
(1999) 12 BOM CK 0024

In the Bombay High Court

Case No : Company Petition No. 484 of 1999

Madhula Devappa Manere

APPELLANT

Vs

Jay Maharashtra Gul and Khandasari Udyog Ltd.

RESPONDENT

Date of Decision : 20-12-1999

Acts Referred:

Companies Act, 1956 — Section 10, 10(2), 437

Citation : (2002) 109 CompCas 403

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Y.V. Divekar, for the Appellant; Shekhar Naphade, T.S. Ingale and Uday Warunjikar, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—This petition has been filed u/s 437 of the Companies Act, 1956, ("the Act") with a prayer for direction that the District Court, Kolhapur, shall retain and continue the proceedings in Company Petition No. 298 of 1998, filed before the said Court.

The petitioners are contributories and shareholders of the respondent No. 1. The respondent No. 1 company is a public limited company. The respondent Nos. 2 to 12 are looking after the management and administration of the company. Respondent Nos. 13, 14 and 17 claim to be the creditors of the company. The respondent No. 15 is a Deputy Commissioner. The respondent No. 16 is Deputy Executive Engineer, Maharashtra State Electricity Board. The petitioners had filed Company Petition No. 298 of 1998 for winding up of the respondent-company under Sections 433 and 434 of the Companies Act, 1956 ("the Act"). It is stated that the petitioners have filed the petition before the District Court at Kolhapur in bona fide belief that such a petition can be filed in the District Court and that the Court will have jurisdiction to try and entertain the petition. The petition has been admitted and the relief of status quo has been granted against the assets of the company. It is stated that subsequently the petitioners have come to know

that under the Act u/s 10, the District Court will have jurisdiction only if there is a notification under the section. Hence, the present petition seeking the directions.

2. The learned counsel appearing in support of the petition has submitted that this Court has the power to issue necessary directions u/s 437 to enable the District Court to continue with the winding up petition. The counsel refers to Sub-section (2) of Section 10. Mr. Naphade appearing for the respondent No. 17 has submitted that this petition is an abuse of the process of the court. The petition is not maintainable as no such directions as have been sought in the petition can be given u/s 437. The High Court is only empowered to give directions permitting a Court of competent jurisdiction to continue with the proceedings which ought not to have been filed before that Court. He submits that this Court will have no jurisdiction whatsoever to confer a jurisdiction on a Court which inherently lacks jurisdiction. He further submitted that the jurisdiction of a District Court can only be conferred by the Central Government by notification as required u/s 10(2). Admittedly, no such notification has been issued with respect to the District Court in which the petition is pending. In support of the submission, the learned counsel has relied upon a Single Judge decision of the Kerala High Court in the case of Alleppey Chit Fund (P.) Ltd, In re [1961] 31 Comp. Cas. 641.,

3. In my view, the opinion expressed by the Kerala High Court with regard to the interpretation of Section 437 is the correct view. The power for conferring the jurisdiction on District Courts has been specifically conferred, u/s 10(2), on the Central Government. If the intention had been otherwise, it would have specifically so provided. In fact, the language of Section 437 will not permit the High Court to confer jurisdiction on a District Court, wherein no notification by the Government has been issued. The learned counsel for the petitioner has submitted that if a notification is issued, then there is no necessity whatsoever to move the High Court as the proceedings will always be within the jurisdiction of the Court. I am unable to agree with this submission because even if a notification is issued in favour of a District Court, the Court may still not have territorial jurisdiction to entertain the petition. It is in those circumstances that the High Court will be empowered to give directions u/s 437 of the Act to continue the proceedings by a Court where the jurisdiction of the Court has been irregularly invoked. It would not empower the Court to give jurisdiction to the District Court, which inherently lacks jurisdiction.

4. Before parting with this order, it must be observed that there is some substance in the submission made by Mr. Naphade that neither the company petition nor the present petition has been taken out bona fide. I am inclined to accept the submission of Mr. Naphade that the company petition as well as this petition are an abuse of the process of the Court. In the present petition, it is clearly stated that the petitioners are shareholders and contributories of respondent No. 1 company. Respondent Nos. 2 to 12 are said to be controlling respondent No. 1. The only parties affected by the company petition as well as

the present petition are respondent Nos. 13 to 17. Respondent Nos. 13,14 and 17 are co-operative societies and the creditors of respondent No. 1. Respondent No. 15 is the Income Tax Department, which has sent notice to respondent No. 1 company. Respondent No. 16 is the Deputy Executive Engineer of M.S.E.B. who claimed the arrears of electricity from respondent No. 1. Thus, by obtaining an order of status quo from the District Court, the recovery of the amounts due have affectedly been stayed.

5. In my view, the company petition filed before the District Court, Kolhapur and the present petition are an abuse of the process of the Court and are misconceived.

6. In view of the above, the petition is dismissed.

7. No costs.

8. The observations made above will not stand in the way of the petitioner in filing a company petition in the court of competent jurisdiction.