
(2002) 04 AP CK 0069
In the Andhra Pradesh High Court
Case No : OS A No. 14 of 2002

Koteswara Raju Dantuluri

APPELLANT

Vs

Garvee Granites Limited and Others

RESPONDENT

Date of Decision : 15-04-2002

Acts Referred:

Companies Act, 1956 — Section 466

Citation : (2002) 3 ALD 131

Hon'ble Judges : S.R.K. Prasad, J;S.R. Nayak, J

Bench : Division Bench

Advocate : C. Sitaramaiah, for M. Adinarayana Raju, for the Appellant; P.V. Markandeyulu and Subrahmanyam Narasu, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—This appeal filed u/s 483 of the Companies Act, 1956 (for short, the Act), is directed against the order of the learned Company Judge in CA No.879 of 2001 in RCC No.6 of 2001 dated 13-2-2002 dismissing the application filed by the appellant herein u/s 466 of the Act seeking stay of the winding up order passed by the learned Company Judge dated 20-9-2001 in RCC No.6 of 2001.

2. The background facts leading to the filing of the appeal be noted briefly as under: M/s. Garvee Granites Limited (hereinafter referred to as the "company"), was incorporated as a private limited company on 21-5-1992 and got Factory Licence on 7-12-1995. The object of the company was to carry on the business to produce, process, refine, export, buy, sell and generally deal in polished granite and marble tiles of all kinds. The company went for public issue with an equitable capital of Rs.7.50 crores divided into Rs.75 lakhs equity shares of Rs.10/- each. Public offer was subscribed 1 1/2 times to the issue. The company owns quarries of Ac.2.50 in Arekadu village, Ac.7-88 in Kanchirajugudem, Ac. 10-30 in Gudurupadu, Ac. 7-00 in Mallemadugu, Ac. 1.70 in Bhimrolu of Khamman District, Ac. 4-95 in Ravigudem, Ac. 8-00 in Ammupalem of Warangal District and Ac.5-00 in Pasumanda village of Chittoor District to meet half of its

requirements and the rest is to be acquired from other quarries. The appellant, viz., Koteswara Raju Dantuluri and one Mr. G.V.S. Prasad were the promoters of the company and they are engineering graduates with experience in mining and export. With the financial assistance from 1FCI, State Bank of India and IIBI, respondents 3 to 5 herein, the promoters incorporated the company as a first generation technocrat and export-oriented unit. The company imported special machinery and the same was modified to suit the climatic conditions of the area where the factory was located. The company commenced its commercial production in December, 1995 and stabilized its production and the production level had gone to Rs.301.16 crores in the year 1997-98. However, during the year 1998-99, due to non-realisation of sale proceeds by the bank authorities, it became difficult for the company to procure raw materials and to pay mounting cost of wages and ultimately the company suffered huge losses. Under those circumstances, the company became sick and went before the Board for Industrial and Financial Reconstruction (for short, BIFR). The BIFR, after attempting to rehabilitate the company and having failed in that attempt, held that there is no rehabilitation proposal with the means of finance fully tied up for consideration of the Board despite adequate opportunities having been given to all concerned, and accordingly it recommended for winding up of the company in its reference to the Company Court dated 18-1-2001. The said reference was numbered as RCC No.6 of 2001 by the Company Court. The learned Company Judge, by his order dated 20-9-2001 allowed the RCC. The said order reads as follows:

"The Referred Company Case is placed before this Court pursuant to the recommendation made by the BIFR in exercise of its power u/s 20(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 dated 18-1-2001 recommending that the 1st respondent company herein be wound up.

Initially the matter was listed on 10-4-2001 on which date notice was directed to be issued to the respondents. Accordingly all the respondents, except the 1st respondent, were served. The 1st respondent could not be served for quite some time. Finally on 24-7-2001, Sri B. Vijayasena Reddy, learned Counsel offered to enter appearance on behalf of the 1st respondent and sought two weeks time to file counter. Thereafter the matter underwent several adjournments at the request of the Counsel for the 1st respondent for filing counter. In fact on 5-8-2001 this Court on the proceeding sheet recorded that the matter is finally adjourned to 12-9-2001 for filing counter. So far, no counter has been filed on behalf of the 1st respondent. It do not think it appropriate to grant any more time to file counter in the matter.

Accordingly, the RCC is allowed and the 1st respondent-company is directed to be wound up. The Official Liquidator attached to this Court is appointed as the Liquidator and he shall take possession of the assets of the 1st respondent-company and shall take all other necessary legal steps in accordance with law. The Official Liquidator is directed to make publication as required under Rule 113

of the Company Court Rules in "Deccan Chronicle" English and in "Eenaadu" Telugu Daily Newspapers."

The winding up order passed by the learned Company Judge has become final. When the matter stood thus, the appellant filed Company Application No.879 of 2001 u/s 466 of the Act with the following prayer:-

"it is therefore prayed that the order dated 20-9-2001 in RC Case No.6/2001 to wind up the Company Garvee Granite Limited Company may be stayed and direct the Official Liquidator to unlock the factory of M/s. Garvee Granite Limited and hand over possession of the said factory and the said premises, to the applicant, and permit the applicant to run the factory of the said company and recommence production in the interest of the justice and pass such other order and further orders as this Hon"ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.

In the affidavit filed in support of the said application, it is stated that after the winding up order, the company received two orders, viz., (a) the order dated 25-9-2001 from M/s. Ruchika Agro Tech Private Limited, Delhi, for supplying monument slabs; and (b) the order dated 2-11-2001 from M/s. A.E. Trading Netherland for supplying polished monument slabs, and that the appellant expects some more similar orders if the company is allowed to run. The appellant subsequently filed a statement before the learned Company Judge showing the amount which the company could generate if it is allowed to run. According to the said statement, the company is expected to realize an amount of Rs.8,06,010/- per month if it is allowed to run. Before the learned Company Judge, it was contended that even if the assets of the company are sold in public auction, expect the value of the land there would not be any offer and, therefore, it would be difficult to realize any amount and in that view of the matter and in the interest of the creditors of the company also, it is appropriate and just that the company should be allowed to function by allowing it to resume the business by handing over the factory as well as the quarries. The application was opposed by the secured creditors by filing counter-affidavits. While denying the claims of the appellant/applicant, it was contended that though sufficient opportunity was given to the ex-Directors of he Company when the matter was pending before the BIFR, the Directors could not come up with a suitable scheme of rehabilitation and revival of the company and having failed to come up with a scheme for revival, it would not be proper and appropriate to allow the application filed u/s 466 of the Act, particularly at the behest of only one of the Ex-Directors. It was highlighted before the leaned Company Judge that the promoters of the company were not even able to raise funds to the extent of Rs.82,000/- for renewal of the fire insurance policy and therefore, it was highly doubtful that the appellant would mobilise the required funds for recommencing the business of the company, it was also contended that, as per the counter filed by IFCI, the 3rd respondent, the outstanding principal debt was Rs.803 crores comprising of Rs.355 crores to IIFC, Rs.160 crores to 1IBI and Rs.210 crores to

SBI and, therefore, the proposal of the appellant made in the application is not a feasible proposal. However, on behalf of the secured creditors, alternatively it was suggested that if ultimately the Court were to grant the application, suitable conditions may be imposed to safeguard the interests of the secured creditors. A separate counter was also filed on behalf of State Bank of India, the 4th respondent herein, opposing the claim of the appellant. In the counter, the contentions similar to the ones taken by the 3rd respondent were urged. In the course of the proceedings, it appears, that on behalf of the 4th respondent, a memo proposing the conditions to be imposed in the event of the Company Court granting the application was also filed.

3. The learned Company Judge, on appreciation of the materials on record and the proposals and the counter-proposals made by the parties, held--

"The material on record also shows that in the General Body Meeting that was conducted by the Financial Institutions when the matter was pending before the BIFR, the present applicant, who has participated in the said deliberations, expressed his inability to raise a sum of Rs.82,000/- to reimburse the institution, which was paid by way of insurance premium. Apart from the above, the principles laid down by the Calcutta High Court, as extracted earlier, requires for the indulgence of this Court in an application filed u/s 466 that the applicant should show a firm and accepted proposal for the satisfaction of all the creditors with material particulars. Here the applicant could neither give a firm and accepted proposal nor brought on record any material to satisfy either the financial institutions or this Court. In the absence of any such material showing even the firm commitment, which is required as to the capacity of the applicant to mobilize the required funds not only to purchase the raw material and other consumables for processing the finished products to satisfy the alleged orders available in the hands of the applicant."

The learned Company Judge opining so, dismissed the Company Application No.879 of 2001 and directed the Official Liquidator to take immediate further steps for disposal of the assets of the company. Hence this appeal by the applicant u/s 483 of the Act.

4. Mr. M. Adinarayana Raju, learned Counsel appearing for the appellant would contend that the power vested in the Company Court u/s 466 of the Act is an extraordinary discretionary power and that power is required to be exercised judiciously and having regard to the facts and circumstances of each case and that discretion cannot be allowed to be fettered by any of the findings recorded by BIFR or Appellate Authority for Industrial and Financial Reconstruction (for short, AAIFR). The learned Counsel would contend the right to invoke the power of the Company Court u/s 446 of the Act for the relief contemplated therein does not depend on the party's incapacity or failure to meet the financial obligations during the pendency of the proceedings either before the BIFR or AAIFR or the reason for which those authorities recommended winding up of the company. The learned Counsel would contend that it is an admitted fact that realization of

monies to satisfy the outstanding debts of the company by sale of the assets of the company would be practically nil and it could hardly fetch Rs.30 crores. The learned Counsel would also contend that the learned Company Judge ought to have allowed the Company Application, if not for any other reason, but at least in the interests of the secured creditors. In support of this particular submission, the learned Counsel would draw our attention to the following observation of Vaughan Williams, J., in *re English, Scottish, and Amtrialian Chartered Bank* [1891] 1 Ch.213.

"Having arrived at that conclusion, there still remain the very grave objections which have been urged against this scheme. I confess that I have very little belief in creditors of a company being able to look after their own interests. It is a matter of history that never mind what safeguards may be suggested, never mind what statutory precautions may be given - the creditors of an individual bankrupt have never been roused to look after their own interests. One Lord Chancellor after another has a pet scheme which he thinks will really rouse the creditors to a sense of what is due to themselves, and so far educate them as to make it safe to entrust them with the management of their own affairs; but experience shows that creditors, whether of a company or of an individual man, never can be trusted to take care of themselves. The disjected forces of individual creditors are a mere nothing as against the consolidated forces of those who are often deeply interested in bringing about an adopted of the scheme which is presented to the creditors."

5. The learned Counsel would maintain that the jurisdiction vested in the Company Court under Sections 433 and 466 of the Act is not an adversarial jurisdiction and that jurisdiction has to be exercised judiciously on the basis of just and equitable considerations and keeping in view the larger public interests on the one hand and the possibility of reviving and rehabilitating the comapany on the other hand so as to serve the interest of the Nation at large. The learned Counsel placing reliance on certain observations of the Supreme Court in *S.K. Gupta and another v. K.P. Jain and Anr* 49 Comp. Case 342, would submit that winding up a comapny means civil death, of a company and therefore the power/discretion vested in the Company Court either to wind up the company or to stay winding up order must be exercised with the circumspection and the Comapny Court is bound to explore all possibilities to rehabilitate/revive a sick industry and the winding up must be the ultimate resort of the Court. The learned Counsel would draw our attention to the following observation of D.A. Desai, J., in *re Maneckchowk and Ahmedabad Manufacturing Company Limited* 40 Comp. Cases 819.

"I should like now to dwell upon the important aspect why the scheme should be approved. There are two alternatives before the Court: (1) to sanction the scheme, or (2) to reject the scheme and as a necessary corollary to wind up the company by passing appropriate orders on three winding up petitions which are pending before the Court. If the scheme is to be rejected the only alternative is

to wind up the company; and it was urged with utmost vehemence that for an insolvent company, winding up is its inevitable fate and natural corollary. The company can at this stage be undoubtedly said to be commercially insolvent and in respect of such a commercially insolvent company, the creditor would be entitled to an order for winding up the company *ex debito iustitiae*. But when in respect of such a company, a scheme of compromise and arrangement is offered, the Court should, in my opinion, evaluate the position - firstly of creditors and secondly of members in winding up and in the scheme and should weigh the advantages that may accrue in either course to be adopted by the Court and find out which way the balance tilts. If the matter is approached from this angle, in my opinion, the conclusion in this case is inescapable. If the company is ordered to be wound up, the liquidator would dispose of the assets of the company and will have to apply first the receipts for discharging the dues of the secured creditors and then preferential creditors and thereafter unsecured creditors: and if there is any balance, there would be pro rata distribution to the members. The present liabilities of the company are in the aggregate amount of Rs. 1,64,54,117/-. The company is indebted to the bank to the tune of Rs.40 lakhs and roughly Rs.22 lakhs are payable to the Central Board of Trustees of the Provident Fund. The company has to pay Rs.8 lakhs to the Employees' State Insurance Corporation and the preferential claim of the workers would come to Rs.20 lakhs. Indequip Group of Companies are creditors to the tune of Rs.40 lakhs and there are other unsecured creditors to the tune of Rs.15 lakhs. The remainder is the claim of the workers representing their non-preferential claim. If the assets of the company are sold, taking the best view of the matter, Rs.28 lakhs may be realized by the sale of the machinery and the land may fetch, at the best available price, Rs.35 lakhs. I have worked out the figure of Rs.28 lakhs of the machinery on the basis that the company hopes to realize Rs.14 lakhs by sale of the machinery after scrapping Unit No.11 only. The company is the owner of the land measuring about 59,000 sq. yards. These are approximate estimates. It would immediately appear that the claim of the secured creditors and preferential creditors would not be paid in full by the sale of the assets of the company at the market price. After satisfying the claim of secured creditors and preferential creditors there will be no residue and the unsecured creditors are not likely to get a farthing, and even a part of the claim of the preferential creditors, in my opinion, would remain unsatisfied. Therefore, there is no vestige of a chance for the unsecured creditors to get anything towards their claim in the event the company is ordered to be wound up."

The learned Counsel would maintain that the proposal now made is a workable scheme which intends to infuse life into the sick company and therefore it is to be preferred to civil death of the company.

6. On the other hand, the learned Standing Counsel for respondents 3 and 4, would reiterate the same contentions advanced by them before the learned Company Judge and would maintain that the application filed by the appellant/applicant u/s 466 of the Act lacks in bona fides and it is intended only to drag on

the proceedings to defeat the rights of the secured credits under the winding up order.

7. Section 466 of the Companies Act, 1960 reads as follows:

"Section 466. Power of Court to stay winding up :--(1) The Court may at any time after making a winding up order, on the application either of the Official Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) On any application under this section, the Court may, before making an order, require the Official Liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company."

The object of Section 466 is to enable the Company Court, after the order for winding up has been made, to stay further proceedings in the winding up, if application is made by an Official Liquidator or creditor or contributory and if good cause is shown therefor. Section 466 may be resorted to where a company after an order for winding up has been made is able to set right matters and resume business or enters into some sort of settlement or arrangement or reconstruction and wants to avoid dissolution. In the exercise of its jurisdiction to stay proceedings, the Court should, so far as possible, act upon the principles which are applicable in exercising the jurisdiction to rescind a receiving order or annul an adjudication in bankruptcy against an individual, in which case the Court refuses to act upon the mere assent of creditors in the matter, and considers not only whether what is proposed is for the benefit of the creditors, but also whether the stay will be conducive or detrimental to commercial morality and to the interests of the public at large. In *re, Walters (Stephen) and Sons Limited* 1926 WN 236, the Court held that the jurisdiction may be used in proper circumstances for the resumption of business or for reconstruction purposes, as for instance, where a company is in a position to raise further capital with which to pay its debts and resume business. In *Misrilal Dharamchand P. Limited v. B.Paptnaik Mines (Private) Limited* (1978) 48 Com Cases 494 (Orissa), followed in *Hirtdon Foods (private) Limited v. Golden Dragon Sea Food Factory (Private) Limited* (1991) 70 Com. Cas 335, 339 (Orissa), it was held that where there is a chance of the company reviving after a set-back and is earnestly endeavouring to do so, the proper order will be to stay the proceedings for a reasonable time and give the company a chance to revive. In *Srishti Video Corporation Limited v. Vinay Kwnar Jain* (2000) 4 Comp. LJ 136, the company in winding up made payments to some of the creditors who had filed the petition u/s 466 and there was a proposal under active consideration of all the parties

concerned for settlement and scheduling of payments. The Allahabad High Court ordered that the winding up order would remain in abeyance in the meanwhile. In *Jambiikeshwara and Official Liquidator*, High Court of Karnataka (1984) 56 Com. Cases 360 (Kant), a company which held a vast stone quarry for establishing a cement factory was not able to manage necessary capital and therefore passed a resolution for voluntary winding up. The liquidator paid out all liabilities but formalities for dissolution were not completed. At this stage the shareholders assembled at an extraordinary general meeting and unanimously resolved to revive the company and for obtaining stay of winding up. The Court held that this was a fit case for stay of the voluntary winding up proceedings and permitted the shareholders to constitute a new Board of Directors. The decision of the Court was influenced in the national interest in view of the fact that the limestone quarry leased to the company had great potential.

8. What emerges from these decisions is that the Company Court in order to stay the winding up order u/s 466 should satisfy itself from the materials placed before it, that the applicant is bona fide and the proposal placed before the Court for revival of the company is not only for the benefit of the creditors, but it will be conducive to commercial morality and it will be in the interest of the public at large. The power vested in the company Court u/s 466 is a discretionary power and that power is required to be exercised judiciously and should be brought to bear on facts and circumstances of each case. While winding up may be stayed where the company became the victim of some temporary embarrassment but not when the company continues to be in a state of commercial insolvency. This is so because, the Court cannot hand over commercially insolvent company to its shareholders. In *In Re: Benares Bank Ltd.*, the Court held:

"It was never the intention of the Legislature that a company in an insolvent position should be allowed to continue its operations under the protection of the Court and that those who had dealings with the company should be prevented under the orders of the Court from seeking legal remedies to which they would otherwise have been entitled. The Court could only undertake the responsibility of barring these legal remedies to which people would ordinarily be entitled if it was certain within reasonable limits that they would not suffer any real loss by being deprived of these remedies."

The following statement from Halsbury's Laws of England as showing a working guidance to the Court in the exercise of their discretion is quite apposite:

"In exercise of its jurisdiction to stay, the Court will refuse to act upon the mere assent of the creditors in the matter, and will consider whether what is proposed is for their benefit : The position of the liquidator and, where there is a possibility of a surplus, the interests of the members will also need to be considered : *Re, Calpary and Edmonton Land Company Limited* (1876) 1 All ER 1046 . The Court will also consider whether the stay will be conducive or detrimental to commercial morality and to the interests of the public at large. In particular, the Court will have regard to the following facts:

- (1) that directors have not complied with their statutory duties as to giving information to the official receiver or furnishing a statement of affairs;
- (2) that there has been an undisclosed agreement between the promoter and the vendor to the company as to the participation by the promoter in fully-paid shares forming the consideration for the purchase of property by the company on its formation;
- (3) that the promoter has made gifts of fully-paid shares to the directors;
- (4) that there are any other matters connected with the promotion, formation or failure of the company, or the conduct of its business or affairs, which appear to the Court to require investigation.

The same principles are apparently applicable whether the company has or has not invited the public to subscribe for its shares except, possibly, in the case of a private company, where all the shareholders have full knowledge of what has been done. The summary of the law is based on the observations of Buckley, J., in the case of *Telescriptor Syndicate Limited In re*, (1903) 2 Ch 174 pp. 180-181.

Normally a stay will not be granted against the making of a winding up order against a company carrying on a profitable business, pending appeal, as it would hamper the official receiver in his duties if the appeal were dismissed. Whereas, if a stay is refused, the business can be carried on and be handed back as a going concern should the appeal be allowed. *Re, A & BC Chewing Gum Limited Topps Chewing Gum Inc. v. Coafciey* (1975)1 All ER 1017."

The Calcutta High Court, in the case of *M.P. Agarwalla v. A. Chattarsing* 85 CWN 557, laid down the principles governing the discretion to be exercised u/s 466. The relevant part of the said judgment reads as follows:

"In exercising its discretion for the stay of winding-up proceedings u/s 466 of the Companies Act, 1956, the Court would be guided by the following principles (1) the Court must be satisfied on the materials before it that the application is bonafide; (2) the Court would be guided by the principles and definitely come to the finding that the principles are applicable to the facts of a particular case; (3) mere consent of all the creditors for the stay is not enough; (4) the offer to pay in full or make satisfactory provisions for the payment of the creditors is not enough; (5) the Court will consider the interest of commercial morality and not merely wishes of the creditors and contributories; (6) the Court will refuse an order for stay if there is evidence of misfeasance or irregularity demanding investigation; (7) a firm and accepted proposal for satisfying all the creditors must be before the Court with material particulars; (8) the jurisdiction for stay can be exercised only to allow in proper circumstances a resumption of the business of the company; (9) the Court is to consider not only whether the proposal for the revival of the Company is for the benefit of the creditor but also whether the stay will be conducive or detrimental to commercial morality and to the interest of the public at large; (10) before making an order for stay the Court

must see whether the ex-Directors have complied with their statutory duties as to giving information to the Official Liquidation by furnishing the statement of affairs and (11) the Court will consider any other relevant fact which the Court thinks fit to be considered for granting or not granting a stay having regard to the facts of a particular case.

The Court should not be swayed by catchwords and gimmick of reviving an industry and providing employment to unemployed workers on the ground of socio-economic development of the State; but it has to carefully examine whether it applies to a particular case. On the facts of this case, all these high-sounding words have been submitted before this Court from time to time only to prejudice and influence the mind of the Court, if possible, to get a favourable order. The conduct of the petitioners, particularly the ex-Directors and management of the company all though seems to be dubious, wrongful and illegal and violation of the provisions of the Companies Act, 1956."

9. In the premise of the above well-settled principles governing discretion vested in the Company Court u/s 466 of the Act, let us proceed to consider whether the learned Company Judge has exercised the discretionary power judiciously in refusing the application.

10. No doubt, it is the case of the applicant that after the winding up order, the company has received the following orders:

(a) the order dated 25-9-2001 from "M/s. Ruchika Agro Tech Private Limited, Delhi for supplying monument slabs.

(b) The order dated 2-11-2001 from M/s. A.E. Trading Netherland for supplying polished monument slabs. These orders along with estimations are filed as annexure IV and V to this application.

It is also stated in the application that the applicant expects some more orders if the company is allowed to run by resumption of the work. The applicant has also filed a statement before the Company Court as per which the monthly net realization of amount as per the above two orders would approximately be Rs.8,06,010/-. But, it needs to be noticed that the appellant is only one of the promoters and the Ex.Managing Director. The other Ex-Directors have not joined the appellant in filing the application u/s 466 of the Act for the proposed resumption of the business. It also needs to be noticed that the appellant has not shown how he would mobilize the required funds for the resumption of the business of quarrying as well as polishing the granite stones. At this stage, it is also relevant to notice that when the proceedings were pending before the BIFR, the applicant was not in a position to mobilize even a paltry sum of Rs.82,000/- for the purpose of renewal of fire insurance policy. It is trite to state that in order to resume the business, the appellant has to purchase the raw material i.e., raw granites and he should also have necessary funds to pay the labour as well as to meet other incidental expenses. It is pointed out by the learned Company Judge that a sum of Rs.48,63,000/- is a reasonable amount to be incurred per month in

order to generate a net surplus amount of Rs.8,06,010/-. The contention that the fact that when the proceedings were pending before the BIFR, the appellant was not in a position to mobilize even a paltry sum of Rs.82,000/-for the purpose of renewing the fire insurance policy is not germane to the decision-making on an application filed u/s 466 of the Act, as contended by the learned Counsel for the appellant, is not acceptable to us. It is not that the Company Judge blindly rejected the application solely on the basis of the findings recorded by the BIFR. Undoubtedly, in exercising discretionary power u/s 466 and forming opinion thereunder, the Company Court is entitled to take into consideration the failure of the applicant to mobilize even a paltry sum of Rs.82,000/-to meet the expenses to be incurred in renewing fire insurance policy, because, according to us, that is a relevant consideration in the decision-making. It is pointed out in the order under appeal that in the General Body Meeting that was conducted by the financial institutions when the matter was pending before BIFR, the appellant who had participated in the said meeting, admittedly expressed his inability to raise a sum of Rs.82,000/- for the renewal of fire insurance policy. The Court cannot grant the relief u/s 466 unless the applicant shows a firm and accepted proposal for the satisfaction of the creditors with material particulars. In the instant case, the appellant has not given a firm and acceptable proposal nor has he brought on record any material to satisfy either the financial institutions or the Court that he has necessary resources/funds to resume the industry. There is a total lack of evidence to prove the capacity of the applicant to mobilize the required funds not only to purchase the raw material, but also other consumables for processing the raw granites into finished products in pursuance of the two orders alleged to have been secured by the appellant. In that view of the matter, it cannot be said that the learned Company Judge has exercised the discretion vested in the Court u/s 466 of the Act arbitrarily in rejecting the application. We do not find any error, factual or legal, in the impugned order. This appeal is devoid of merit. It is accordingly dismissed with no order as to costs.