(1952) 10 P&H CK 0003

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous Petition No. 174 of 1951

In Re: Patiala Banaspati and Allied Products Co. Ltd.

Date of Decision : 13-10-1952

Acts Referred:
Part B States (Laws) Act, 1951 — Section 6

Citation : (1952) 10 P&H CK 0003

Hon'ble Judges : Passey, J

Bench : Single Bench

Advocate : Atma Ram, for the Appellant; P.L. Handa, for Bank of Patiala and Ram Niwas, Official Liquidator, for the Respondent

Judgement

Passey, J.—This petition for winding up the Patiala Banaspati & Allied Products Company Ltd., Doraha by Court, was submitted in the name of the said Company by its Managing Director S. Sewa Singh Gill, and I had appointed two official liquidators provisionally. It further appeared to me necessary to ascertain the wishes of the creditors and contributories of the Company in relation to the winding up application and on 19-3-1952 I appointed a Commissioner in the light of the provisions of Section 174 of the Companies Act. The Commissioner held a meeting of the creditors and contributors and reported that their view was in favour of the winding up. The petition came up for hearing before me to-day and I found that the person presenting it had no authority to do so. The petition, in my opinion, must fail not only for that reason but also because it has been made under a repealed law, viz., the Patiala Companies'' Act, 1996 Bk. Section 6 of the Part B States (Laws) Act (No. III) 1951, whereby the Companies Act 1913 came into force in this State on the Ist of April 1951, says that ''if immediately be-fore the appointed day, there is in force in any Part B States any law corresponding to any of the Acts or Ordinances now extended to that State, that law shall, save as other wise expressly provided in the Act, stand re-pealed''. By virtue of that section the Patiala Companies Act, 1996 which was in force in the Pepsu State before the coming into force of Act 3 of 1951 stood repealed on 1-4-1951. The petition for winding up was presented on 24-12-1951 much after Act No. 3 of 1951 came into force and the Patiala Companies, Act was repealed.

On the want of authorised presentation of the petition I would make my view explicit The petition has been presented in the name of the company by the Managing Director without the authority of the. general meeting. It is contended by Shri Atma Ram that it should be taken to be a petition by the company. According to Section 166 of the Companies Act, a petition for compulsory winding up can be presented by the company, by any present, contingent or prospective creditor by any contributory or contributories or by all or any of these parties together or separately or by the registrar. The section attaches some conditions subject to which the contributories, the Registrar and the contingent and prospective creditors can apply. The right to petition is thus conferred by statute upon the above mentioned persons. Sections 166 and 162 Clause (1) should be read together and if they are so read, there can be little doubt that it is the company that can apply for compulsory winding up and in that case the company can be wound up only when its members assembled in a general meeting decide to present a petition for winding up by the Court. If the petition is to be by the company it must have behind it the decision of the general meeting. Section 162 Clause (1) says that a company may be wound up by the Court if the company has by a special resolution resolved that it be wound up by the court. The Managing Director or for the matter of that any number of Directors cannot constitute the company for the purposes of making an application for winding up. It may be that the Directors in case they find the Company to be insolvent or unable to pay its debts, or in case there is any other urgent or important matter affecting the company which requires an investigation by the court, would be justified in applying to the court for compulsory winding up, but if they make such an application they would be doing so in their individual capacity and not in the name of the company. The present petition was, as stated above, submitted in the name of the company and was subscribed for it by the Managing Director. The Managing Director or the Board of Directors through whom S. Sewa Singh Gill claims to have derived his authority to present the petition for winding up do not form the company, as the company has other members also nor had they any power under the law or the Articles of Association to present the petition in the name of the company without the authority of the resolution passed at a general meeting. The company means the company as composed, of all its members and for a matter as grave as compulsory winding up, their views must be consulted and expressed by a resolution adopted at a general meeting. It is true that the Managing Director does, under the Articles of Association possess the power to institute or defend suits or other litigation on behalf; of the company. But that power, in my opinion, does not include the power to make an application for winding up in the name of the company; as it is the company itself which will decide whether to apply for compulsory winding up or not. Of course if it decides to do so, it might authorise the Managing Director or any other member or person to make the necessary petition.

2. It is contended that the order u/s 174 of the Companies Act and its

compliance make up for the fatal lacuna. The meeting held by the Commissioner was that of the contributories and creditors combined and could not by any stretch of imagination or words be a substitute for a general meeting of the members. Since in this case the petition does not have behind it any resolution of the company the petition for winding up presented by the Managing Director is unsustainable. In spite of the fact that objections to the maintainability of the petition had been taken by Raja Surrinder Singh Director and shareholder on 19-3-1952 the Managing Director did not move to have his act ratified by the company.

3. For both the above stated reasons I dismiss the petition with costs of the respondents which are fixed at Rs. 100/-. All interim orders made by me including that relating to the appointment of official liquidators shall be deemed to have been vacated.

