
(1993) 07 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : C.P. No. 138 of 1978

Maruti Ltd. and Another

APPELLANT

Vs

Laxmi Steel Traders and Others

RESPONDENT

Date of Decision : 09-07-1993

Acts Referred:

Companies Act, 1956 — Section 531, 531A

Citation : (1998) 91 CompCas 632 : (1994) 106 PLR 231

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : J.S. Narang, for the Appellant; S.L. Goyal and Anand Chhibar, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—These seven company petitions bearing Nos. 82, 84, 107, 109, 129, 138 and 140 of 1978 filed by the official liquidator and Maruti Udyog Ltd. can be conveniently disposed of by one order as the questions of law involved in them are common though some facts, as would be noticed in the later part of the judgment, are different. The primary question which arises for consideration in these proceedings is whether the impugned transactions of transferring goods by Maruti Ltd., Gurgaon, to different parties which have been arrayed as respondent No. 1 in these petitions are void ab initio or liable to be annulled by this court under the provisions of Sections 531 and 531A of the Companies Act, 1956 (for short, "the Act").

2. Before examining the merits of each case, I shall first refer to the scope of the provisions of Sections 531 and 531A of the Act under which the transfers made are sought to be challenged. These provisions are reproduced hereunder for facility of reference :

531. (1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or

against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly :

Provided that, in relation to things made, taken or done before the commencement of this Act, this sub-section shall have effect with the substitution, for the reference to six months, of a reference to three months.

(2) For the purposes of Sub-section (1), the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the court, and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to an act of insolvency in the case of an individual.

531A. Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by or subject to the supervision of the court or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator."

3. In order to avoid a transfer of property by a debtor in favour of a creditor on the ground of its being a fraudulent preference it has to be shown that the debtor has transferred the property with intent to prefer the creditor and that his act is free and volitional. It is, indeed, the state of mind of the debtor that has to be seen to determine whether he acted in a manner solely with a view to prefer the creditor to the exclusion of others. If the transfer takes place not with a view to prefer one of the creditors but to save the debtor's own skin either because of a threat of prosecution or to avoid prosecution or because of any other threat, actual or threatened, by the creditor concerned, the transfer or payment in such circumstances cannot be termed as a fraudulent preference. Fraudulent preference would mean preferring one creditor to another and that too fraudulently. To set aside a transaction u/s 531 of the Act fraud must be clearly alleged, proved and established and mere general allegations using statutory words or language but lacking in material particulars would not suffice. If the transaction of transfer amounts to a fraudulent preference under the bankruptcy law or insolvency law and is entered into within a period of six months prior to the commencement of the winding up then alone the transaction in question can be treated as void u/s 531(1) of the Act and not otherwise. It cannot be said that every transaction of transfer of property effected within six months before the commencement of the winding up of the company without anything more must be treated as a fraudulent preference within the meaning of this section and nothing more need be enquired into. In other words, law does not presume a transaction to be a fraudulent preference merely because it was entered into

within a period of six months prior to the commencement of winding up.

4. Section 531A of the Act, on the other hand, would make a voluntary transfer of property immovable or movable void against the liquidator if (i) there is transfer of property or any delivery of goods made by the company ; (ii) such transfer or delivery has not been made in the ordinary course of its business or in favour of a purchaser or any encumbrancer in good faith and for valuable consideration ; and (iii) the transfer or delivery is made within a period of one year before the presentation of a petition for winding up. In other words, Section 531A comes into play only if the transaction was not done in good faith and for valuable consideration. Again, if the transfer is made in the ordinary course of business, it would not attract the provisions of Section 531A. Where a transaction is sought to be annulled under this provision or u/s 531, the burden of proof is entirely on the official liquidator or the person who impugns the transaction of transfer. As held by their Lordships of the Supreme Court in *N. Subramania Iyer Vs. The Official Receiver, Quilon*, it is not necessary for upholding a transaction that the transferor who had been subsequently adjudged as an insolvent should have been honest and straightforward in the matter of the impugned transaction. It was observed that both the transferor and the transferee must have shared a common intention to defraud the creditors and unless the conduct of the transferee is also blameworthy the transaction cannot be annulled. Section 531A is equivalent to Section 53 of the Provincial Insolvency Act and this aspect of the matter was considered by a single judge of this court as well as in *Sunder Lal Jain v. Sandeep Papers (P.) Ltd.* [1986] 60 Comp Cas 77 wherein the learned judge after adverting to the judgment in *N. Subramania Iyer Vs. The Official Receiver, Quilon*, took the same view observing that unless it is found that the transferee was wanting in bona fides in respect of the transaction in question, he cannot be affected by the dishonest course of conduct of the transferor.

5. Maruti Ltd. (hereinafter called "the company") was a limited company duly incorporated under the provisions of the Act for the purposes of carrying on business of manufacturers, dealers, hirers, etc., of automobiles, motor cars, lorries, vans, motor-cycles, etc, Company Petition No. 126 of 1977 was filed on May 16, 1977, in this court by one of its creditors for the winding up of the company on the ground that it was unable to pay its debts and meet its current liabilities. A provisional liquidator was appointed on July 22, 1977, and ultimately, the company was ordered to be wound up on March 6, 1978, and the official liquidator attached to this court was appointed its liquidator. The company, before it went into liquidation, had transferred some goods in favour of seven different parties and it is these transfers which are sought to be annulled by the official liquidator who filed the present petitions under Sections 531 and 531A read with Section 446 of the Act as early as in the year 1978. While these petitions were pending in this court, the undertakings of the company were acquired by the Central Government under the Maruti Ltd. (Acquisition and Transfer of Undertakings) Act, 1980. Undertakings of the company and the right, title and interest of it in relation to its undertakings stood transferred to and

vested in the Central Government. Thereafter, by a notification issued u/s 6 of the aforesaid Act, the Central Government directed the vesting of the undertakings of the company in Maruti Udyog Ltd., Gurgaon--a Government company which with effect from such vesting became the owner in relation to the undertakings and all the rights and liabilities of the Central Government in relation to such undertakings. In other words, the company with all its assets but without liabilities was taken over by Maruti Udyog Ltd. which was then impleaded as petitioner No. 2 in all these petitions. Amended petitions were allowed to be filed. Parties in whose favour the goods had been transferred were impleaded as respondent No. 1 whereas the three ex-directors of the company were impleaded as respondents Nos. 2 to 4. Before the filing of the amended written statements, learned counsel for the respondents raised a preliminary objection to the effect that the amended petitions were not maintainable/triable in this court. The argument was that the company in liquidation had ceased to be the owner of the assets of the company and Maruti Udyog Ltd. having taken over its assets was not in liquidation and, therefore, the proceedings could continue only in a regular civil court. The objection was allowed to be raised and after hearing counsel for the parties at some length, the then learned company judge referred the matter to a Division Bench for decision. The Division Bench as per its order dated March 29, 1982, held that the petitions were maintainable and the preliminary objection raised was overruled. Evidence of the parties was recorded in each case and the petitions are now being decided on the merits.

Company Petition No. 138 of 1978 :

It is not seriously disputed between the parties in this case that respondent No. 1 was supplying raw materials like MS sheets, angles, BP sheets, etc., to the company for carrying on its business activities. The case of respondent No. 1 is that every time when the raw materials were supplied the bills were sent to the company and for quite some time payment of the price of the goods supplied had not been made. The respondent-firm kept pressing the company for payment and, finally, when its representative Shri Bipin Kumar, RW-1, approached Shri Sanjay Gandhi, ex-director of the company, the latter directed his officers to return the goods. It is the common case of the parties that the company was not in a position to make payments to its creditors including the suppliers. It was in these circumstances that the goods supplied by respondent No. 1 were returned to it through four delivery notes, exhibits PW-2/1 to PW-2/4. This return of goods by the company described as transfer of goods has been impugned in the present petition. The case of the official liquidator, on the other hand, is that a meeting of the board of directors of the company took place on May 7, 1977, in which the affairs of the company were reviewed in the wake of various problems which it was facing including financial problems and according to the petitioners, the secretary of the company, Shri S. M. Rege, was authorised to file a petition in the High Court for the winding up and/or scheme of arrangement for any other purpose. The secretary was also authorised to defend any proceedings which may be initiated by any shareholder, creditor or any other person against the

company. It is alleged by the petitioners that the then directors of the company being conscious of the financial problems which the company was facing decided to return the goods in question to respondent No. 1 which according to the official liquidator, amounts to a fraudulent preference within the meaning of Section 531 of the Act and that the return/transfer is liable to be declared void. It has also been contended that the impugned transfer of goods was also liable to be annulled u/s 531A of the Act,

6. The pleadings of the parties gave rise to the following issues :

1. Whether the petitioners are entitled to recover the articles mentioned in the delivery notes (annexures "P-1" to "P-4") or in lieu thereof the price, amounting to Rs. 1,34,159.27 ? Opp.

2. Whether the petitioners are entitled to any rental charges for the said articles from respondent No. 1 ? Opp.

3. Whether the petitioners are entitled to interest on the amount of articles and if so, at what rate ? Opp.

4. Whether the petitioners are entitled to future interest at 12 per cent. per annum ? Opp,

5. Is the petition not maintainable in the present form ? Opp.

6. Was there any valid legal resolution passed by the board of directors for taking steps for the winding up of Maruti Limited ? Opp.

7. Relief.

7. There has been a serious controversy between the parties as to what was decided in the meeting of the board of directors of the company held on May 7, 1977. According to respondent No. 4, Brig. Kapil Mohan, who was a director of the company, no decisions were taken and the meeting held on the said date was only to consider as to how to protect the assets of the company. According to him, the secretary or the general manager might have been asked to ascertain the legal position in case the company was to go in liquidation. Brig. Kapil Mohan, who appeared as R-4, has stated that besides him the late Shri Sanjay Gandhi and Shri Vidya Bhushan were the only directors of the company in May, 1977, and to the same effect is the statement of the official liquidator. Admittedly, the proceedings of this meeting were not recorded. The secretary of the company whose duty it was to record the proceedings of such meetings has appeared in the witness box to state that he had prepared some notes of what transpired at the meeting held on May 7, 1977, and as per the practice of the company a draft of the minutes of the meeting used to be prepared by him which was later circulated to the directors and it was only after its approval by the directors that the regular minutes/proceedings of the meetings were recorded in the books, The draft notes in regard to this meeting prepared by the secretary have been produced as exhibit "PW-3/2". According to the secretary, the present

draft notes were not circulated amongst the directors and, therefore, they were neither approved nor could they be recorded in the minutes book. In his cross-examination when he was recalled, he had to admit that some decisions were taken in the meeting and that his notes were (not) correctly recorded though he had earlier stated that no decisions were taken in the said meeting. The notes, exhibit "PW-3/2", prepared by this witness are suspicious in some particulars. The presence of Shri Sanjay Gandhi, Vidya Bhushan and Kapil Mohan has been noted and they start by granting leave of absence from the meeting to Shri M. A. Chidambaram and Ronak Singh. Is one to believe that Shri Chidambaram and Ronak Singh, were also the directors ? It is nobody's case that these two gentlemen were on the board of directors in May, 1977. The official liquidator has categorically stated in his statement that there were only three directors, namely, Shri Sanjay Gandhi, Vidya Bhushan and Kapil Mohan. After perusing the evidence led by the parties it can safely be held that a meeting of the board of directors of the company did take place in May, 1977, in which the financial position of the company was reviewed and may be, some decisions were also taken but the minutes of the meeting could not be recorded. However, in view of the legal position as discussed in the earlier part of the order, it is not necessary for me to record a finding as to whether the notes of the meeting exhibit "PW-3/2" were correctly recorded by the secretary and whether they truly represent the decisions taken by the board of directors. It is, however, clear that the directors were aware of the poor financial condition of the company and they were taking stock of the entire situation. Since this issue is common in other petitions as well the finding as recorded herein will dispose of similar issues in those petitions.

8. As regards issue No. 1, the petitioners would be entitled to recover the articles in the delivery notes or in lieu thereof the price of goods transferred only if it is held that the transfer of goods amounted to a fraudulent preference. It may be recalled that the goods in the present case which had been supplied by respondent No. 1 have been returned to it by the company as it was not in a position to make the payment of the price. The parties are agreed that the company at the relevant time was not in a good financial condition. Can it be said in such circumstances that the goods were transferred with a view to prefer one creditor over the other ? In view of the legal position discussed in the earlier part of the judgment, the answer has to be in the negative. Respondent No. 1 which was supplying raw materials was pressing for payment of its bills and when the company was not in a position to pay the amount, Shri Sanjay Gandhi, the ex-director of the company, directed his officers to return the goods. This act was an act of good management on the part of the company inasmuch as it reduced its further liabilities by not keeping the goods for which it could not pay but by no process of reasoning can it be said that the company by returning the goods was making any transfer so as to prefer respondent No. 1 over the other creditors and that too fraudulently. The averments in para 5 of the petition in regard to the alleged fraudulent preference are in most general terms lacking in

material particulars. No details of any fraud have been mentioned and the return of goods has simply been described as a fraudulent preference by using the statutory words. Again, the act of the company in returning the goods to respondent No. 1 if at all it could be taken to be a transfer was not a voluntary act and the goods were sent back because it was being pressurised for payment. As already observed earlier, the return of goods to a supplier because the company was unable to pay the price cannot be said to be preference of one creditor over the other. In fact, there is no transfer of goods at all in the eyes of law when they are being only returned. There is no evidence on the record to show that respondent No. 1 shared any common intention with the company to defraud its creditors.

9. Similarly, the impugned transfers cannot be declared void against the liquidator even u/s 531A of the Act as the ingredients of the said section are not satisfied. The return of goods to a supplier cannot be considered as transfer of goods and at any rate, it was done bona fide with a view to reduce the liability of the company as it was not in a position to pay the price of the goods. In the result, issue No. 1 is decided against the petitioners and in favour of the respondents. Consequently, issues Nos. 2 and 3 are also decided against the petitioners and in favour of the respondents.

Company Petition No. 82 of 1978 :

Goods to respondent No. 1--Delhi Automobiles Pvt. Ltd.--were transferred on May 14, 1977, as per three delivery notes which are exhibits "PW-2/1", "PW-2/2" and "PW-2/3". These transfers have been impugned in the present petition. The case of the respondents, however, is that the company which was the contractor for body building for Haryana Roadways and D.T.C., Delhi, had its business dealings with respondent No. 1 which was a sub-contractor of the company. Respondent No. 1 also used to take contracts for the fabrication of bus bodies of Haryana Roadways and D.T.C., Delhi, Respondent No. 1 used to pass on surplus work of fabrication to the company. In other words, the company and respondent No. 1 were doing job work for each other while fabricating bus bodies for Haryana Roadways and D.T.C., Delhi and for this purpose, they used to give and take material from each other which was required for the job work (fabrication of bus bodies). The company issued credit notes for the goods supplied to respondent No. 1 and similarly, it used to give debit notes for the goods received by it from the respondents. It appears that the directors of respondent No. 1 had good relations with the late Shri Sanjay Gandhi who was a director of the company and presumably because of such relations respondent No. 1 was also advancing loans to the company from time to time. As per the accounts maintained by respondent No. 1 a sum of Rs. 3,79,712.48 was due to it from the company in June, 1977. Since the amount was not paid, respondent No. 1 was constrained to file Company Petition No. 126 of 1977, in this court for the winding up of the company and it was on the petition of this respondent that not only was a provisional liquidator appointed on July 22, 1977, but the company

was also ordered to be wound up on March 6, 1978. In these circumstances, the question that arises for consideration is whether the transfer of goods by the company to respondent No. 1 as referred to above, can be treated as a fraudulent preference and whether the said transfers are liable to be declared void u/s 531A of the Act. There is no gainsaying the fact that the parties had mutual business dealings in the course of which goods were being transferred by one to the other and vice versa. It can, in my opinion, be safely concluded that goods were transferred in the ordinary course of business transactions and, therefore, the provisions of Section 531A of the Act are not attracted. Respondent No. 1, no doubt, was a creditor of the company but the transfer of goods to this respondent in the circumstances as stated above cannot be held to be a fraudulent preference u/s 531A of the Act. The company, no doubt, was in a poor financial condition and even if it be assumed that the directors on May 7, 1977, had decided to defend the proceedings that may be initiated by any of its shareholders or creditors as is to be found in the notes prepared and recorded by the secretary of the company, the goods in that event must have been transferred under the pressure of respondent No. 1 who not only threatened proceedings against the company but actually filed a winding up petition which led to its winding up. Consequently, I hold that the transfers cannot be annulled u/s 531 of the Act.

10. It was then urged on behalf of the respondents that even if the transfers are annulled, they cannot be fastened with any liability to pay the price of the goods merely on the basis of the statement of accounts, exhibits "PW-6/1A" to "PW-6/3A", as produced by the company. Reference in this connection was made to Section 4 of the Evidence Act and some decided cases. Since I am holding that the impugned transfers are not liable to be annulled either u/s 531 or u/s 531A of the Act, it is not necessary to decide this question. Consequently, the issues which are almost identical with the issues framed in Company Petition No. 138 of 1978 are decided against the petitioners and in favour of the respondents.

Company Petition No. 109 of 1978 :

In this case, respondent No. 1 had been supplying foam rubber goods to the company from October 8, 1975, and the last supply is said to have been made on May 9, 1978. These goods were required by the company for its business of building bus bodies. Payment for the goods was received by the respondent through cheques. One of the cheques issued by the company in a sum of Rs. 10,000 was dishonoured. The respondent-firm threatened to take legal proceedings against the company for the recovery of its dues and also refused to make further supplies. The company then was in dire need of rubber foam material as it had in hand a number of buses which were otherwise ready for delivery except for the foam rubber, sheets that were required to complete the seats. The buses had to be delivered to Rajasthan Roadways. The company did not possess sufficient money to pay the dues of the respondent and it, therefore, sold GP sheets, LP sheets and aluminium sheets to it which were lying with it in

excess of its immediate requirements. The value of these sheets was more than the amount due to respondent No. 1 and the excess amount was to be adjusted towards future supplies. The goods were transferred to respondent No. 1 as per delivery notes, exhibits "PW-3/1 to "PW-3/3", and it is these transfers that have been impugned in the present petition as a fraudulent preference. All these facts have come in the statement of Shri S. K. Bhutani, a partner of respondent No. 1, who appeared as RW-1 and he was not cross-examined by the petitioners even though they had the opportunity. There is no evidence on behalf of the petitioners to rebut the statements of this witness.

11. The question that arises for determination is as to whether the transfer of goods in the aforesaid circumstances can be annulled under Sections 531 and 531A of the Act. The goods were not transferred voluntarily and the company was under a two-fold pressure. The cheque having been dishonoured, respondent No. 1 was not only threatening to initiate proceedings for the recovery of its dues but had stopped future supplies to the company which were urgently required by the latter as it had to deliver buses to the Rajasthan Roadways which were otherwise lying ready but for the rubber foam sheets. In these circumstances, the company was forced to sell its goods which were not immediately required by it and, therefore, the impugned transfers do not fall within the mischief of Sections 531 and 531A of the Act. No doubt, the price of the goods sold was much more than the amount due to respondent No. 1 but it was presumably done to ensure future supplies from the respondent supplier. At any rate, there is no evidence that the sale was made fraudulently to give undue benefit to respondent No. 1 and to defraud other creditors. In the result, issues Nos. 1 to 4 are decided against the petitioners and in favour of the respondents.

Company Petitions Nos. 84, 107, 129 and 140 of 1978 :

In all these cases goods were transferred by the company to respondent No. 1 through different delivery notes. Since the official liquidator is impugning these transfers as fraudulent preferences u/s 531 of the Act, the onus was on him to show that the company voluntarily transferred these goods to respondent No. 1 with a view to prefer it as against other creditors and that too fraudulently. It was also necessary for him to allege and prove the circumstances under which the goods were transferred and also the motive in transferring them. As already observed in the earlier part of the judgment a transaction cannot be impugned merely because the goods were transferred within six months prior to the commencement of the winding up. Material particulars of fraud and connivance between the company and the transferee have not only to be alleged but have also to be proved beyond reasonable doubt. While impugning the transactions under Sections 531 and 531A of the Act all that the official liquidator has to say is stated in paragraph 5 of the petition which is almost identical in all the cases and reads as under :

"5. That respondents Nos. 3, 4 and 5 constituting the board of directors of the company prior to the passing of the winding up orders, passed a resolution on

May 7, 1977, authorising the secretary of the company to take steps for the liquidation of the company. After passing this resolution the company in the hands of the above said respondents fraudulently transferred by making fraudulent preference of various articles to respondent No. 1 on May 14, 1977, and May 16, 1977. The copies of the delivery notes Nos. 2782, 2814, 2786 and 2785 are annexed as annexure "P-1", "P-2", "P-3" and "P-4". The value of the goods fraudulently transferred to respondent No. 1 was assessed in the accounts of the company and the bills were prepared but the same were not signed by either of respondents Nos. 3, 4 and 5 for reasons best known to them. It may also be pointed out here that the goods transferred to respondent No. 1 do not fall within the ambit of the business of the company as is clear from para No. 2 of the petition and also from the memorandum of association of the company. The bills so prepared remained unsigned till the date of the passing of the winding up order, i.e., March 6, 1978. The goods transferred to respondent No. 1 to the extent of Rs. 4,37,836.54 were transferred fraudulently by making fraudulent preference with the motives best known to respondents Nos. 3, 4 and 5. The copies of the unsigned bills are annexed as annexures P-5, P-6, P-7 and P-8."

12. These averments even if taken as true, in my opinion, are not sufficient to impugn the transfer of goods as they lack in material particulars. Respondent No. 1 in each case has chosen not to appear despite service and has been proceeded against ex parte. The other respondents including the late Shri Sanjay Gandhi in their written statements after denying the allegations of fraudulent preference have expressed ignorance about the transfers made in favour of respondent No. 1. There is not even an iota of evidence which would prove any connivance between the company and the transferees nor is there anything on the record to suggest that the transfers were not bona fide or in good faith. The official liquidator has also not led any evidence to show the circumstances in which the goods were transferred. All that has been brought on the record is that the board of directors of the company met on May 7, 1977, the proceedings of which have been produced in the form of notes prepared by the company secretary which, as I have already held, are quite suspicious and not safe to be relied upon. Be that as it may, it can safely be held that the directors of the company were aware of its weak financial position but this by itself is not enough to lead to the conclusion that the transfers made by the company were in any way fraudulent or that they were made to prefer respondent No. 1 over the other creditors. The fact that bills were also prepared corresponding to the delivery notes and that those have not been signed by the directors of the company is of no consequence. This fact, to my mind, is not even relevant for determining the real issues in the case. In the absence of any cogent evidence, the official liquidator must fail. Consequently, all the issues are decided against the petitioners and in favour of the respondents.

13. Before concluding, it may be pointed out that since in all these cases, I have held that either the transfer of goods did not amount to a fraudulent preference

or the official liquidator has failed to plead and prove the facts necessary for annulling the transfers, it is not necessary to deal with some other contentions which were raised by some of the respondents in these cases.

14. I cannot resist observing that in all the cases, the allegations made by the official liquidator to seek annulment of the various transactions were vague and insufficient and that voluminous evidence was led on matters which are not wholly relevant for the issues involved in the cases with the result that much of the precious time of this court has been consumed causing avoidable delay of more than a decade in the disposal of these petitions.

15. For the aforesaid reasons, I find no merit in the petitions and they stand dismissed with costs which are assessed at Rs. 5,000 in each case.