(1978) 04 BOM CK 0006

In the Bombay High Court

Case No : Company Petition No''s. 30, 117 and 692 of 1977

In Re: Mulraj T. Morarji and Another

Date of Decision : 17-04-1978

Acts Referred:

Citation : (1979) 49 CompCas 475

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Advocate : A.C. Chinoy, C.J. Shah, H. Vishram, I.M. Chagla, V.V. Tulzapurkar, R.H. Belose and S.A. Bhelawal, Vora, for the Appellant;

Judgement

Bharucha, J.—This is a winding-up petition based upon a debt in the sum of Rs. 800. Mr. Chagla, learned counsel for the company, has stated that the company does not dispute the debt but that it is presently unable to make the payment.

2. On 13th February, 1978, when this petition had reached hearing before me, Mr. Chagla applied for an adjournment on the ground that a new management had taken over the company as well as Centron Industrial Alliance Ltd., of which the company is a fully-owned subsidiary. The affidavit in support of that application, dated 10th February, 1978, asked for an adjournment for a period of four months or such other period as the court considered reasonable to enable the new management to place before the court the efforts made to revive the company. I had then adjourned the matter till to-day.

3. In support of the application now made for adjournment of the petition until the end of the year 1978, the company has filed the affidavit of one Murlidharan. It states that a feasibility report has been obtained on 5th April, 1978, in respect of restarting the company. The affidavit states that the United Western Bank Ltd. and SICOM have assured working finance to revive the company in the same manner in which they had aided Centron. The feasibility report dated 5th April, 1978, is made by two employees, technically qualified of Centron and SICOM. It state that to put the existing equipment of the company in working condition components have to be added; to place orders for these and to bring the existing machinery into running condition a period of four months is envisaged. The

report states that the equipment required to commence production is estimated to cost Rs. 3.50 lakhs. This sum presumably is expected by the company to come from the coffers of SICOM and the United Western Bank.

4. Both the United Western Bank and SICOM have filed affidavits before me in support of the company''s application for adjournment till the end of the year 1978. The reasons in support of the adjournment application are stated by the United Western Bank in these words :

"As the second largest creditor of Everkeen we are satisfied that it is in our interest not to allow the company to be wound up but to enable it to revive its operations and profitability. It is our view that it is only this course that our interest will be fully safeguarded."

5. SICOM''s affidavit states that if the company is ordered to be wound up, loss would be caused to the secured creditors and to the unsecured creditors and if the company is allowed to restart under the new arrangement there is a possibility of the company making profits and in due course reducing or meeting its liabilities.

6. In neither of these affidavits is there a word stated that the United Western Bank or SICOM are willing to advance a single paise towards the revitalisation of the company.

7. In the circumstances, it is quite clear that the company''s hopes of reviving its factory based upon financial aid from United Western Bank and SICOM, as reflected in the affidavit of the said Murlidharan, are mere castles in the air.

8. Mr. Chagla says that I must take into account the views of the creditors who are supporting his application for adjournment. With the exception of one unsecured creditor in the sum of Rs. 3,000, the only creditors before me who are supporting Mr. Chagla''s application are, as may be expected, the Untied Western Bank and SICOM and they feel that if the company is wound up, it assets (which are wholly secured in respect of the debts to the United Western Bank and SICOM), will not be sufficient to meet those debts. The views that are material are not those of such creditors.

9. The company has been dormant since March, 1976. It is admittedly in no position to pay it debts. There is no reasonable expectation of its revival or profit-making. In the circumstances, no useful purpose can be served by staving off the evil day. I, therefore, wind up the company and pass an order in terms of prayer (a) of the petition. The costs of the petitioner will come out of the assets of the company.

10. On Mr. Chagla''s application, the aforesaid order is stayed until 5 p.m. on 27th April, 1978.

