

(2006) 12 CAL CK 0040

In the Calcutta High Court

Case No : C.P. No. 525 of 2005 and C.A. No. 423 of 2006

In Re: Rehabilitation Industries Corporation Ltd.

Date of Decision : 22-12-2006

Acts Referred:

Companies Act, 1956 — Section 433
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 250

Citation : (2007) 2 CALLT 542

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : A. Chakraborty and P.K. Bagoria, A. Chatterjee, A. Basu and S.S. Roy, P.C. Sen, S.N. Mukherjee, D. Basak, H. Chakraborty and A. Malhotra, U. Bose and S. Dutta, for the Appellant;

Judgement

Sanjib Banerjee, J.—The company has sought an order directing it to be wound up on the strength of a special resolution passed at a general meeting of the company on 24-6-2005. By such resolution the company had resolved that steps be taken for it to be wound up.

2. The Rehabilitation Industries Corporation Ltd. ("the company"), was incorporated in 1959, and promoted by the Central Government, inter alia, to establish industries and enterprises to provide employment to displaced persons from erstwhile East Pakistan and West Pakistan and repatriates for the then Burma and the then Ceylon.

3. In the course of time funds have been poured into the company by the Central Government in furtherance of the cause for which the company was set up. There was little or no return but that was a social cost that the Central Government incurred through the instrumentality of the company. In course of time the company has outlived its purpose and does not carry on any business. The paltry amounts of income, in recent times have been on account of lease rents. The once substantial staff strength has been brought down by the company offering a Voluntary Separation Scheme (VSS) completely supported by the Central Government.

4. Though u/s 433 of the Companies Act, 1956 ("the Act") it was enough for the company to seek winding up on the strength of a special resolution passed by it, additional grounds of the company being insolvent and having suspended its business for more than a year, were also cited to justify the order sought. The petition has been advertised pursuant to an order of the court.

5. The petition has been opposed by several persons having varying interests in the company. A set of workmen was against the company passing over to the stage of imminent death. A landlord sought to intervene seeking protection of the premises transferred in favour of the company and also claiming as creditor. The landlord moved a separate application being C.A. No. 423 of 2006. Tenants under the company (or sub-tenants) claimed that they would suffer if the management passed over to the official liquidator. The State was represented and though it was not opposed to the order sought, it required that the land made available by the State to the company should revert to the State upon an order of winding up being passed. A lessee under the company complained that its right to the land in its occupation would be in jeopardy if the company was wound up. A claimant in an arbitration reference involving the company sought protection of its claim. Another employee and a creditor wanted their claims to be secured.

6. The company has relied on a notice issued on its behalf on September 1 and 4, 2000. By such notice a revised VSS for the employees of the company was introduced. The opening lines of such notice reads as follows:

It is notified to all concerned that Government of India proposes to close down Rehabilitation Industries Corporation Ltd. On closure compensation to the employees will be paid as per provision of the Industrial Disputes Act, 1947. However, as a safety net it has been decided to introduce Revised Voluntary Separation Scheme (VSS) on following terms and conditions.

7. Though such scheme was initially for a period of two months beginning 1-9-2000, the same had been kept alive till 30-9-2000. Since the VSS was to be supported with loan (read, grant) to be made available by the Central Government, the company sought extension of the tenure of the VSS. The Central Government acceded to such request and by a writing of 12-12-2000, provided that the scheme could be kept open till the date fixed for closure of the company. It appears from such writing that an expert group had been set up by the Department of Heavy Industries of the Central Government to examine the possibility of revival of the company. It is recorded that even the representative of the union did not contest the management's perception that the continuing operations of the company were not viable. The closing paragraph of that letter recorded as follows:

Having regard to the reasonableness/genuineness of the request for closure of the industrial establishment...and also keeping in view the interest of the workmen and all other relevant factors, permission of Government is hereby

granted for closure of the Rehabilitation Industries Corporation Ltd., with effect from 16-1-2001, subject to the condition that the VRS offer of the management should be kept open to all the workers till such time the management is able to settle the VRS package as well as wages of workman.

8. The decision to close down the company was challenged as to the authority of the Central Government to declare closure. Such challenge failed in W.P. No. 128 of 2001. It appears from the final order in that writ petition that a question relating to the closure had been referred to the Industrial Disputes Tribunal and in view of the pendency of the dispute, the court did not enter into the question of validity of the approval granted u/s 250 of the Industrial Disputes Act, 1947. The question as to whether the Central Government had authority to issue the notice was answered in favour of the Central Government.

9. The Central Government made provision for the VSS to be honoured and in March, 2000, sanctioned a further loan of Rs. 260 lakhs to the company for payment of retrenchment benefits and other dues to the 132 employees of the company in accordance with the provisions of the 1947 Act. Such employees had not applied under the Scheme.

10. In September, 2001, 100 of the 132 employees applied to opt for the VSS. The company requested the Central Government in November, 2001, to consider whether the Scheme could be offered to the employees who had not opted there under earlier. A fresh writ petition was instituted by an employees' union and some of its members". Liberty was given to the petitioners to opt under the Scheme if the same was received by the Central Government. The company was required to work out the total cost involved if the Scheme was extended to the remaining employees. In terms of the order, a calculation was made on 26-12-2001, and forwarded to the Central Government indicating that VSS compensation for 134 employees would be Rs. 465 lakhs against which Rs. 260 lakhs had already been provided for by the Central Government as retrenchment benefits leaving a shortfall of Rs. 205 lakhs. A further order was made in the employees' union's writ petition on 18-4-2002, directing closure compensation to be paid to the employees upon retaining a token amount. Such payment was to be made and received without prejudice.

11. The Central Government declined to extend the VSS to the 130 or so employees who had not applied earlier by a writing of 4-1-2002. The question as to whether such employees should be afforded the VSS is pending consideration of this court in W.P. No. 2648 of 2001.

12. The latest audited annual accounts of the company have been placed. The directors" have reported that the operations in all undertakings of the company continued to remain dosed. The accumulated losses of the company are more than 50 per cent of its net worth. Cash losses continue to be incurred by the company each year. The unsecured loan of the company as at 31-3-2006, is a staggering Rs. 689 crores.

13. In view of the net worth of the company having been eroded, the company had made a reference to the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 in 1992. The reference was rejected on the ground that the company did not qualify to make a reference in terms of the said Act of 1985.

14. Most of these facts remain uncontroverted. At least it is not in dispute that the company has no funds. It has not been disputed that the company continues its operations. Each of the objectors has made more of an emotional plea to resist the company's passing over to the final stage than make any commercial reason for it not to be wound up. The company, after all, was set up to tackle a large issue that invoked passion and emotion.

15. None of the objectors, in my view, would be prejudiced if the official liquidator were to replace the management of the company which, in any event, has little work as the operations of the company have been closed down. Let us presume that the order of winding up is declined. The D employees would neither have any work nor would the employees be able to effectively enforce any legitimate claim against the company. The rights and liabilities of the company remain with the company despite an order of winding up but the rights are enforced by and liabilities enforced against the official liquidator who becomes the face of the company in place of the management upon the winding up order being made. If the State is entitled to get back its land, so it will ultimately from the official liquidator. If the tenants under the company (or sub-tenants) enjoy rights, such rights are not extinguished upon the company being wound up.

16. The order of winding up does not lead to the obliteration of the company. This is what happens upon dissolution and the company's name being finally struck off. The rights and liabilities of the company and against it remain, but the machinery to enforce it or be proceeded against alters upon the order of winding up being made.

17. There is no conflict with a company being wound up despite complaints and questions under the Act of 1947, remaining unresolved. The decision in *Bombay Metropolitan Transport Corporation Ltd. Vs. Employees of Bombay Metropolitan Transport Corporation Ltd. (Cidco) and others*, , is authority for such purpose. In the Act of 1947, the workers' interest are protected and notwithstanding the workers being entitled to be heard before an order of winding up is made, the commercial insolvency of a company and the consequential necessity of it being wound up cannot be resisted on the basis of the provisions of the 1947 Act.

18. The workers in this case have the added protection that the promoter of the company was the Central Government and that in the pending proceedings under Article 226 of the Constitution of India, their right to opt under the VSS may be considered.

19. Sufficient grounds have been made out, apart from Section 433(a) of the said Act that the company be wound up. The latest audited balance sheet of the

company is proof enough of the company's insolvency.

20. The Rehabilitation Industries Corporation Ltd., is directed to be wound up in accordance with the provisions of the Companies Act, 1956. The official liquidator shall forthwith take possession of all assets and properties of the company and take immediate control of all transactions involving the company.

21. C.A. No. 423 is without basis and no order need be passed thereon. The applicant will be entitled to pursue its right, if any, before the official liquidator in accordance with law.

22. There will, however, be no order as to costs.