification for the applicants not raising the arguments which have been dealt with on their first appearance. The applicants' conduct in putting them up after the expiry of the period allowed by the Court for vacation of the quarters in their occupation, is indicative of mala fides and dilatory tactics. Nonetheless, having heard arguments at length, spread over two days, I prefer to answer the arguments on merits. The requirements laid down in National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, have been fully met, in letter and certainly in spirit, since adequate opportunity of being heard had been extended and availed of by the workman to be heard, the following passage is of relevance to the issue in hand, even though it is from a minority judgment. There is no dissension on the Bench on this proposition:

"It is because of some doubts that had been expressed earlier about the continuance of the employment of the employees of a company ordered to be compulsorily wound up that Section 445(3) was enacted making it clear that the passing of the order of winding up amounts to a notice of discharge of the employees concerned. Section 445(3) corresponds to the termination of service brought about by the abolition of a post under a Government or by the closure of a business, neither of which as the law stands today requires compliance with the principles of natural justice. It may, however, attract Section 25-FFF of the Industrial Disputes Act, 1947 in appropriate cases."

8. Mr. Parikh, learned counsel appearing for the Electronics Kamgar Union painstakingly expressed the discomfort of his client in opposing the subject application purporting to be put forward by the fellow workers. He has stressed that the opposition has been necessitated because unless the quarters are vacated, a price reasonably close to the market value would undoubtedly not be received. In such an event the defraying of the dues of the workers, which have already been outstanding for an inordinately long time, would be held up and the maximum disbursements to them would not be achieved. Mr. Parikh, however, clarifies that his clients have no quarrel with whatever demands the other workers may raise predicated on the rights contained in the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) or any other enactment or law. He has emphasised that Mr. Tiku's clients are regretfully protecting their interests even though they may substantially defeat the interests of the majority of workers.

9. Mr. Tiku, learned counsel for the applicants has contended that the provisions of Section 445(3) of the Companies Act, 1956 (hereinafter referred to as "the Act") do not override the provisions of the I.D. Act since, had this been the intention, a non obstinate clause could easily have been employed in the said Section, which is a later enactment than the I.D. Act. Mr. Tiku has relied on Sections 25F, 25FFF, 25K, 25N and 25-O of the I.D. Act and has sought support of his contentions from the decisions in Delhi Transport Corporation v. Presiding Officer and Anr. , 1999 VI AD 723, Sisir Kumar Mohanty v. State of Orissa and

Anr. , 1970 Orissa 113, and In the matter of Shree Madhav Mills Ltd. , , 1967 Bombay 219. The enquiry, Therefore, must be directed towards whether the provisions of the I.D. Act cast a penumbra on the operation of Section 445(3) of the Act.

10. It should be kept foremost in mind that the I.D. Act is concerned with industrial disputes. The relief in the present application revolves around the work force. It is not the contention of Mr. Tiku that there is any subsisting dispute between one group of workers and another. Therefore, no dispute or difference exists between one set of the workmen and the other. The question that arises is whether the definition of "employer" contained in the I.D. Act takes within its sweep the Official Liquidator appointed by the High Court. Only thereafter would any other provisions of the I.D. Act be attracted. The important aspect of Section 2(g) of the I.D. Act, which seeks to define the word employer, is that it envisages a continuing industrial enterprise. However, once a company goes into liquidation the consequence is the cessation of its business. No doubt it may temporarily continue for a short period, but that would only be with the objective of effectively closing down the business. A Division Bench of the Kerala High Court has opined in General Secretary Palai Central Bank Employees' Union v. Official Liquidator, Palai Central Bank Ltd. [1965] 35 Comp. Cas. 279 that unless the winding-up order is a result of collusion or fraud, such a closure ensuing from insolvency or winding-up adjudication, falls within the ambit of the proviso to Sub-section (1) of Section 25FFF of the I.D. Act; and that the carrying on of the business of a company under liquidation, in so far as it is necessary for its beneficial winding-up does not constitute continuation of the business of the company. It was further held that unless there is clear evidence of a subsequent employment engagement entered into between the Official Liquidator and the employees, the winding-up order operates as a discharge of the employees as contemplated by Section 445(3) of the Act.

11. In Rohtas Industries Limited (in Liquidation), [2000] 99 Comp. Cas. 503 , the issue was whether the Official Liquidator was liable for making contributions under the Employees' Provident Fund Act during the period for which the establishment was in the process of being finally wound up. The Learned Single Judge of the High Court of Patna clarified in this Judgment that efforts to revive the company had been made not only by the Hon'ble Supreme Court but also by the Official Liquidator attached to that Court. Nonetheless, despite the fact that some business had been transacted in the course of efforts to revive the establishment, the Learned Judge considered these incidental and irrelevant since the primary objective was the winding up of the company. It was, Therefore, held that the Official Liquidator was not liable to make contributions under the Provident Fund. The rationale of this judgment can be easily extrapolated to the issues that arise in the present case. The Learned Single Judge was also of the opinion that the view expressed in In Re: Mahalaxmi Cotton Mills Ltd. (in liquidation), . could be distinguished on the grounds that in the Calcutta case the Liquidator was directed to carry on the factory and to sell it

as a going concern. Therefore it was held that the Liquidator was liable to make contributions as an employer or occupier under the Employees' Provident Funds Act. In fact this judgment can be followed inasmuch as the Learned Single Judge has observed that "I shall not be understood as holding that were the Liquidator is asked to wind up a factory and close it down, he would still be liable to contribution under this Act. In fact, I have already said that in such an event the Liquidator will not be liable under the Act for contribution because it will no longer be a factory "engaged" in the specified industry."

12. A single Judge of the Madras High Court has not followed the Division Bench of the Kerala High Court in the Palai Central Bank case (*supra*) in *A. Shanmugham v. Official Liquidator and Ors.*, [1992] 75 Comp. Cas. 191. It is, however, necessary to draw the distinction that the query before the Madras High Court was as to whether Section 25-FFF would apply to a company which is ordered to be wound up pursuant to a petition for its winding up filed by one of its creditors. In this judgment I am not concerned in any manner of the legal propriety and soundness of any claims prior to the passing of the winding up order by the Company Court. This caveat should be clearly emphasised. However, to the extent that the Learned Single Judge of the Madras High Court has expressed the view that the proviso to Section 25-FFF of the I.D. Act would not apply, I would express my respectful reservations.

13. There exists a watershed between cases where a winding up is brought about by the company itself and where it is ordered on the initiation of a creditor, so far as the interplay between the Act and the I.D. Act is concerned. *Mr. Tiku's* reliance on *Bombay Metropolitan Transport Corporation Ltd. v. Employees of BMTC (CIDCO) and Anr.*, (1987) 3 Comp LJ 21 is indubitably relevant where the winding up orders are passed at the instance of the company. As I see it, such a situation is pregnant with the possibility of a company circumventing its obligations and liabilities under the I.D. Act by bringing about its closure through the circuitous route of liquidation proceedings. Its escaping liability by this device cannot be countenance in law. Therefore, I am in respectful agreement with the views expressed by Hon"ble Mr. Justice S.N. Variava, J. (as his Lordship then was) in the following paragraph:

"There is no doubt that to the extent that one of the effect of winding-up is that there is a closure of an undertaking and so long as that undertaking is covered by the provisions of Section 25-L of the Industrial Disputes Act and an application is made by the company for winding itself up, there would be conflict between the provisions of the Companies Act; and the Industrial Disputes Act. There is in my mind not the slightest doubt that in such cases, the provisions of the Industrial Dispute Act will have to prevail. This is not only because the Industrial Disputes Act is a beneficial legislation but also because in respect of relationship between employees and employer, it is the legislation which is more special legislation; whereas in this respect, the Companies Act is merely a general legislation. There is also another reason and that is that in all such cases

where the provisions of two Acts or two provisions of the same Act cannot stand together and are in conflict, then the provision which has been legislated after must always prevail. Section 25K of the Industrial Disputes Act, as it now stands was introduced in 1976 and it is, Therefore, the later legislation and for that reason also, it must prevail.

In the present case, as has been seen from the facts mentioned above in fact the petitioners have applied u/s 25-0 of the Industrial Disputes Act and that application stood rejected not once but twice; and it is only thereafter that they have filed this winding-up petition. In view of the fact that no permission u/s 25-0 has been obtained by the petitioners and the provisions of the Industrial Disputes Act have to prevail over the Companies Act. The company cannot be allowed to be wound-up. For this reason also, the petition will have to stand dismissed."

14. The pronouncement of the Division Bench of the High Court of Orissa in Sisir Kumar's case (supra) is in similar vein and would not be apposite to the present controversy. The Khadi Board constituted under the Orissa Khadi and Village Industries Board Act was an industry governed by the provisions of the I.D. Act. When a statutory dissolution took place, the Court observed that compensation u/s 25-FFF of the I.D. Act should have been paid. However, it was observed that the Petitioner must "work out his remedies under the provisions of the said statute. It is difficult to go into the matter in a writ application and examine and compute the advantages to which he becomes entitled." This case, Therefore, does not advance the course of the applicants, despite reliance on it by Mr. Tiku. The distinction can again be discerned between a voluntary or self-induced winding up and one ordered by the Court. The decision in *In Re: Shree Madhav Mills Ltd.*, is also to the same effect. It needs to be reiterated that the substance of a possible claim u/s 25-FFF of the I.D. Act does not arise in the present case and would have no direct relevance for the vacation of quarters allotted to workmen because of their erstwhile employment.

15. Since Mr. Tiku has relied on provisions of the I.D. Act dealing with "closure" it is necessary to clarify that in all the cases relied upon by him where the closure of a business establishment had been brought into focus, this event had transpired at the volition of the company itself. This must be the distinction between a closure and the extinguishment of the company as a consequence of the passing of winding up order under the Act. Nothing further should be said, since I have already observed that I do not intend to return any finding or give any observation on the validity and soundness of a claim which has or may be brought under the I.D. Act. It would be advantage, nonetheless, refer to the perspicuous decision of the Division Bench of the Calcutta High Court in *Ram Hari De Vs. Official Liquidator*, High Court, . Judgments, inter alia, of the Hon'ble Supreme Court in *Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union*, and *Barsi Light Railway Co. Ltd. v. K.N. Joglekar and Ors.*, AIR 1957 SC 121, were relied upon in to arrive at the conclusion that "a closure of business as

a result of a winding-up order cannot be equated with retrenchment and does not attract compensation which can be described as "retrenchment compensation." These observations would also apply a fortiori to "closure" as contemplated in the I.D. Act. The following extract from Ram Hari De's case (supra) is relevant:

"The position is that an order for a compulsory winding up has the same effect as notice of discharge given on the date when the winding up order is made. It is nobody's case that the business of the company has been continued after the date of the winding-up order. The point, Therefore, is in a very small compass. The tripartite agreement expressly stated that the amount payable thereon was in the nature of "retrenchment compensation". The question is whether the discharge of employees u/s 445(3) of the Companies Act, upon the compulsory liquidation of a company, operates as an order of retrenchment. If it does, then the appellants would be entitled to amounts agreed upon between the parties under the so-called tripartite agreement. If not, they are not entitled to the same, although they may be entitled to payment u/s 25FFF of the Industrial Disputes Act, 1947. It was argued in the court below that all the employees were entitled to take advantage of the tripartite agreement, firstly, on the ground that it became part of their contract of service and secondly, on the ground that the discharge of employees u/s 445(3) of the Companies Act is equivalent to retrenchment as contemplated by the tripartite agreement. The learned Judge was right in rejecting both the contentions. So far as the first ground is concerned, the so-called tripartite agreement expressly used the word "retrenchment". There is nothing to show that at the date when it was agreed upon, the bank had closed its business. It closed its business only when it was compulsorily wound up by the court."

16. The above analysis leads to the conclusion that upon the passing of winding up orders on the strength of Section 445(3) all employees of the erstwhile Company stand discharged forthwith. Prior to the passing of such orders, whatever rights may have been enjoyed by a workman under the I.D. Act, should be canvassed and adjudicated upon before the appropriate forum. It certainly ought not to be dealt with by the Judge exercising company jurisdiction. If an authority is needed for this proposition it can be found in *The Premier Automobile Ltd. v. Kamlaker Shantaram wadke and Ors.*, AIR 1979 SC 2238 and *Sisir Kumar Mohanty's case* (supra). The latter case has specifically been relied upon by Mr. Tiku, learned counsel appearing for the applicants. But while doing so he has glossed over the observations made therein to the effect that the workman must work out his remedies, under the provisions of the I.D. Act.

17. Upon the passing of a winding up order, Section 630 of the Companies Act immediately comes into operation. It provides that if any officer or employee of a company being possessed of company's property wrongfully withholds it from the general use and benefit of the company, he would be liable for prosecution. It is trite to state that this Section applies equally to employees, past and present.

Reference can be made with advantage to the decision of the Hon"ble Supreme Court in Baldev Krishna Sahi Vs. Shipping Corporation of India Limited and Another, . Even if there are some doubts as to whether this provision would have application to a company in liquidation they would stand dispelled by Rule 9 of the Companies (Court) Rules, 1959 read with Section 446 and 456(2) of the Act, which states that all properties and assets of the company shall be deemed to be in the custody of the Court from the date of the order for the winding up of the company. Thereafter Section 468 further specifies that the Court may, at any time after making a winding up order, inter alias require any officer or other employee of the company to deliver, surrender or transfer forthwith or within such time as the Court may directs to the Official Liquidator, any other property in his custody or under his control which the company is prima facie entitled to. Support can be found for this view in Britannia Engineering Company Ltd. (In liquidation) [1983] 54 Comp. Cas. 277.

18. The case has already been pending for a considerably long period. No further indulgence to the applicants/workmen is called for. This is also for the reason that the position adopted by the applicants is detrimental to the common weal of the entire force of workers. The CA 450/2001 is without merit and is dismissed.

C.A. 1882/2001 (Filed on 13.12.2001)

& C.A. 661/2002 (Filed on 29.6.2002).

19. In view of the Orders passed in CA 450/2001, no further orders are called for in these applications. Both 20. C.As. 1882/2001 & 661/2002 are accordingly dismissed.

C.P. 159/96.

21. The Official Liquidator is directed to take effective steps for getting the employees evicted from the staff quarters. For this purpose he is further authorised to seek Police assistance. The local Police is directed to render all such assistance as is necessary. The eviction should be carried out within seven days from today.

22. Report be filed by the Official Liquidator within two weeks from today.

23. Renotify the matter for consideration on 27.11.2002.