
(2007) 09 AHC CK 0087
In the Allahabad High Court

In Re: Universal Insulators and Ceramics Ltd.

Date of Decision : 19-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 21
COMPANIES ACT, 1956 — Section 10
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 18, 20

Citation : (2007) 09 AHC CK 0087

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Judgement

Sunil Ambwani, J.—Heard Shri Alok Mathur, learned Counsel for respondent-company Shri P.K. Singhal appears for Syndicate Bank.

2. M/s Universal Insulators & Ceramics Ltd-respondent company made a reference to Board for Industrial and Financial Reconstruction (BIFR) u/s 15 of the Sick Industrial Companies (Special Provisions) Act 1985 (in short the Act). It was registered as Case. No. 243/87 in Re: M/s Universal Insulators & Ceramics Ltd. The IIBI was appointed as Operating Agency (OA) and was required to submit a report for rehabilitation;

3. The proceedings were pending in BIFR for almost 12 years. The scheme for rehabilitation, sanctioned by the BIFR u/s 18(4) of the Act on 25.10.1990, and modified on 15.3.1993, could not be implemented. The proceedings of change of management did not receive any respondent. A show cause notice was given for winding up of the company on 6.1.1998 to which the objections were heard on 12.3.1998. The company again took time with regard to the status of the approval of bank guarantee to be issued by Andhra Bank. The OA informed the BJFR on 5.11.1998 and on 8.12.1998 that the company had failed to comply with the directions of the Bench and that even a personal loan of Rs. 1 lakh was not paid. The factory was not operating since long period of time and as such the BIFR confirmed its opinion that the company was not likely to make its net worth exceed its accumulated losses within a reasonable time, while meeting all its financial obligations, the company was not likely to become viable in future and thus it was just and equitable and in public interest that it was wound up u/s

20(1) of the Act. The opinion was forwarded to this Court by letter of Registrar of BIFR dated 23.4.1999 and was received on 3.5.1999.

4. The company was represented through a counsel on 20.8.1999 but did not choose to file objections upto 14.10.1999. On 14.10.1999 a statement was made that the company shall pay the entire debts and desires to revive itself. Thereafter the company has only made promise to the Court and having obtained about 50 adjournments and two detailed orders, namely the order of Hon"ble M.C. Jain, J. dated 7.8,2000 and thereafter the order of Hon"ble S.U. Khan, J. dated 1 L9.2003, the company had made payment of only of Rs. 6.14 lacs to IIBI; Rs. 7.75 lacs to Syndicate Bank, Rs. 4.46 Lacs to PICUP and Rs. 33,000/- to UPSIDC as against the principal amount of Rs. 113 lacs of IIBI; Rs. 142.87 lacs of Syndicate Bank; Rs. 82.15 lakhs of PICUP and Rs. 6.16 lakhs of UPSIDC. Shri P.K. Singhal submits that the company is still required to pay the debt with interest of Rs. 53 crores to the Syndicate Bank. In between these orders the Company had taken the number of adjournments for payment of the amount fixed by the Court, On 15.10.2003 the Court had made it clear that in case there is any default, the matter will be taken up for hearing on the issue of winding up.

5. The Syndicate Bank has also filed a claim in Debt Recovery Tribunal. It appears that there was some settlement between the Bank and the Company. The Company has filed a writ petition against me terms of settlement and has obtained interim order from the Lucknow Bench of the Court.

6. When the respondent-company found that the winding up was inevitable. It has come up with a plea that as the registered office of the company is situated at A/2, Site No. 2, Industrial Area, Rae Bardi the High Court at Allahabad does not have jurisdiction to hear the matter. Shri Alok Mathur has relied upon judgment of this Court in Registrar of Companies. U.P. & Uttaranchal v. Kamal Infosys Ltd and Ors. Cornuanv Petition No. 57 of 2001 decided on 14.3.2005 in which the Court found that ouster of the jurisdiction of the Lucknow Bench in company matters upto 15.7.1949, was restored by a notification dated 5.8.1975. issued by Honble Chief Justice and thus upto the stage of winding up proceedings, the companies having their registered office within the areas of Audh will be heard by the Lucknow bench and thereafter for subsequently proceedings the matter will be dealt with at Allahabad. Shri Alok Mathurhas also relied upon cases of Sumac International Ltd and Dr. Maniu Verma which have been relied upon in Kamal Infosys Ltd (supra).

7. Shri P.K. Singhal has strongly opposed the prayer to transfer the record to Lucknow Bench to wind up the Company. He submits that after taking advantage of the orders passed by this Court and the pendency of the matter in this Court for seven long years, in which the respondent-company has avoided the winding up by making false assurance of payment of the amount, and succeeded in getting repeated adjournments the Court should not allow the plea of ouster of jurisdiction. He submits that it is not a case of inherent lack of jurisdiction but an

arrangement made by Hon''ble Chief Justice which may be acquiesced by the conduct of the parties. Section's 10 of the Companies Act, 1956 gives jurisdiction in such matters to the High Court which has jurisdiction in relation to the place at which the registered office of the concerned company is situated. For the purpose of arrangement in the High Court and its benches the Chief Justice has passed the orders time to time. Clause 14 of the Amalgamation Order authorises Hon''ble the Chief Justice to pass such orders. These powers have been interpreted by the Court in *Sri Nasiruddin Vs. State Transport Appellate Tribunal*, Hon''ble the Chief Justice has been issuing notifications with regard to the distribution of the works between Allahabad High Court and Lucknow Bench of the Court and these orders, though statutory in nature, cannot be interpreted to mean that the parties cannot, by their conduct, acquiesce to the jurisdiction either at Allahabad or Lucknow Bench of the Court.

8. Shri Singhal submits that for 8 long years the respondent-company has been using the jurisdiction of the Court for its advantage, and has taken up the plea of the lack of jurisdiction only when the winding up order is about to be passed by the Court.

9. Section 10(1) of the Companies Act 1956 confers jurisdiction of winding up proceedings on the High Court and not any of its benches. The High Court Amalgamation Order, 1948 authorises Hon''ble Chief Justice to distribute the work and not to determine the jurisdiction of the High Court. The Court ordinarily accepts the orders of Hon''ble Chief Justice distributing the work but where it finds that, one of the parties has not, only acquiesced to the jurisdiction but has taken undue advantage of the jurisdiction by seeking orders of repayment of the debts, which have not been complied with and has gained advantage of time to avoid the winding up, the court would not allow such plea to be taken after such a long time. The distribution of work by Hon''ble Chief Justice, may be acquiesced by the parties who have taken advantage of the pendency of the proceedings. The situs of the registered office as such, do not take away jurisdiction of the Court to wind up the respondent-company.

10. In *The Bahrein Petroleum Co. Ltd. Vs. P.J. Pappu and Another*, the Supreme Court observed that the defendant may waive the objection to the territorial jurisdiction of the Court.

11. In *R.S.D.V. Finance Co. Pvt. Ltd. Vs. Shree Vallabh Glass Works Ltd.*, the Supreme Court, referring to Section 21 of the Code of Civil Procedure, held that the objection as to the place of suing shall be allowed by the appellate or revisional court subject to the conditions that such objection was taken in the Court of first instance at the earliest, possible opportunity; in all cases where issues are settled then at (sic) before such settlement of issues; and that there has been a consequent failure of justice. It was held that where there was no failure of justice to the defendant decreeing the suit by the Single Judge of the Bombay High Court it would be totally unjust and failure of justice to the plaintiff in case such objection relating to jurisdiction is to be maintained as allowed by

Division Bench of High Court in its appellate jurisdiction.

12. Section 20(1) of the Sick Industrial Companies (Special Provisions) Act 1985 provides for recommendation of amalgamation. Such recommendation has to be examined by the court and in case there is any possibility of proposal for revival, the Court may consider the same before the Company is wound up. In the present case the production is closed for last nine years and that the company is heavily indebted. It is unable to pay its debts. All the attempts of rehabilitation in BIFR and in this Court have failed. The Court is also of prima facie opinion that the Company has played fraud with the court by seeking accommodation for seven long years to pay the amount.

13. In *Harshad Chiman Lal Modi Vs. DLF Universal and Another*, the Supreme Court held:

30. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.

31. In *Halsbury's Laws of England* (4th Edn), Reissue, Vol. UK para 317, it is stated:

317. Consent and waiver.- Where, by reason of any limitation imposed by a statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the root of the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the Court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge, the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extent the jurisdiction by consent.

14. In the facts and circumstances the objection to territorial jurisdiction is

rejected. The court finds that the respondent company-M/s Universal Insulators & Ceramics Ltd A/2, Site No. 2 Industrial Area, Rae Bareilly unable to pay its debts and that it is also just and equitable to wind up the company. The respondent-company is as such directed to be wound up and the Official Liquidator is appointed as Liquidator of the Company He shall obtain copies of the last report from the Registrar of the Company and send notice to the Ex-Director to hand over the assets and to file "Statement of Affairs" in accordance with the Companies Act 1956. He will submit report to the court in next six weeks. The respondent-company shall not transfer alienate or encumber any of the asset in the meantime. In case the Official Liquidator does not receive any response from the Ex-Director he will send his authorised representative, who will be given due assistance by the District Magistrate in taking over possession of the assets of the Company.