

(2010) 01 RAJ CK 0097
In the Rajasthan High Court

In Re: Jaipur Spg. and Wvg. Mills Ltd. (In Liquidation)

Date of Decision : 08-01-2010

Acts Referred:

Companies (Court) Rules, 1959 — Rule 147, 148, 159, 163, 167
Companies Act, 1956 — Section 391, 454, 466, 535, 543

Citation : (2010) 102 SCL 127

Hon'ble Judges : R.C. Gandhi, J

Bench : Single Bench

Judgement

R.C. Gandhi, J.—This application has been presented u/s 466 of the Companies Act, 1956 ("the Act of 1956") read with Rules 147, 148, 159, 163 and 167 of the Companies (Court) Rules, 1959 (hereinafter referred to as "the Rules of 1959") by the applicant, Podar Finance Private Limited, a Company incorporated under the Act of 1956, having its registered office at Podar Centre, 85, Parel Post Office Lane, Mumbai, seeking permanent stay of the liquidation proceedings of the Company (in liquidation); directing the Official Liquidator to furnish to the applicant the details and Photostat copies of the uninvited claims, if any, received by the Official Liquidator with regard to Jaipur Spinning and Weaving Mills Limited (hereinafter referred to as "the Company (in Liquidation)"); further to invite claims under Rule 147/148 of the Rules of 1959 and furnish to the applicant the details of the such claims; to adjudicate the claims received pursuant of notice issued by the Official Liquidator in accordance with Rule 163 of the Rules of 1959 and provided opportunity of hearing to contest the claims; to file a list of Creditors of the Company in Liquidation under Rule 174 of the Rules of 1959 and till final decision of this application, stay the Tender Notice dated 26-10-2009 by an interim order or injunction from proceeding to sell the assets and or properties of the Company (in liquidation) including a parcel of land situated near Railway Station, behind Shri Ram Mandir, Podarpuri (Power House Road), Bani Park, Jaipur measuring in an aggregate 56,629 square yards (equivalent to 47,349 square meters) present leased out in favour of Podar Mills Limited under an Indenture of Lease dated 30-12-1964 read with the Supplemental Lease Deed dated 23-8-1968 and a parcel of land situated at near

Railway Station, behind Shri Ram Mandir, Podarpuri (Power House Road), Bani Park, Jaipur measuring in an aggregate 89,231 square yards (equivalent to 74/687.09 square meters).

2. The applicant has stated in the application that he presently holds 1,63,550 equity shares of the face value of Rs. 10 each constituting approximately 65 per cent of the Issued, Subscribed and Paid-Up Share Capital of the Company (in liquidation). The Company (in liquidation) i.e., Jaipur Spinning and Weaving Mills Limited, vide order dated 2-12-1983 passed in Company Petition No. 10/1980 filed by Swadeshi Polytex Limited, was ordered to be wound up and the Official Liquidator was appointed by the Court who took possession of the assets and affairs of the Company (in liquidation) in the year 1983.

3. Podar Mills Limited filed Company Application No. 100/2002 for fixing the capitalized value of the said leased property directing the Official Liquidator to disclaim the said leased land u/s 535 of the Act of 1956, on the said Podar Mills Limited depositing the capitalized value of the leased land fixed by the Court and further direction to the Official Liquidator to transfer and assign the reversionary right and interest in respect of the said leased property in favour of Podar Mills Limited.

4. The application was dismissed by the Company Court vide order dated 26-5-2006 observing that the Podar Mills Limited had no preferential right to purchase the said leased land and the property is required to be sold in auction in which Podar Mills Limited may also take part and the State Bank of India was directed to re-determine the market value of the said leased property.

5. The Official Liquidator took up the matter with the State Bank of India and placed before the Court the valuation report received from the Bank vide Company Application No. 33/2006. The Court on Company Application No. 07/2007 filed by the Official Liquidator directed the Official Liquidator, vide order dated 23-2-2007, to once again take the task of valuation and to conduct public auction in respect of the said leased property. The Official Liquidator vide Company Application No. 33/2007 submitted the Draft Tender Notice and the terms and conditions of sale of leased out land measuring 47349 square meters which were approved by the Court vide order dated 20-7-2007 in respect of the leased property. Pursuant thereto, the Tender Notice was issued which came to be published in Dainik Bhaskar on 8-8-2007. The reserved price fixed by the Official Liquidator was Rs.118 crores.

6. At this stage, Mr. Ajay Podar, Ex Director of the Company (in liquidation) intervened expressing his right to revive the company and to pay off all the Creditors of the Company (in liquidation) and bring it out of liquidation. The Official Liquidator did not file details of all the creditors of the Company (in liquidation). The Court vide order dated 17-8-2007 directed the Official Liquidator to provide information about debts and liabilities of the Company (in liquidation). While passing the order, the Court observed that Ajay Podar should

disclose his intention for revival of the unit and steps taken and future plan and the Scheme of revival on which he relies. He did not submit any such Scheme. There was inadequate response to the Tender Notice, therefore, the offers were rejected.

7. As per fresh valuation of the property in dispute measuring 29818.77 square meters (free from any encumbrances), reserve price was fixed at Rs. 79 crores which includes the value of existing Building thereon to the extent of Rs. 3.68 crores and the Yarn to the extent of Rs. 7.35 lakhs. Tender Notice was issued on 26-10-2009 fixing the last date of receipt of tenders as 16th November, 2009.

8. The applicant has averred that he being the substantial contributory and interested in the assets of the Company (in liquidation) has filed the present application u/s 466 of the Act of 1956 and that the Official Liquidator has not complied with the Rules 147, 148, 149, 159, 163 and 167 of the Rules of 1959 and unless it is satisfied, the property of the Company (in liquidation) cannot be auctioned or tendered and further that the Official Liquidator be directed to proceed with the ascertainment of the creditors of the Company (in liquidation) and take all steps as required commencing from inviting of the claims till preparation of the settled list of Creditors in accordance with the Act of 1956 and the Rules of 1959.

9. It is also averred that the applicant proposes to pay the creditors of the Company (in liquidation) not under any Scheme u/s 391 of the Act of 1956 but as per the settled list of the Creditors arrived at by the Official Liquidator in accordance with law. On the basis of aforesaid averments, the applicant seeks stay of liquidation proceedings.

10. Reply has been filed by the Official Liquidator stating therein that the applicant does not want to revive the Company (in liquidation) as has been stated in Para No. 8 of the application and wants to pay the creditors as per the settled list of the creditors. It is stated in reply that the application u/s 466 of the Act of 1956 is not maintainable as no documentary evidence of holding 65 per cent shares of the Company (in liquidation) as on the date of winding up order has been placed on record. The application is further not maintainable as the application is outside the scope of Section 391 of the Act of 1956. The applicant has neither made out any case for staying winding up proceedings nor his request made in prayer clause 11(b) and (c) is governed by provisions of Section 466 of the Act of 1956. It is also stated that the applicant has not shown any cause of action on account of which the present application is moved seeking permanent stay of liquidation proceedings. It is also stated that the application is not maintainable for the reason that the plant and machinery of the Company (in liquidation) has already been sold by giving wide publication in Newspapers i.e., Times of India and Rajasthan Patrika in the year 1984-85 and at that time the applicant never raised any objection that either he wants to revive the Company (in liquidation) or to pay the creditors according to the settled list of the Creditors by the Official Liquidator.

11. It is also stated that the winding up proceedings have already been completed and payment to the Secured Creditors and workers to some extent has been made by sale of assets of the Company i.e., plant and machinery. There remains the land of the Company (in liquidation), therefore, at this stage no question arises for revival of the Company. The claims have been satisfied to some extent without payment of interest. The applicant otherwise has not come up with any scheme for revival of the Company (in liquidation) or any future plan for its functioning or steps taken for revival of the unit. It is stated that the present application is not maintainable as far as providing information to the applicant is concerned as he filed an application in the Court wherein the Court passed an order on 17-8-2007 observing that before the information is supplied to him through the Court, he should disclose his intention for revival of the unit submitting the steps taken and future plan and cause of action, and the Scheme on which he relies. No such scheme has been submitted before the Court. The said application was filed only to create a hurdle in disposal of the assets of the Company (in liquidation). The applicant has also not disclosed by supporting any documentary evidence that he holds 65 per cent equity shares of the face value of Rs. 10 each fully paid-up. It is also not disclosed that how much shares the applicant was holding before and after passing of the winding up order of the Company (in liquidation). The applicant has not made out that it is substantial contributory of the Company (in liquidation) by showing any documentary evidence.

12. It is also stated in the reply that Ex-Directors of the Company (in liquidation) have not filed the Statement of Affairs of the Company as required u/s 454 of the Act of 1956 showing details of the assets and liabilities and present status of the Company (in liquidation). Cases u/s 454 and for misfeasance u/s 543 of the Act of 1956 are pending trial before the Court. Therefore, the shareholders or anybody representing the Company (in liquidation), even the applicant is not entitled, to file such an application till the proceedings pending before the Court are disposed of finally.

13. It is stated that the applicant has filed the present application as proxy litigation for the reason that the conveyance deeds have been executed by the applicant in favour of third parties in respect of lease hold land which discloses the mala fide intentions of the applicant to save the subsequent transferees. It is further stated that after winding up of the Company (in liquidation) all the requirements under Rules 147, 148, 149, 159, 163 and 169 of the Rules of 1959 have been complied with. The claims were invited from creditors of the Company (in liquidation) through wide publication in Newspapers Times of India, Rajasthan Patrika (Hindi Edition) and Rajasthan Patrika (English Edition) on 2-1-1985, 24-12-1984 and 23-12-1984 respectively.

14. It is stated that individual notices were also issued pursuant to Rule 147 of the Rules of 1959 to the creditors whose information was available with the Official Liquidator. The claims received from the creditors were admitted/rejected

and intimation to that effect was furnished in Form Nos. 69 and 70. The dividend has also been declared/paid pursuant to Rules 275 and 276 of the Rules of 1959. Rule 174 is not applicable on the company which stood wound up by this Court. It is further stated that the Official Liquidator has already invited claims and paid dividend which were settled as per the provisions of Rules 147, 148, 149, 159, 163, 167, 169, 275 and 276 of the Rules of 1959. It is also submitted that the Official Liquidator has filed prosecution for not filing Statement of Affairs before the Court vide Company Application No. 242/1984 which came to be decided vide order dated 6-9-1991 holding that "sentence the accused to pay Rs. 25 per day from 24-12-1983 up to the date of default continues. In default of payment of fine the accused shall suffer 15 days simple imprisonment."

15. Mr. G.N. Podar, Director of the Company filed D.B. Special Appeal No. 34/1991 against the aforesaid order. The appeal came to be dismissed by the Division Bench vide order dated 6-3-2006 on the ground that the appellant died and no application for substitution of legal heirs was preferred. It is also stated that Company Application No. 15/1989 was filed u/s 543(1) of the Act of 1956 against the Ex-Directors of the Company including Shri Ajay Poddar for payment of compensation amounting to Rs. 1,47,00,000. Shri Ajay Poddar filed SLP No. 14126/2006 before the Hon"ble Supreme Court of India against the judgment dated 21-9-2005 passed in D.B. Special Appeal No. 32/1991 arising out of Application No. 15/1989. The SLP preferred before the Apex Court was also dismissed vide order dated 15-7-2008. Application No. 15/1989 is pending before the Company Court. On the basis of the reply and the affidavit, the Official Liquidator has stated that the present application is misconceived being proxy litigation and deserves to be dismissed.

16. Heard learned Counsel for the parties and perused the record.

17. At the very outset it is made clear that the land of the Company (in liquidation) is in three parcels. One parcel is lease hold rights with the Podar Mills and the remaining two parcels of land are free from encumbrances. The lease hold land is measuring 56,629 square yards (equivalent to 47,349 square meters). Second parcel of land is on which colony of the workers has been constructed by the Company (in liquidation) measuring 53581.89 square yards (equivalent to 44848.49 square meters). Third parcel of land is between these two parcels of land measuring 29,818.77 square meters (equivalent to 35,650 square yards). This land, i.e., third parcel of land, has been put to auction by way of inviting tenders. In the application nothing has been said about this third parcel of land and the tenders invited for sale of the land has been sought to be stayed without even a murmur in the application in respect of this land. The litigation on the face of it, therefore, appears to be mala fide and malicious.

18. It is made out from the record that the requirement of the Rules 147, 148, 149, 159, 163, 167, 169, 275 and 276 of the Rules of 1959 have been complied with. The claims of the creditors, workers and others whose information was available with the Official Liquidator were invited and received. The claims so

received were considered by the Official Liquidator in terms of the Rules of 1959 which have been accepted and rejected as the case may be. The payment has been made to the workers and others without payment of interest and the claimants are pressing for payment of interest also which may run into crores.

19. It is not made out by placing evidence before the Court that the applicant has invested in the Company (in liquidation) as pleaded with regard to 1,63,550 equity shares of the face value of Rs. 10 each. The Official Liquidator has also produced Balance Sheets of the applicant Company which were filed with the Registrar of Companies from the year 2007 to year 2009 wherein no such investment with regard to the shares of the Company (in liquidation) has been shown. This information has been received by the Official Liquidator from Registrar of Companies, Maharashtra where the applicant company is registered. This claim of the applicant appears to be either false or not proved. In the rejoinder, the applicant has submitted the details of the shares. Had the applicant invested in the Company (in liquidation), it should have been reflected in the Balance Sheets of the applicant Company. It is also not shown that on what date the shares were purchased and invested for becoming the contributory of the Company (in liquidation).

20. It is seen from the record of Petition No. 100/2002 that whenever an effort is made to sell the assets of the Company (in liquidation), such applications came to be filed either by the Ex-Directors or by other persons showing themselves as interested persons to frustrate the follow up action with mala fide intention and to restrain the Official Liquidator to complete the winding up proceedings.

21. The prayer made for seeking information from the Official Liquidator also appears to be not bona fide. Had it been so, the Court vide order dated 17-8-2007 passed in Company Application No. 33/2007 directed the applicant that before such information is supplied, he should disclose his intention for revival of the unit submitting the steps taken and future plan and cause of action, and the Scheme on which he relies. Nothing has been brought before the Court. In the present application, the applicant has categorically submitted in Para No. 8 that he does not want to revive the Company u/s 391 of the Act of 1956 and want to pay the creditors as per the settled list of the creditors by the Official Liquidator. With this application, the applicant has not placed any evidence that he ever raised a demand to the Official Liquidator for supplying any information which the Official Liquidator has not supplied.

22. It is also seen from the record that while the plant and machinery of the Company (in liquidation) were sold about 19 years back in the year 1990-91, no plea was raised either by the Directors or by the applicant for revival of the Company or pay to the Creditors. The applicant has also not shown his resourcefulness to make payment to the creditors in terms of the settled list of the creditors. Similar dispute with regard to seeking stay of the winding up proceedings was subject-matter in case title Mahabir Prasad Agarwala v. Askaran S. Singh 1980 Tax LR NOC 150. The Court while dealing with this situation held

as under:

Therefore, from the above principles which have been summarized in different authorities and the decision referred to hereinbefore it appears that the discretion for stay u/s 466 can only be exercised by the Court (1) if the Court is satisfied on the materials before it that the application is bona fide, (2) the Court would be guided by the principles and definitely come to the finding that the principles are applicable to the facts of a particular case; (3) mere consent of all the creditors for stay of winding up is not enough; (4) that offer to pay in full or make satisfactory provisions for the payment of the creditors is not enough; (5) Court will consider the interest of commercial morality and not merely the wishes of the creditors and contributories; (6) Court will refuse an order if there is evidence of misfeasance or of irregularity demanding investigation; (7) a firm had accepted proposal for satisfying all the creditors must be before the Court with material particulars; (8) the jurisdiction for stay can be used only to allow in proper circumstances a resumption of the business of the Company; (9) the Court is to consider whether the proposal for revival of the company is for benefit of the creditor but also whether the stay will be conducive or detrimental to commercial morality and to the interest of the public at large; (10) before making any order Court must see whether the Ex-Directors have complied with their statutory duties as to giving information to the Official Liquidator by furnishing the statement of affairs; (11) and any other relevant fact which the Court thinks fit to be considered for granting or not granting the stay having regard to the peculiar facts of a particular case.

As I have already observed that there is no positive or concrete materials which the Court can rely and be satisfied that the petitioners have know-how financial resources to pay off the ordinary creditors and the secured creditors and carry on the business of the Jute Mills with commercial morality and for public interest. Some of the petitioners seems to be delinquent Director of the Company (in liquidation) who have committed gross violation of the provisions of the Companies Act disclosed in the report of the Official Liquidator which is based on the records with the Registrar of Companies, West Bengal. Therefore, it is not only understandable but it is positively dangerous on the ground of commercial morality and interest to stay the winding up. On the other hand, the winding up process should be expedited and efforts should be made to see that the assets of the company are recovered as early as possible without incurring further liability by the company in respect of the said leasehold right of the Jute Mills under the lessor Prem Chand Jute Mills Limited. The Court should not be swayed by catch words and gimmick of reviving an industry and providing employment to the unemployed workers on the ground of socio-economic development of the State, but it has to carefully examine whether it applies to a particular case and I have no doubt in my mind on the facts of this case that all these are high sounding words which have been submitted before this Court from time to time only to prejudice and influence the mind of the Court, if possible to get a favourable order. But the conduct of the petitioners particularly the Ex-Directors and

management of the company although seems to be dubious, wrongful and illegal and violative of the provisions of the Companies Act, 1956.

The duty cast on the Court as it appears from the principle laid down in the above authorities and by the cases cited seize to be very responsible one, the matter has to be very seriously and carefully examined from all aspects particularly in the light of the conduct of the ex-management and the applicant before the Court for stay of winding up petition. As I have already discussed above I have no doubt in my mind that the applicants who were some of the Ex-Directors have adopted various contrivances to hang on other properties and deprive the creditors of their legitimate dues only to carry on business in illegal, dishonest manner and absolutely lacking in commercial morality. It is also the further duty of the Court from the Socio-Economic point of view to eradicate dishonest and corrupt management of the company affairs and to set up a healthy atmosphere in the industry, particularly the Jute Industry which is foreign exchange earner and passing through a boom having very bright prospects in the near future. Therefore, the assets of the company being that of Prem Chand Jute Mills Ltd. Together with any machineries if any has been added by the company in liquidation has to be protected and steps should be taken so that it may be restarted under efficient, honest and bona fide management.

23. Relying upon the judgment of Mahabir Prasad Agarwala's scase (supra), the Calcutta High Court in case title Nilkanta Kolay Vs. The Official Liquidator, dismissed the application seeking to stay the winding proceedings.

24. The Company (in liquidation) was ordered to be wound up in the year 1983 and the present application has been filed after a period of about 25 years which itself shows that this application has been filed only to block the sale of the land of the Company(in liquidation). The necessity to sell the land is that the claims of the persons against the Company (in liquidation) have to be satisfied along with the interest which has yet not been paid. Winding up proceedings can be stayed by the Court if the applicant satisfies the requirements of law as pointed out at serial Nos. 4, 6, 7, 8, 9 and 10 of relevant para of the judgment {supra}. The applicant-company has not satisfied the aforesaid requirements and thus, not found entitled for stay of the winding up proceedings. The applicant has also not been able to make out as per the Audited Balance Sheets filed by him before the Registrar of Companies for the years 2007 to 2009 that he has invested in the Company (in liquidation).

25. On consideration of the facts as projected by the applicant and the reply filed by the respondent-Official Liquidator and submissions of the learned Counsel for the parties, I am of the view that the applicant has not made out a case for stay of the winding up proceedings of the Company (in liquidation) u/s 466 of the Act of 1956. The application is, accordingly, dismissed with costs to be recovered from the funds of the Applicant-Company.