

(2005) 02 CAL CK 0053

In the Calcutta High Court

Case No : C.P. No's. 532 of 2002, 55 of 2003 and 277 of 2004 and CA No's. 157 and 170 of 2004

In Re: Ellenbarrie Tea Co. Ltd.

Date of Decision : 25-02-2005

Acts Referred:

Companies Act, 1956 — Section 391(1)

Citation : (2005) 64 SCL 196

Hon'ble Judges : Ashim Kumar Banerjee, J

Bench : Single Bench

Judgement

Ashim Kumar Banerjee, J.—This winding up petition came up before me after advertisement. The appearing creditors filed Affidavits supporting the petition for winding up.

2. In the meantime, the company also proposed a Scheme u/s 391(1) of the Companies Act, 1956 and ultimately filed an application being C.P. No. 277 of 2004 for final sanction of the Scheme of Arrangement between the parties.

3. I heard this matter from time to time. I gave opportunity to the company to pay off the creditors in a phased manner. Lump sum payments were made in course of hearing and such lump sum payments were distributed pro rata amongst the appearing creditors. Initially there had been dispute with regard to the amounts claimed by the respective creditors and the amounts admitted in the application for sanction of the scheme of Arrangement by the company. Now the disputes have been resolved. The company has accepted the claims of the creditors as claimed by them in the respective pleadings except M/s. Tea Spares International. In the case of T. Spares International this Court earlier admitted the winding up petition for a sum of Rs. 5.32 lakhs and granted liberty to the petitioner to file suit for the balance amount with the corresponding direction upon the company to secure the balance amount. In case of Tea Spares International the company has now admitted the claim for a sum of Rs. 5.5 lakhs leaving a balance sum of Rs. 2,87,123.

4. Mr. Surajit Nath Mitra, learned Counsel appearing for the company submits

that the balance claim of all the creditors should be allowed to be paid in 4 years. Mr. Mitra further submits that the company would secure the claim of Tea Spares International to the extent of Rs. 2,87,123.

5. The respective claims of the creditors would appear from the Schedule appended below:--

Name	Their claim	Amount	Admitted	Amount in application	now admitted	Anil Agencies
Ashok Bhattacharya	1,30,087	1,30,087	1,30,087	1,30,087	1,30,087	1,30,087
Bail Engineering	84,455	84,455	84,455	84,455	84,455	84,455
Cassava (India)	3,13,132	3,13,132	3,13,132	3,13,132	3,13,132	3,13,132
Darjeeling Cereal Supply	9,95,184.32	9,95,184.32	9,95,184.32	9,95,184.32	9,95,184.32	9,95,184.32
Gassin Pierre (P.) Ltd.	1,62,475	1,62,475	1,62,475	1,62,475	1,62,475	1,62,475
K.N. Chaudhury	3,44,774	3,44,774	3,44,774	3,44,774	3,44,774	3,44,774
Globe Enterprises	2,83,915	2,83,915	2,83,915	2,83,915	2,83,915	2,83,915
Pradeep Enterprises	1,73,124	1,73,124	1,73,124	1,73,124	1,73,124	1,73,124
Tea Spares International	8,37,123	5,50,000	5,50,000	5,50,000	5,50,000	5,50,000
Vinay Industries	2,94,407.50	2,06,016	2,06,016	2,06,016	2,06,016	2,06,016

6. The company is permitted to pay the balance dues of all the creditors except M/s. Tea Spares International save and except to the extent of Rs. 2,87,123 by three monthly instalments in a year payable on 31st January, 30th June and 30th September of every year. Payment of such instalment must be completed by 31st January, 2009. The company is also directed to furnish appropriate security to the satisfaction of the Registrar, High Court, Original Side to the credit of M/s. Tea Spares International to the extent of Rs. 2,87,123 by 15th May, 2005.

7. In default of furnishing of the said security within the said period the said amount would stand admitted and would be included in the claim of T. Spares International over and above Rs. 5.5 lakhs.

8. The company would be entitled to have adjustment of the sums already paid to the creditors in course of hearing of this matter before me.

9. The company would also make payment of interest on the respective claims set out above at the rate of 5% per annum on and from the respective due dates of the bills until payment. The interest amount would, however, be paid by 30th June, 2009.

10. There would be an order of winding up in terms of prayer (a) in C.P. No. 55 of 2003. This order would, however, remain stayed so long the instalments are paid and in case of default of payment of any one instalment the Official Liquidator will take forthwith possession of the assets of the company.

11. The company is however, directed to pay actual advertisement cost to the petitioning creditor by 31st May, 2005.

12. Despite advertisements the other creditors did not join either to support or oppose the winding up petition. They also did not appear in the application 1 or sanction of the Scheme of Compromise. Mr. Mitra submits that there should be order of stay with regard to the other non-appearing creditors. In my view, once the order of winding up is passed and the same would remain stayed because of

the payments to the appearing creditors, the other non-appearing creditors would not be permitted to take punitive steps for filing any further winding up petition without express leave being obtained from this Court. Therefore, no direction is necessary at this stage and such prayer of Mr. Mitra is considered and rejected.

13. M/s. Tea Spares International is restrained by an order of injunction from filing any suit for the said disputed sum of Rs. 2,87,123 until a period of three weeks from the date of intimation of furnishing of the security.

14. In default of filing of the suit by M/s. Tea Spares International the company would be at liberty to ask for return of the security from the Registrar, High Court, Original Side so to be furnished by them.

15. In view of the above, C.P. No. 55 of 2003, C.P. No. 277 of 2004 and C.P. No. 532 of 2002 along with all connected applications thereto are disposed of by this order.