(2008) 12 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Marigold Leasing (India) Ltd. APPELLANT

Vs

Shashi Bhushan RESPONDENT

Date of Decision : 15-12-2008

Acts Referred:
Companies Act, 1956 — Section 433, 434

Citation : (2009) 150 CompCas 381 : (2009) 90 SCL 229

Hon'ble Judges : K. Kannan, J;J.S. Khehar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.

(I) Scope of Enquiry in Appeal

1. The issue involved in the Company Appeal is whether the Company Court exercising jurisdiction in an application under Sections 433,434 and 439 of the Companies Act, has the power to appoint a provisional liquidator giving him liberty to sell properties not merely the property standing in the name of the Company but also the properties standing in the names of other Companies on the premise that such assets have been created with the funds collected by the Company.

(II) Material on which plea for winding up was made

2. On complaints of large scale commission of frauds by the Directors of the Company involving siphoning off the Company funds for private ends and for purchasing all properties in the names of other front companies, thus stashing away large assets from the reach of the creditors, an application had been moved for winding up of the company. It had been brought on record at the time of application was moved that the Income Tax Authorities had raided the Company and seized its current assets in the year 1995 and on the basis of complaints registered at the instance of members/investors of the Company for

commission of offences under Sections 406, 420, 120B Indian Penal Code, FIR No. 72 of 1998 had been registered against the Managing Director Mr. B.M. Jain and other officers of the sister company, M/s. Alphine Floretec Ltd. and other associated concerns. In the application filed u/s 450 of the Companies Act the Company Court passed an order on 31-7-2003 which is impugned in this appeal, appointing a provisional liquidator under whose control of the property, effects and actionable claims to which the Company claims to be entitled, assist in calculated shall vest. This direction was issued on a perusal of the pleadings and with the availability of prima facie material that the funds of the Company were transferred to other companies formed by one of the Directors Sh. Rajesh Sayal. The Company Court also recorded satisfaction on the basis of materials placed before it that the affairs of the Company, including assets in the names of other companies which had been created with the funds collected by the Company was required to be investigated and that such systematic investigation would bring out the extent of assets owned by the Company, legal and valid, so as to make available the properties for discharge of debts of the investors. While so regarding the Company Court had also given liberty to Sh. Rajesh Sayal to move appropriate applications to show that such other companies and concerns had nothing to do with the affairs of the company under liquidation.

(III) Subsequent important events

3. It is Pointed out by the respondents even at the outset that after passing of the order, the Official Liquidator has been assiduously gathering all the details relating to the Company, identified the properties belonging to the Companies and at the time of the hearing of the appeal, the proceedings have already become ripe for bringing up several properties for sale. It was also the contention that property that had been identified as belonging to the Company were really handed-over to the liquidator on the affidavit given on behalf of the Company by the erstwhile Directors and therefore the appellant is not entitled to resile from the affidavit and to contend that the properties that shall be brought for sale do not belong to the Company or that the Company cannot have offered to the liquidator to take possession of all the assets including the assets that did not stand in the name of the. Company.

(IV) Statutory powers of Provisional Liquidator

4. The power of provisional liquidator appointed by the Court u/s 450(3) of the Companies Act are the same power as that the liquidator has himself. The Sub-section (3) reads:

(3) Where a provisional liquidator is appointed by the Court, the Court may limit and restrict his powers by the order appointing by him or by a subsequent order; but otherwise he shall have the same powers as a liquidator.

The extensive powers of the liquidator are delineated u/s 457 of the Companies Act which includes u/s 457(1)(c) "power to sell immovable or movable property and actionable claims of the company by public auction or provide contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels."

(V) Extent of Directions that the Company Court could pass

5. Even apart from the powers of the liquidator which are co-extensive with the power of the provisional liquidator, the Court itself has the power u/s 477 at the time of appointment of the provisional liquidator to summon before it any officer of the Company or person knowing or suspected to have in his possession any property or books or papers of the Company or known or suspected to be inducted to the Company. This power which the Company Court has u/s 477 is wide enough to pass even an ex parte order to secure the interest of the persons moving the application for winding up. In this behalf reference may be made to the decision rendered by the Apex Court in Satish Churn Lawv. H.K. Ganguly [1962] 32 CompCas. 97. Having regard to such wide power of the Companies Court, it is untenable to contend that the Company Court could not have directed the properties which on a prima facie finding, were also the assets of the Company. The order of the Company Court is unexceptional if we notice that the Company Court had also given liberty to show that the assets standing in the name of other Companies did not belong to the Company against which liquidation proceedings had been initiated. Indeed no prejudice could be said to be caused by such an order. Further, Section 533 of the Companies Act enables the liquidator to apply for disclaimer of onerous property.

Section 535(4) however, states that the "liquidator shall not be entitled to disclaim any property in any case where application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not claim and the liquidator has not within a period of 28 days after the receipt of the application or such extended period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim and in case the property is a contract, if the liquidator, after such application aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted". This provision, while fastening the liquidator to disclaim certain properties, makes possible for any third party from approaching the liquidator himself staking his claim to the property which is taken possession of by the liquidator or in respect of which proceedings are taken for sale. Having regard to the scheme of the Companies Act protecting the interest of third parties and controlling the discretion of the liquidator by overall supervision of the Company Court, it will be untenable to contend that the directions given by the Company Court at the time of appointment of the provisional liquidator are not in conformity with law.

(VI) Disposition

6. The sole contention raised by the appellant is therefore, without any substance and the appeal is dismissed but however, we direct no order as to costs.

