(2001) 11 AHC CK 0043

In the Allahabad High Court

Case No : Misc. Application No. 78227 of 2000 in Miscellaneous C.A. No. 1 of 1997

Indian Maize and Chemicals Ltd. (In Liquidation) APPELLANT

Vs

Official Liquidator, U.P., Allahabad RESPONDENT

Date of Decision : 09-11-2001

Acts Referred:
Companies Act, 1956 — Section 529, 529A, 529A(1), 529A(2), 546

Citation : (2002) 2 CompLJ 32

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : R.P. Agarwal, for the Appellant; S.K. Saxena, Official Liquidator, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri R.P. Agarwal for the applicant and Sri S.K. Saxena, 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 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 were not appearing, Sir R.P. Agarwal could not appear and made submission in

support of their application and, in the circumstances, the court has heard him at some length.

4. The company (in liquidation) was wound up on 12.3.1998 in pursuance of the opinion received from 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 up after its valuation and after 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 secured creditors and the workmen, and after taking into account the amount realised, the rateable distribution was proposed to be made at 3 paise [per rupee ?]. 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 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) 2 Comp LJ 125 (SC) : (1987) 55 FLR 340 ; (ii) Textile Labour Association Vs. State of Gujarat and Others, ; (iii) Mohan Kamalkar Sindgikar and Ors. v. Joshi Metal Industries and Ors. (1999) 83 FLR 139 (iv) Modi Industries Ltd. v. Additional Labour Commissioner, Ghaziabad and Ors. (1993) 67 FLR 402 (v) R. Sefton and Company (P) Ltd. v. Ghanshyam and Ors (1998) 80 FLR 649.

6. Sections 529 and 530 of the Companies Act, 1956, provide for application of insolvency rules in winding up for insolvent companies, overriding preferential payments in the windings 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 pair 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 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 liquidation certain powers

[in the liquidator] subject to sanction of court. The liquidator may -- (a) with the sanction of the court, when the company in 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 of creditors in full or make any compromise or arrangement with creditors or 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 possesses 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 to beg. 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 of survival and livelihood is involved, whereas, the secured creditors act in commercial interest. I am unable to agree with the submission of Sir 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 the 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 workmen''s share at par and to run with secured creditors over the assets of the company (in liquidation). Sub-section (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 paisa per rupee has been proposed to be shared by the workmen as well as secured creditors, and the rest of their claim has to abate in equal proportions. The case law relied upon by Sir Agarwal is concerned with labour laws which are entirely different from Insolvency laws. In the case of Workers of Rohtas Industries Ltd. (1987) 2 Comp LJ 125 (SC) 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 Supreme Court in the same case in 1989, reported in (1989) 74 FJR 55 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 was that there were other assets against which the financial institutions could pitch their claims. The judgment in Textile Labour Association Vs. State of Gujarat and Others, 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, supra, deals with the provisions of Section 33C(1) and (2) of the Industrial Disputes Act, 1947, and the case of Modi Industries ltd. (1993) 67 FLR 402 and R. Soften and Company (P) Ltd. (1998) 80 FLR 649 deal with the provisions of U.P. Industrial Peace (Timely Payment of Wages) Act, 1978, and Section 6-H(1) and 16 of the U.P. Industrial Disputes Act, 1947.

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

10. In the circumstances, I do no find any reason to reconsider my earlier order disposing of and rejecting the application A-56.

