(2001) 11 AHC CK 0113

In the Allahabad High Court

Case No : Misc. Co. Application No. 1 of 1997 and Miscellaneous Application No. 75227 of 2000

Indian Maize and Chemicals Ltd. (In Liquidation) APPELLANT

Vs

Official Liquidator RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:
Companies Act, 1956 — Section 529A, 529A(2), 546

Citation : (2002) 108 CompCas 401 : (2002) CriLJ 32

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : R.P. Agarwal, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard Sri R.P. Agarwal for the applicant and Sri S.K. Saxena, the official liquidator.

2. This application has been filed for the relief to direct the official liquidator to settle the claims of the workmen of the company (in liquidation) on priority and in preference (and not rateably), to the dues of the secured creditor; and that in case the above directions for preferential payment to the workmen as aforesaid are not issued, the court may direct the official liquidator that in the computation of rateable distribution, the outstanding interest claim of the secured creditors on their loans/advances, should not be taken into consideration and the respective instalments of the workmen and secured creditors should be computed with respect to the principal amount of loans/advances as may be found due to the secured creditors.

3. The application A-56 has been disposed of and the prayers were rejected. It appears that due to the resolution of the Bar Association when the advocates are not appearing Sri R.P. Agarwal could not appear and made submission in support of their application, and in these circumstances, the court has heard him at some

length.

4. The company (in liquidation) was wound up on 12-8-1998, in pursuance of the opinion received from the BIFR. It is stated that the workmen were not paid their wages and emoluments and that the aggregate amount of wages due to the workmen from April, 1977, till the date of winding up comes to Rs. 1,39,56,914; and that the claim has been lodged with the official liquidator. It is further stated that on the date of winding up, stocks of raw materials, finished goods and work-in-progress was approximately to the value of Rs. 2,40,00,000. The entire assets of the company have been sold after its valuation and obtaining orders from the court for a consideration of Rs. 2,55,00,000 and the sale price has been received in full by the official liquidator. After receiving the sale price the official liquidator submitted a report to the court for taking into account the dues of the secured creditors and the workmen; and taking into account the amount realised, the rateable distribution was proposed to be made at three paise. The report was considered and the rateable distribution as calculated by the official liquidator was approved. Since thereafter the official liquidator has also paid about 133 workmen out of 229 claims and that the rest of the claims are being processed and paid.

5. In support of the prayers made in the application Sri R.P. Agarwal has relied upon the judgment in, (i) Workers of Rohtas Industries Ltd. v. Rohtas Industries Ltd. [1987] 55 FLR 340 , [1989] 74 FJR 155 (SC), (if) Textile Labour Association v. State of Gujarat [l993] 83 FJR 623 (Guj.) [1994] 2 LLJ 303 (iii) Mohan Kamalkar Sindgikar v. Joshi Metal Industries [1999] 95 FJR 888 (Kar.) ; [1999] 83 FLR 139(iv) Modi Industries Ltd. v. Addl. Labour Commissioner [1993] 67 FLR 402 and (v) E. Sefton and Co. (P.) Ltd. v. Ghanshyam [l998] 80 FLR 649.

6. Sections 529 and 530 of the Companies Act, 1956 (''the Act''), provided for application of insolvency rules in the winding up of insolvent companies, overriding preferential payments in the winding up of the companies and the preferential payments. By Amendment Act 35 of 1985 Section 529A was added so that legitimate dues of the workers rank pari passu with secured creditors and above even the dues of the Government in the event of winding up of the company. The effect of the proviso to Section 529(1) and of Section 529A, is that the secured creditors who could realise their security by remaining outside the winding up will have to act in association with the official liquidator, who will represent the workmen. The ''workmen''s portion'' as defined in the amended Section 529 will be deducted from what is realised, and applied rateably for the discharge of ''workmen''s dues''. That part of the secured debt which cannot be realised because it has been appropriated towards ''workmen''s dues'' is under this section to be treated as payable in preference to all other debts. This amendment gave the workmen the status of secured creditors, by operation of law.

7. Sri R.P. Agarwal has relied upon the provisions of Section 546 for giving direction to the official liquidator. Section 546 vests in the liquidator certain

powers subject to sanction of the court. The liquidator may--(a) with the sanction of the court, when the company is being wound up or subject to the supervision of the court and (b) with the sanction of a special resolution of the company, in the case of a voluntary winding up,--pay any classes or creditors in full or make any compromise or arrangement with creditors of persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable. This section deals with some of the general power which a liquidator possessed for the purpose of winding up of the company affairs. A going company has powers to compromise, settle or collect the debts and pay out of claim and when the company goes into liquidation it was found equally necessary that subject to the necessary sanction, the liquidator should also have the same powers of compromising, both with creditors and debtors with the sanction of the court.

8. Sri Agarwal has tried to emphasise that this power can be used to settle the claims of the workmen who have been raised to the status of secured creditors to be paid in full. He has also relied upon articles 21 and 23 of the Constitution of India which includes, right to live and prohibition of begar.

According to him the court must ensure that the workmen are paid in full in preference to the creditors as in the case of workmen, the question is of survival and livelihood is involved, whereas the secured creditors act in commercial interest. I am unable to agree with the submission of Sri Agarwal. The winding up of the company has to be carried out in accordance with the provisions of the Companies Act, 1956. Prior to its amendment by Amending Act 35 of 1985, the workmen''s dues did not get priority over the secured creditors. The amendment brought about a significant change by treating the workmen''s share at par and to run with secured creditors over the assets of the company (in liquidation). Subsection (2) of Section 529A provides that the debts payable under Clause (a) and Clause (b) of Sub-section (1) shall be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportions. In the present case the assets are not sufficient and that the dividend of only three paise per rupee has been proposed to be shared by the workmen as well as secured creditors and that rest of their claim has to abate in equal proportions. The case-law relied upon by Sri Agarwal is concerned with labour laws which are entirely different than insolvency laws. In the case of Workers of Rohtas Industries Ltd. (supra) the court was concerned with wages and emoluments for the period up to closure and a direction was issued that the official liquidator may keep that amount separately and allow the State Bank to adjust the same against its insurance. The observations were reconsidered by the Supreme Court in the same case in Workers of Rohtas Industries Ltd. (supra) in which in paras 5 to 7, the Supreme Court observed saying that the order of the court was made under peculiar circumstances and may not be taken as a precedent. Whether the company''s assets are sufficient to meet all the liabilities is a matter which was yet to be seen in that case, and what the Supreme Court really intended to say that there were other assets against which the financial institutions could pitch their claims. The judgment in Textile Labour Association (supra) took account of subsequent observation of the Supreme Court and decided the question of priority in time, and as to whether the payment was required to be made as a preferential payment in view of the urgency, The subsequent judgment namely Mohan Kamalkar Sindgikar''s case (supra) deals with the provisions of Section 33C(1) and (2) of the Industrial Disputes Act, 1947, and the case of Modi Industries Ltd. (supra), E. Sefton and Co. (P.) Ltd.''s case (supra) deal with the provisions of the U.P. Industrial Peace (Timely Payment of Wages) Act, 1978, and Sections 6H(1) and 16 of the U.P. Industrial Disputes Act, 1947.

9. In my opinion, the aforesaid case-law cannot be brought in aid in deciding the preferential payment to be made in the case of winding up proceedings under the Companies Act.

10. In the circumstances, I do not find any reason to reconsider my earlier order disposing of and rejecting the application A-56.

