
(2005) 03 GUJ CK 0024
In the Gujarat High Court
Case No : Company Petition No. 40 of 1997

Khimjibhai Sanabhai Parmar

APPELLANT

Vs

Sevalia Cement Works

RESPONDENT

Date of Decision : 31-03-2005

Acts Referred:

Companies Act, 1956 — Section 433, 434, 439, 529A, 530

Citation : (2005) 03 GUJ CK 0024

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Kishor M. Paul, for the Appellant; G.M. Das, G.M. Joshi, for the Respondent

Judgement

K.A. Puj, J.—The petitioner, namely, Khimji Sanabhai Parmar has filed this petition u/s 433(e) read with Section 434 of the Companies Act, 1956 for winding up of the respondent Company, namely, M/s. Sevalia Cement Works, unit of M/s. Manor Investment Private Limited.

2. It is the case of the petitioner that the petitioner was a workman and was regularly working in the respondent Company for the last many years. About 260 workers were working with the respondent Company and about 123 employees were working in Balasinor quarry, which was run and managed by the respondent Company. It is also stated that in all 400 workmen were working with the respondent and the respondent was not paying regular wages to its employees inspite of several demand, notices and directions of the Court. The petitioner and all other workers were engaged and appointed by M/s. Associate Cement Company Limited and they were working with the said Company for many years. The respondent Company was run and managed by ACC Company Limited and was a profit making unit. However, the said ACC Company decided to sell the said unit to the respondent by an agreement dated 05.03.1988, along with all the liabilities of about 11,102 workers at the relevant time. After purchasing the unit of M/s. Sevalia Cement Works, the respondent Company was

not running the unit and the factory was totally closed from May 1989 and there was no production from that date. The respondent Company has sold away the assets of the Company and the regular wages of the workers were not paid. More than Rs. 10 Crores were due and payable by the respondent Company to its workers towards the wages, allowances etc. The respondent Company has made payment to its other Creditors without paying wages to its workers and employees and as per the Provisions of Section 529-A and 530 of the Companies Act, 1956, the dues of the workers are having priority over the dues of other Creditors of the Company. The petitioner has, therefore, filed the present petition for recovery of his dues from the respondent Company.

3. After issuance of notice, this Court has granted interim relief on 24.04.1997, in terms of para 14 (c) of the petition whereby the respondent Company was restrained from disposing of any of its assets, movable or immovable and was further restrained from transferring, alienating or in any way creating charge over the movable and immovable of the Company. Thereafter, consent terms were arrived at between the parties i.e. between the workmen and the respondent Company on 26.10.1997. It is interalia stated in the said consent terms that during the pendency of the above petition and all other petitions, the workmen and the Management have arrived at an amicable settlement. The said consent terms were in respect of about 400 workers. The workmen have agreed to accept all the legal dues upto 31.01.1997 as cut-off date for all the purposes i.e. for the purpose of their own legal claims in respect of wages, all benefits and all other allowances etc. The respondent Company has agreed to pay all the legal dues including wages and other allowances for 49 months towards full and final settlement of all claims in respect of the wages, benefits and other allowances for the said period. The respondent Company has further agreed to pay the amount of wages and allowances for four and half months out of the disputed period of nine months which was the subject matter of the dispute pending before the Industrial Tribunal in Reference (I.T.) No. 478 of 1992. The said payment was agreed to be accepted in full and final settlement of the disputes and the Reference was to be withdrawn accordingly. It was also agreed that the said legal dues of the workmen would be paid by the Management by disposing of the movable / immovable assets of the Company and other misc. assets to that extent only. The Company has also agreed to dispose of the movable assets at the first instance and thereafter if the dues are not satisfied then the Company would dispose of the immovable assets. The parties have also agreed to get the interim relief granted by this Court vide order dated 24.04.1997 passed in Company Petition No. 40 of 1997, modified to that extent so as to enable the respondent Company to meet with the above liability. The assets were to be disposed of within the period of six months and the sale was to be conducted by the Committee consisting of five representatives of the Union and three representatives of the respondent Company. The amount of the sale proceeds was to be deposited in this Court and all the workmen would be paid their dues as per the amount drawn in Annexure to the settlement. The respondent

Company has also agreed to pay the Provident Fund Contribution upto the cut off date i.e. 31.01.1997 before the authorities to enable the employees to get their P.F. and pension benefits under the Scheme. The respondent Company has also agreed that all the workmen would continue to occupy their respective Quarters till the entire amount was paid to the concerned employees. The respondent Company has also agreed that the Company would continue to supply all the necessary amenities i.e. light, water, etc. till the entire dues were paid up to the concerned employees.

4. Based on the aforesaid settlement, this Court has passed an order on 16.12.1997 in Company Petition Nos. 40 to 44, 54 to 70, 76 to 92, 102 to 137, 158 to 213, 263 to 271 of 1997. The consent terms were placed on record in Company Petition No. 40 of 1997. In view of the said consent terms, the interim relief granted earlier by this Court in terms of para 14 (c) of the petition on 24.04.1997 stood modified in terms of para 4 of the consent terms filed on 16.12.1997. The Managing Director of the respondent Company was directed to file an affidavit giving an undertaking that he would comply with the consent terms filed before this Court on 16.12.1997.

5. As per Annexure A to the consent terms, an amount of Rs. 6,50,06726.54 ps. was to be paid by the respondent Company to the workmen. The said annexure shows details of outstanding salaries / wages and other legal dues of all employees of M/s. Sevalia Cement Works as on 31.01.1997. The details are as under :-

Amount	Payable	No.	(In	Sr. Details Rs.)
-----				1. 133 Nos.
(Petitioners)	2,38,70,375.82	All dues.	2. 15 Nos.	Ex-Employees 17,09,199.83
All dues.	3. 19 Nos.	Contractor M/s. H.J. Gohel's	Employees	All dues.
28,29,731.89	4. 177 Nos.	Resigned Employees,	All dues.	3,15,34,075.25
5. 66 Nos.	Ex-Employees	All dues.	36,75,990.26	6. 6 Nos.
M/s. H.J. Gohel	Contractor's	Employees	All dues.	6,96,629.02
7. 4 Nos.	Suspended	Employees.	6,90,724.47	Total.
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6. Pursuant to the order dated 16.12.1997, Mr. Mayur M. Amin, the Director of the respondent Company has filed an undertaking before this Court on 28.12.1997. He has undertaken that he would comply with reference to the terms and conditions of the consent terms dated 16.12.1997 entered into between the workmen and the respondent Company. He has further undertaken to pay all the legal dues of the workmen as per the consent terms.

7. After arriving at the settlement and after reducing the consent terms in writing and after getting the order of interim relief modified by this Court, the

respondent Company has entered into an agreement with one M/s. Punit Corporation. It was a tri-partite agreement and over and above the said M/s. Punit Corporation and respondent Company, the Sale Committee appointed by this Court was also a party to the said agreement. As per the said agreement, the said M/s. Punit Corporation was to deposit a sum of Rs. 6,61,00,000/- before this Court on different dates as mentioned in the said agreement and in lieu thereof, the said M/s. Punit Corporation was allowed to lift the materials to the extent of the monies so deposited by it. It was also clarified in the said agreement that if the said M/s. Punit Corporation failed to deposit the amount as per the Schedule fixed, it would be liable to pay interest @ 8% p.a. on such belated payment. It was also stated in the said agreement that once the workmen received the payment as per the settlement, they would not have any dispute or objection against other assets of the respondent Company. Along with this agreement, an undertaking was also given by Shri Mayur Amin, the Director of the respondent Company wherein it is stated that under the settlement, on 22.04.1998, the Management, the Workmen and M/s. Punit Corporation entered into a Sale Agreement and thereby parties agreed to dispose of movable and immovable assets of the Company and agreed to purchase the said assets under the Sale Agreement dated 22.04.1998. It was further undertaken that he would comply with each and every terms and conditions of the Sale Agreement dated 22.04.1998 as entered into between M/s. Punit Corporation, Manor Investment Company Private Limited and the Sale Committee. It was further undertaken by him that he would pay all the legal dues of the workmen as per the Agreement entered into on 22.04.1998.

8. Based on the aforesaid Sale Agreement, this Court has passed an order on 28.04.1998 in Company Application No. 162 of 1998 directing the applicant to go on depositing the agreed amount as stated in the Schedule to the Sale Agreement dated 22.04.1998 and as and when the amounts were deposited, the applicant would be permitted to sell the movable and immovable property of the equivalent amount. The Court has further observed that along with the payments being deposited in the Court, the members of the Sale Committee were directed to file a statement of distribution amongst the workmen signed by all of them and on the strength thereof, as and when the amounts were received, the Registrar of this Court was directed to issue cheques to the concerned employees.

9. As per the Sale Agreement, the respondent Company was to deposit the entire amount of Rs. 6.61 Crores on or before 25.09.1998. But the respondent Company did not act as per the Agreement and the undertaking given by this Court. Even thereafter, request for extension of time was made and that was granted till December, 1998. However, till 10.03.1999, the respondent has deposited an amount of Rs. 3.25 Crores only as against which it was alleged that the goods worth Rs. 8 Crores were lifted by M/s. Punit Corporation. The workmen - Union has therefore filed M.C.A. for contempt of Court alleging that the respondents have committed breach of the order as well as the undertaking filed before this Court. It was further alleged that though the goods were removed, the

equivalent amount was not deposited in the Court. It was also alleged that the respondent was not ready and willing to follow and implement the order of this Court and undertaking filed by them. The respondents have resorted to display of, so called disputes between them. The Director, Mayur Amin has filed Civil Suit No. 164 of 1998 against M/s. Punit Corporation and obtained ex-parte injunction restraining them from lifting the materials / scraps lying within the four corners of M/s. Sevalia Cement Works and it was also alleged that M/s. Punit Corporation did not make any effort to get the said stay vacated only with a view to shirk from the responsibility of paying the outstanding dues of Rs.3.36 Crores to the workers.

10. It is only because of the aforesaid disputes, neither the goods were sold nor the balance amount was paid to the workers and several proceedings were initiated either by the workers or by intending purchasers or by M/s. Punit Corporation or by the Company. All other petitions were disposed of in view of the consent terms and the present petition was kept pending till the entire dispute was over.

11. This Court has disposed of several applications and also heard all other remaining applications. However, this petition being the main petition, unless and until it is finally heard and disposed of, all matters could not come to an end finally.

12. It is in the above background of the matter, the present petition is taken up for final hearing.

13. Heard Mr. G.M. Das and K.M. Paul, learned advocates appearing for the petitioner and other Workers and Mr. G.M. Joshi, learned advocate appearing for the respondent Company. Mr. Joshi has put forward a proposal on behalf of the respondent Company by affidavit of Mr. Darpan M. Amin, Director of Manor Investment Company Limited dated 02.02.2005. It is stated in the said affidavit that the present proceedings seeking winding up of the Company at the instance of the Workmen are not maintainable. Subject to this preliminary objection, it is further stated that only with a view to finding overall solution to the issue between the workmen and the Company, the Company had suggested to enter into consent terms on 26.10.1997 whereby the Company had agreed to pay the sum of Rs. 6.61 Crores to the workmen by disposing off the movable and immovable properties of the Company as agreed between the parties. Accordingly, the parties invited an order. The parties found out the purchaser and the amount of Rs.3,34,97,127/- was paid through this Court. As on date, an amount of Rs.2,61,68,348/- was required to be paid to the workmen for their actual dues as per the consent terms. In addition to this, an amount of Rs.64,34,525/- was the amount to be paid to PF and essential services and hence, the total amount of Rs.3,26,00,000/- was to be paid. The respondent Company is ready and willing to pay the said amount within 21 days of this Court directing the respondent Company to do so before this Court to demonstrate that the Company is in a position to pay the amount without prejudice to the

preliminary contention about the maintainability of the petition by the workmen. Since the respondent Company was ready and willing to deposit the amount to show its bonafide that the Company is in a position to discharge its liabilities and, therefore, there is no need to wind up the company at the instance of the workmen.

14. Since the above proposal was not acceptable to the workmen and they were demanding interest on the remaining amount, the matter was required to be heard on merits.

15. Mr. Kishor M. Paul, learned advocate appearing for the petitioner has placed on record the affidavit of the petitioner dated 24.01.2005 along with several agreements and orders. The petitioner has given the previous history of several transactions entered into by the Company and its directors with other parties. The petitioner has also alleged in the said affidavit that the Directors of the respondent Company is disposing off assets - movable and immovable and they have deliberately and wilfully disconnected the electric supply from the factory premises and sold away the same. It is further stated that the respondent Company has entered into agreements with several parties with a clear intention to harass the workers and not to pay legal dues to the Workers with some ulterior motive to get an advantage out of several dealings. Mr. Paul has, therefore, submitted that the respondent Company is required to be wound up and the properties of the Company be disposed off under the supervision of this Court.

16. Mr. G.M. Das, learned advocate appearing for other Workers has submitted that the preliminary objection raised by the respondent Company against the maintainability of the petition has no substance at all. The petition filed by the Workmen is maintainable and for this purpose, he has relied on the decision of the Hon"ble Supreme Court in the case of National Textile Workers" Union and Others Vs. P.R. Ramakrishnan and Others, wherein the Hon"ble Supreme Court has held that the Workers are entitled to appear at the hearing of the winding up petition whether to support or to oppose it so long as no winding up order is made by the Court. The workers have a locus to appear and be heard in the winding up petition both before the winding up petition is admitted and an order for advertisement is made as also after the admission and advertisement of the winding up petition until an order is made for winding up the Company. If the winding up order is made and the workers are aggrieved by it, they would also be entitled to prefer an appeal and to contend in the appeal that no winding up order should have been made by the Company Judge. Mr. Das has further relied on the observations made by the Hon"ble Supreme Court in the above judgment that merely because the right to apply for winding up a Company is not given to the workers u/s 439, it does not mean that they cannot appear to support or oppose a winding up petition which is properly filed by one or the other persons specified in that Section.

17. Mr. Das has further submitted that the workers are also the Creditors of the

Company to the extent of unpaid wages and salaries by the Company to them. Mr. Das has further submitted that by virtue of the consent terms entered into by the workmen and the Management of the respondent Company, the petitioner and other workmen have become the Creditors of the Company. The claim of the workmen is now that the promise and assurance made by the Management in the consent terms is a binding agreement and the workmen are entitled to be paid in accordance therewith. In support of this submission, he has relied on the decision of the Hon"ble Supreme Court in the case of Pipraich Sugar Mills Ltd. Vs. Pipraich Sugar Mills Mazdoor Union, wherein the Hon"ble Supreme Court has held in the context of Section 3 of U.P. Industrial Disputes Act that "On a true construction of Section 3, the power of the State to make a reference under that Section must be determined with reference not to the date on which it is made, but not to the date on which the right which is the subject matter of the dispute arises, and that the machinery provided under the Act would be available for working out the rights which had accrued prior to the dissolution of the business." Mr. Das has, therefore, submitted that no sooner the wages and salaries of the workmen remained unpaid, the workmen became the Creditors and right has already been accrued in their favour. The said right has been further fructified by the consent terms wherein the management of the respondent Company has agreed to pay the amount stated therein to the Workers. He has, therefore, submitted that the present petition is maintainable before this Court.

18. Mr. Das has further submitted that no sooner the management of the respondent Company has entered into consent terms with the workmen, the respondent Company has waived its right to raise preliminary objection. He has further submitted that after entering into an agreement and after making part payment as per the said agreement and also after filing an undertaking before this Court to be abide by the consent terms, it is not open for the respondent Company now to challenge the maintainability of the present petition before this Court. He has, therefore, submitted that the preliminary objection raised by the respondent Company is nothing but an abuse of process of law and such objection cannot be entertained by this Court.

19. Mr. G.M. Joshi, learned advocate appearing for the respondent Company has submitted that the present petition is not maintainable and the petitioner has no locus to file this petition against the respondent Company. Section 439 of the Companies Act, 1956 is very clear and the petitioner does not fall in any of the categories which are enumerated in Section 439 of the Act. The petitioner is neither Creditor nor Contributory nor Company nor Registrar nor any person authorised by the Central Government. In this connection, Mr. Joshi has relied on the decision of the Hon"ble Supreme Court in the case of National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, wherein it is observed that it is no doubt true that Section 439 confers the right to present a winding up petition only on certain specifically enumerated persons and the Workers are not included in that enumeration and, therefore, obviously the

Workers have no right to prefer a petition for winding up of a Company. The right to apply for a winding up of a Company being a creature of a statute, none other than those on whom the right to present a winding up petition is conferred by the statute can make an application for winding up of a company and no such right having been conferred on the workers, they cannot prefer a winding up petition against a Company. It is true that Hon''ble Supreme Court has further clarified that from the exclusion of the workers from the right to present a winding up petition, it does not fall as a necessary consequence that the workers have no right to appear and be heard in the winding up petition filed by one or more of the persons specified in Section 439. It may be that the workers have no right to present a winding up petition against the Company, but if a winding up petition is properly filed by any of the persons entitled to do so u/s 439, they may still be entitled to appear and be heard in support or opposition to the winding up petition. Mr. Joshi has, therefore, submitted that the observations made by the Hon''ble Supreme Court make it amply clear that the workers have no right to file the winding up petition.

20. Mr. Joshi has further relied on the decision of Madhya Pradesh High Court in the case of PAWAN KUMAR KHULLAR v. KAUSHAL LEATHER BOARD LIMITED (1996) 87 COMP CASES 130 wherein it is observed that there is difference between a debt and salary. Salary is remuneration paid to a person or employee in lieu of services rendered by him/her whereas a debt is not remuneration. A debt is something which is borrowed by a person on settled terms and conditions and a settled rate of interest and can be resettled between the parties. A petition for winding up a company by its employee on the ground of its failure to pay him his salary is not maintainable u/s 433(e) of the Companies Act, 1956.

21. Mr. Joshi has further relied on the decision of the Bombay High Court in the case of MUMBAI LABOUR UNION v. INDO FRENCH TIME INDUSTRIES LIMITED 1991 F.L.R. 1194 wherein it is held that the Workers have no right to prefer a petition for winding up of a Company. A Trade Union cannot certainly be called a Creditor to be able to file a winding up petition u/s 439 of the Act. If an unpaid employee is considered to be a Creditor in the provisions of the Companies Act, 1956, one employee is enough to bring about disaster in the industrial sphere if he is allowed to maintain a winding up petition as a Creditor. There is another stronger reason for not treating a Union and unpaid workmen/employees as Creditors of a Company to enable them to maintain a winding up petition and that is the efficacious and legitimate remedy provided by the Central and the State Legislatures for recovery of their dues. These enactments have created special machinery to deal with the disputes and the claims of the employees as expeditiously as possible free from the unnecessary and avoidable procedural shackles of the civil litigation. In the proceedings of expeditious and special remedy, it would be absolutely unreasonable to allow a Union and/or unpaid employees to abuse the process of the Companies Act.

22. Relying on the aforesaid judgments, Mr. Joshi has strongly submitted that the

present winding up petition is not maintainable. Simply because consent terms were filed earlier, the respondent Company's right to challenge winding up petition was not taken away. There was no occasion to consider the winding up petition on merits. It is only with a view to have an amicable settlement between the Company and the workers, the consent terms were entered into and the said consent terms were partly performed also. Because of the circumstances beyond the control of the respondent Company, the remaining part of the consent terms was not fulfilled. Without prejudice to the Company's rights, the Company has now come forward with the proposal to pay remaining amount to the petitioner and all other workers in respect of whom the consent terms were entered into and for this very purpose, the respondent Company has filed the affidavit on 02.02.2005 and offered to deposit Rs.3.26 Crores which will take care of the dues of all the workers. The respondent Company was also agreeable to the Court suggestion to offer Rs. 3.36 Crores and it was orally admitted by Mr. Joshi in presence of Mr. Mayur Amin, the Director of the respondent Company.

23. Mr. Joshi has further submitted that the petitioner and all other workers are mainly concerned with their dues and they should not be the tools of other parties. At the behest of other parties, the petitioner and other workers are trying to thwart the proceedings and at their instance are claiming interest which is not just and proper looking to the facts and circumstances of the case. More than eight years have gone because of several disputes. During all these years, certain parties have come and they have failed to discharge their obligations. There were serious allegations against M/s. Punit Corporation and goods were taken away by them in excess of the amount paid by them. M/s. Harisiddhi Corporation has committed fraud and submitted bogus Bank Guarantee. No third party, therefore, should be involved in the present transaction and it is in the interest of the workers to accept the offer made by the respondent Company.

24. Mr. Joshi has further submitted that the offer made by the respondent Company to the petitioner and other workers is quite fair and reasonable and it should be accepted by them. Even if they do not want to accept this offer, the pressing for winding up of the Company is not the proper remedy. An alternative remedy is available to the petitioner as well as all other workers and they can approach the Industrial Tribunal. By entering into several disputes, the petitioner and other workers have not received their amount for number of years and even by inviting the winding up order, the workers are not going to get their due amount. Mr. Joshi has further submitted that there is neither any Secured Creditor nor any Statutory Creditor. The P.F. dues are also taken care of in the present arrangement. Considering all these aspects of the matter, he has strongly urged that either the petition deserves to be dismissed on the ground of non-maintainability or in the alternative the offer made by the respondent Company to the petitioner and to other workers be accepted and the respondent Company be permitted to deposit the amount of Rs.3.36 Crores before this Court within 21 days from the date of the order.

25. After having heard the learned advocates appearing for the respective parties and after having considered their rival contentions including the preliminary issue raised by the respondent Company against the maintainability of the winding up petition and after having gone through all the earlier proceedings in this matter as well as all other connected matters relating to the Company and the workers, and after having given serious thoughts to the issues raised in the present petition in light of the authorities cited by the learned advocates appearing on behalf of their respective parties, the Court is of the view that in strict sense, the petition is not maintainable. Section 439 of the Companies Act, 1956, as interpreted and explained by the Hon'ble Supreme Court in the case of National Textile Workers' Union and Others Vs. P.R. Ramakrishnan and Others, does not permit the petitioner - Workmen to file the winding up petition against the respondent Company. The right of audience is, however, not denied to the petitioner. There is much difference between the Workers' right to file a winding up petition and his right to be heard in the properly filed winding up petition against the Company. There is also logic behind it as Workers are normally fighting for their rights emanated from their employment. By filing winding up petition, the Workers are inviting the death of the Company and no sooner the winding up petition preferred by the Workers, if entertained and allowed, the life of the Company comes to an end. Immediately, on winding up of the Company, Section 445(3) of the Companies Act, comes into play which says that such order (winding up order) shall be deemed to be notice of discharge to the Officers and employees of the Company, except when the business of the Company is continued. No worker would ever desire to put an end to his employment with the Company. There is also another reason not to include the workers in the list of eligible applicants for preferring winding up petition as enumerated in Section 439 of the Act, and that is other alternative efficacious remedies available to the workers for ventilating their grievances and establishing their rights against the Company. These remedies are provided in the Labour Legislations. The Bombay High Court in its judgment in the case of MUMBAI LABOUR UNION v. INDO FRENCH TIME INDUSTRIES LIMITED 1991 F.L.R. 1194 has enumerated four such main enactments viz. (i) The Industrial Disputes Act, 1947; (ii) The Payment of Wages Act, 1936; (iii) The Payment of Gratuity Act, 1972 and (iv) The States Act viz. the Bombay Industrial Relations Act, 1946 and the M.R.T.V. and P.U.L.P. Act, 1971. The Bombay High Court has further enumerated other special enactments which are self contained codes providing for remedies for recovery of dues, such as ESI Act 1948, EPF Act 1952, Workmen's Compensation Act 1926. All these enactments have created special machinery to deal with the disputes and the claims of the employees as expeditiously as possible and the winding up petition can never be thought of by any prudent workmen, unless such petition is a sponsored petition or there is malicious intention behind it.

26. This Court is also in agreement with the second reason given by the Bombay High Court in the said judgment that even one employee is enough to bring about the disaster in the industrial sphere if he is allowed to maintain a winding

up petition as a Creditor. There is no dispute about the fact that Section 529-A confers preferential rights on the workmen and it says that notwithstanding anything contained in any other provisions of this Act or any other law for the time being in force, in the winding up of a Company - (a) workmens" dues and (b) debts due to Secured Creditors to the extent such debts ranked under clause (c) of the Proviso to Sub-section (1) of Section 529 pari passu with such dues, shall be paid in priority to all other debts. Thus, within the meaning of this section, workmens" dues are also considered to be the debts due to them by the Company and such dues are put at par with the debts of the Secured Creditors and such debts are to be paid in priority to all other debts. This Section, however, comes into play only after the winding up order is passed by the Court. Till such order is passed, the Court cannot and should not draw analogy from this Section that even during the subsistence of the winding up petition, the workmens dues are the debts due to them by the Company and they are the Creditors of the Company. The Court is also of the view that the right to be heard in the winding up petition legally and properly filed, is conferred on the workmen only because if some unscrupulous Creditors for achieving their own objects want to bring an end to the Company which affect the employment of the workmen, they can come forward before the Court and oppose any order of winding up. In rarest of rare cases, the workmen come before the Court and pray for the winding up of the Company. The Court is, therefore, very slow in entertaining such petitions.

27. The Court, however, does not want to throw away this petition on the ground that it is not maintainable as much waters have flown by now. There is no denial of the fact that the workers" dues are outstanding. Consent terms were filed. Agreements and undertakings are on record of this Court. Workers have been paid more or less to the extent of 50% of their claim and because of the disputes subsequently crept in, the remaining 50% or so of their dues has not been paid. Instead of fastening any liability to any one or finding fault with any one. When the respondent Company has come forward to deposit an amount of Rs.3.36 Crores before this Court within 21 days from the date of this order, there is no justification not to accept this proposal. One thing is very certain that the workmen are concerned with their dues only. They cannot suggest or recommend that the assets of the Company should be sold to a particular person. So long as the Company survives, the Company through its Management or Board of Directors is the sole owner of the assets of the Company. It is in its discretion as to whom and in what manner the properties are to be sold or disposed of. Any third party has no right to claim that the properties must be sold to them to the exclusion of all others. Similarly, the workmen have also no right to suggest that the properties of the Company must be sold to a particular buyer. The Court is, therefore, of the view that the offer made by the Company at this stage to deposit the amount of Rs.3.36 Crores before this Court within 21 days from the date of order is quite just and appropriate and the same has to be accepted rather than accepting the plea of the petitioner to first wind up the Company and thereafter to put the assets on sale by auction. It is common experience by every

one that there is no possibility of fetching higher price while putting the assets for sale, after winding up of the Company.

28. The only issue which remains for consideration is that of the interest. As per the agreement, undertaking and the consent terms, the entire amount was to be deposited in 1998 itself. More than seven years have gone and the workmen were deprived of their dues. Though there is much substance in this contention, looking to the peculiar facts of this case, the Court is not inclined to accept the interest claim of the workmen and to direct the respondent Company to pay the interest on the remaining dues of the workers. There was no intentional delay in making the payments to the workers nor there was any wilful default or intentional breach of the agreement on the part of the respondent Company. The circumstances are such under which it is practically impossible for them to honour their commitments. There is another reason for not awarding interest and that is that the workmen are still occupying the Quarters inspite of the fact that their employment has come to an end much earlier.

29. Keeping all these facts in mind and taking over all view of the matter and in the larger interest of all including the workmen, despite the fact that the winding up petition is dismissed, the Court issues the following directions :-

(i) The respondent Company is directed to deposit a sum of Rs. 3.36 Crores before this Court within 21 days from today. It is made clear that till this amount is deposited, the respondent Company is not permitted to lift any part of the goods or materials either movable or immovable from the premises of the Company.

(ii) The petitioner and all other workmen who are parties to the agreement either directly or through their representatives and who are still occupying the Quarters of the respondent Company are directed to vacate the said Quarters as soon as the remaining amount as per the consent terms, excluding interest has been paid to them.

(iii) On deposit of the amount of Rs.3.36 Crores before this Court, the stay earlier granted by this Court against sale, transfer and/or dispose of or to deal with the assets of the Company shall stand vacated.

(iv) It is expected that the Management of the Company and the workers shall co-operate to each other in smooth, speedy and effective implementation of this order.

(v) It is needless to state that by virtue of this order, the claim of all petitioning workers whose petitions were disposed of earlier and all other workers whose names were included in the earlier list to whom the part payment was made earlier, against the Company stands discharged.

30. With the aforesaid directions and observations, this petition is accordingly disposed of without any order as to costs.