

(2006) 05 RAJ CK 0023
In the Rajasthan High Court

In Re: Shri Sidh Plantation and Farms Ltd.

Date of Decision : 12-05-2006

Acts Referred:

COMPANIES ACT, 1956 — Section 433, 434, 439, 454, 484

Citation : (2007) 78 SCL 410

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Judgement

Shiv Kumar Sharma, J.—This company petition is filed for winding up u/s 433(e) and (f), read with Section 439(a) of the Companies Act, 1956.

2. The petitioner company Shri Sidh Plantation & Farms Ltd. (in short "the petition company") was incorporated on 24-8-1994 under the Companies Act, 1956 as a Public (P.) Company by Shares/Limited by guarantee as a limited Company. The authorised Equity share capital of the company is Rs. 10,00,000 (Rupees Ten Lakhs) divided into 1,00,000 (one lakh) equity shares of Rs. 10 each. The company have power to increase, reduce subdivide or to re-pay the same or to divide the same into several classes and to attach there to any rights to consolidate or sub-divided the shares and to vary such rights as may be determined in accordance with the regulations of the company. The main objects to be pursued by the company on its incorporation are-

(i) To develop manage and carry on the business of agriculture, horticulture, floriculture, sericulture, plantation, forestry, gardening growing, farming cultivating, harvesting, grazing field, sheep farming, fish faming, animal husbandry, diaries and preserving, converting, chemically treating, altering, grinding, processing nursery, pastures, crops, trees, leaves, orchards, estates, fields, plantations, farmhouses, wastelands, barren lands, and lands live stock and planning, managing, running, improving, developing, maintaining, protecting, controlling, supervising, re-chaining, let ting or getting on lease, hire, contract or otherwise dealing in deserts, water resources, ponds, lakes, rivers, dams, canals, wells, natural resources and manufacturing the product and by products thereof for making them marketable and seller, buyer, importer,

exporter of the product and by product as raw, finished or and semi-finished and to carry on the research and development work on and provide services as an advisors and consultant to private, semi-Government, Government bodies for protection on environ pollution control and corest, ment, animal husbandry, forest and agriculture.

(ii) To carry on the business of farming, horticulture, floriculture, sericulture, dairies, cultivation of all kinds of foods grains, seeds, oil-seeds, fruits, proprietors of orchards and traders, importers, exporters, sellers, buyers and dealers in products of farming, horticulture, floriculture sericulture and fishing and to carry on the business of growers, manufactures, traders, grinders, rollers, processors, stores, cold canners and preservers and dealers of poultry products, fodder, fruits, dehydrated, canned or converted agricultural products, provisions, foods, vegetables, herbs, flowers and to extract by products and derivative whether edible, pharmaceutical, medicinals or of any kind or nature whatsoever and foods preparations of every kind and description and to carry on the business of tissue culture laboratories, production of plant, manufacturing of agro products and extraction of oils, horticulture activities and providing consultancy for the above referred objects whether in India or elsewhere.

3. It is alleged in the petition that the object for which the petitioner's company was incorporated has substantially failed or it is now impossible to carry on the business of the company at a loss that is there is no reasonable hope of the business of the company at a profit, the agriculture land which was purchased on receipt of the deposits/investment from the public could not be put to any use and there is no possibility in sight of any smooth and efficient functioning of the company on commercial line because the company was put under financial losses due to large establishment and no accounts were prepared and maintained. The liabilities of the company have far exceeded its assets on account of which it could not file any return to the Registrar. When the petitioner's company was passing through the critical time, the short-term deposits in the meanwhile, under the Vijay and Akshay Yojna, became due and the depositors presented their cheques for payment in the Banks. Some of the depositors presented their cheque for payment before maturity period because they become suspicious about the credibility of the petitioner's company. Under such circumstances the business could not be commenced. Consequently the company stopped to accept the deposits since July 1997 and the business remained closed thereafter. Thus all other means of healing an ailing company were of absolutely no avail and the company became financially insolvent. The petitioner's company while lacing maximum pressure for payment by the investors depositors and looking to the insufficiency of funds, has finally decided to sell the lands after being converted into farm houses so that payment could be made to them. Accordingly the payment of Rs. 38,00,000 (Rupees Thirty eight lakhs) was made with interest / profit to 729 depositors against their investment of Rs. 27,92,000, (Rs. 27,75,000 + 17,000) (Rupees twenty seven lakhs and ninety two thousands

only). The petitioner company under the circumstances unable to carry out its business for want of funds. The company has neither paid the money due to the depositors or likely to be due in near future nor they are secured or compounded their reasonable dues in any manner. The petitioner's company is unable to pay its debts to the investors credits within the meaning of Section 433(c) of the Indian Companies Act and is under heavy financial liabilities and have no funds to pay. The petitioner company in the circumstances pray that it is just and equitable that the petitioner's company should be wound up as it has lost more money including the money collected/borrowed personally by the chairman from his; own family members and friends.

4. On 24-5-2002 this Court directed the petitioner to publish in two News papers namely Siasman (Delhi Edition), Rashiradoor (Jaipur Edition). In pursuance of the order issued by this Court, notice was published in Statesman (Delhi Edition) on 8-10-2002 and in Rashtrdoot on 10-10-2002. The matter was listed thereafter before this Court but no objections in regard to winding up of the company has been filed in spite of notice being published.

5. The Official Liquidator submitted reply to the petition and taken a preliminary objection that the petition u/s 439, read with sections 433 and 434 of the Companies Act are not applicable as the present petition has not been filed by any Creditor or by any Contributory of the Company. The voluntary winding up by a Company is governed by the provisions contained in Section 484 of the Companies Act. Since the petitioner company has not complied with the provisions contained in clauses (a) and (b) of Section 484 of the Companies Act, the petition filed by the petitioner Company is liable to be rejected. In reply to the company petition the Official Liquidator pointed out that as per the record of the Registrar of Companies it revealed that last balance sheet available in his office is for the year 31-3-1995 and no balance sheet for the subsequent period are available. The Annual General meeting of the company was held last held on 7-2-1996 and only the Annual Return up to 7-2-1996 is available on record. The petitioner company be directed to furnish the Statement of Affairs along with the required affidavit in terms of provisions contained in Section 454 of the Companies Act. The petitioner company in the petition averred that it has made payment of Rs. 38 lakhs to 729 depositors against their investment of Rs. 27,92,000 and details of such investors/depositors who have received their full and final payment were to be filed before this Court when so directed. The Official Liquidator prayed for a direction to the Company to submit the list of depositors and investors along with their names and complete addresses and the details of the cheques issued by the Company with the depositors and further more to submit the details of the expected liabilities of Rs. 50 lakhs as stated in the company petition. The Official Liquidator also requested for filing latest position of the land in possession of the Company under its ownership along with the copies of the sale deeds/documents of ownership and maps and the details of the trees planted if any with the names and address of the care taker to enable the answering respondent to take possession of the same as and when directed.

6. The Registrar of Companies also filed reply to the company petition. The averments regarding the incorporation of the Company on 24-8-1994 was admitted. The company did not file its Annual Return and Balance Sheet after the annual return made upto 7-2-1996 and balance sheet for the year ended on 31-3-1995. The company and its directors were prosecuted for non-filing of the annual returns and balance sheets for the years 1996, 1997 and 1998 which resulted in conviction and imposition of fine. Notices have also been issued for non-filing of Annual Return and Balance Sheet for the subsequent years. A prayer was made for completing its books and accounts before any direction is issued for winding up.

7. The petitioner Company filed rejoinder to both the replies.

8. Section 433 of the Companies Act provides that a company may be wound up by the court if the company is unable to pay its debts. As per Section 434(1) a company shall be deemed to be unable to pay its debts-

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding (one lakh rupees) then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to reasonable satisfaction of the creditor.

(b) if execution or other process issued on a decree or order of any Court or Tribunal in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Tribunal that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Tribunal shall take into account the contingent and prospective liabilities of the company.

(2) The demand referred to in clause (a) of Sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm.

9. From the averments made in the petition I am of the opinion that since the company is unable to pay its debts and no objection has been filed to the winding up of the company, it will be just and equitable that the company should be wound up and accordingly, the petitioner company is ordered to be wound up. The Official Liquidator shall take charge of all the properties and effects of the company forthwith. He shall cause a sealed copy of this order to be served on the company by pre-paid registered post. The petitioner shall advertise within fourteen days from this day a notice in the prescribed form of the making of this order in one issue (each) of Rajasthan Patrika (Jaipur Edition) and the Hindustan Times (Delhi Edition). The petitioner shall serve a certified copy of this order on

the Registrar of Companies not later than one month from this date.