(2004) 04 AHC CK 0053

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 14816 of 2002 (A-36)

In Re: Srishti Video Corpn. Ltd.

Date of Decision : 30-04-2004

Acts Referred:
Companies Act, 1956 — Section 433, 434, 466

Citation : (2005) 63 SCL 171

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Advocate : P.K. Singhal, J.C. Bhardwaj, J.S. Tomar and Vikram Nath, for the Appellant; S.D. Singh, R.P. Agarwal, Anurag Khanna, Muralidhar and S.K. Saxena, for the Respondent

Final Decision : Allowed

Judgement

Tarun Agarwala, J.—A number of petitions were filed for winding up of the company known as M/s. Srishti Video Corpn. Ltd. under Sections 433 and 434 of the Companies Act, 1956. This Court on 16-8-1999 passed an order for winding up of the company, pursuant to which the Official Liquidator took charge of the assets of the company. Subsequently, an application A-36 was filed by the company through its promoters and also by the new investors praying therein that the winding up order dated 16-8-1999 be recalled. In the application it, was alleged that the company had made certain arrangements with the unsecured creditors as well as with the secured creditors to pay all their debts in a phased manner. On the said application, notices were issued to the secured creditors inviting their objections. The secured creditors appeared before the Court and did not oppose the revival of the company and submitted that the proposal for the settlement and reschedulement of the dues of the company was under consideration. This Court passed an order dated 10-8-2000 u/s 466 of the Companies Act directing that the winding up order dated 16-8-1999 would remain in abeyance subject to certain conditions, namely--

"1. The winding up order dated 16-8-1999 shall remain in abeyance till further orders.

2. Any of the creditors would be at liberty to approach this Court for withdrawing the abeyance order in case such an exigency arises because of the company not honouring the settlements and defaulting in making payment as agreed upon.

3. The possession of the assets and properties of the company shall be delivered back by the Official Liquidator.

4. Any realisation made by the Official Liquidator shall be held by him till further orders of this Court. He shall make a fixed deposit initially for a period of three months in Punjab National Bank, Civil Lines, Allahabad within a week from today. Thereafter he shall seek instructions of this Court for further course to be adopted by him. He shall present a report before this Court within two weeks after having complied with this direction."

2. Pursuant to the aforesaid order, the Official Liquidator delivered back the possession of the assets and properties to the promoters of the company.

3. Application A-36 has now been filed by a secured creditor, namely, Syndicate Bank, stating therein that the company had defaulted in its commitments and did not make the payments as was agreed with the bank and therefore, prayed that the order of this Court dated 10-8-2000 be recalled and the Official Liquidator be directed to take the possession of the assets and the properties of the Company and proceed further in accordance with the law as per the winding up order passed by this Court.

4. This Court vide order dated 24-2-2003 issued notices to the company, the promoters and the new investors to explain and prove whether they have or have not honoured the commitments made by them and further show cause why the order dated 10-8-2000 is not recalled.

5. In response to the issuance of the aforesaid notices, the respondent-company and its promoters, etc., appeared and filed a reply dated 11-3-2003 stating therein that the new investors had brought in Rs. 5.10 crores approximately out of which the company had paid a sum of Rs. 2.49 crores to the secured creditors and have also settled the liabilities to a large extent with the unsecured creditors. It was alleged that out of Rs. 2.49 crores, a sum of Rs. 1.26 crores was paid to the Syndicate Bank. It was further contended by the company that the new investors, namely, Piyanka Overseas Ltd., were facing a severe liquidity crunch on account of the disastrous earthquake, which occurred in Gujarat in 2001 and, therefore, the repayment schedule could not be adhered to by the company. The company further stated that a proposal has been submitted to the secured creditors as well as to the Syndicate Bank for restructuring the companies debt. The company stated that in the event the order dated 10-8-2000 is vacated, the promoters and the new investors would suffer irreparable loss and injury.

6. The company filed a supplementary affidavit dated 29-9-2003 in which, it was stated that the Syndicate Bank as well as another secured creditor IIBI were

insisting on charging an exorbitant rate of interest and this interest burden had made the debt burden unbearable, on account of which, the investors are unable to invest more money to revive the company. The company further stated that out of the outstanding balance of Rs. 15.82 crores as on 31-1-2003, the company had made the payment of Rs. 2.49 crores and Rs. 13.33 crores still remained outstanding.

7. The Syndicate Bank in their rejoinder affidavit dated 4-8-2003 stated that even though a sum of Rs. 1.26 crores had been paid by the company to the Syndicate Bank, but after 1-5-2001 not a single paisa has been paid. Not only this, further dues have accrued upon the Syndicate Bank to the extent of Rs. 4 crores due to the payment of the invocation of foreign bank guarantees and therefore the present outstanding amount has increased to Rs. 13.26 crores. The Syndicate Bank stated that the company is not honouring the settlement and for the last two years they have done nothing to make the payments.

8. This Court by an order dated 28-1-2004 granted two weeks time to the learned Counsel appearing for the company to seek instructions in the matter and show its bona fides by making some substantial payment during the period when the case was being adjourned. The matter was listed again on 11-2-2004, and was again adjourned on the request of the company and 31-3-2004 was fixed for consideration of the application filed by the Syndicate Bank.

9. I have heard Sri P.K. Singhal, the learned Counsel for the Syndicate Bank, Sri R.P. Agarwal, the learned Counsel appearing for the Company, the promoters and the new investors and Sri S.K. Saxena, the Official Liquidator attached to this Court.

10. In spite of the order of this Court dated 28-1 -2004, no payment has been made or offered by the company.

11. It is therefore clear that the respondent-company is unable to honour its commitments. From the affidavits filed, it is clear that the last payment was made prior to 1-5-2001 and thereafter no payment has been made. The excuse made is that one of the investors could not invest further amount on account of the earthquake which occurred in Gujarat. The second excuse made is that the secured creditors are insisting on charging exorbitant rate of interest, which have discouraged the new investors from further investing in the company. Be that it may be, this Court is not inclined nor interested as to why the new investors could not invest further in the company. The Court is also not inclined to consider the charging of exorbitant rates of interest by the secured creditors. The Court is only to see whether the conditions imposed in the order dated 10-8-2000 was being complied or not by the company. The affidavits filed by the company clearly shows that the company is not interested in repaying the debts of the secured creditors and are only interested in lingering the matter for vested reasons. In spite of time being granted by this Court directing the respondents-company to make substantial payment in order to show their bona fides, the

company has failed to make any fresh payment. Thus the bona fides of the respondent-company is doubtful. From the affidavits filed by the respondent-company, it is further clear that the new investors are not bringing any further investments in the company. It is, therefore, clear that the discretion exercised by this Court u/s 466 of the Companies Act has been misused by the Company and no further latitude can be given to the respondent-company. Granting further time to the company to bring a fresh proposal for revival of the company and to repay the debts will not be in the interest of the creditors. Therefore, I see no purpose in keeping the winding up order in abeyance.

12. Consequently, the application A-36 is allowed. The order dated 10-8-2000 passed by this Court is vacated. The result would be that the winding up order dated 16-8-1999 is revived. I, therefore, direct the Official Liquidator to take charge of the assets of the company forthwith. The registry is directed to supply a copy of this order free of charge to the Official Liquidator within three days.