
(2001) 07 DEL CK 0152

In the Delhi High Court

Case No : Company Appeal No. 26/93

M/s. Anand Synthetics

APPELLANT

Vs

M/s. Anand Synthetics Employees Union

RESPONDENT

Date of Decision : 25-07-2001

Acts Referred:

Companies Act, 1956 — Section 433

Citation : (2001) 07 DEL CK 0152

Hon'ble Judges : Sanjay Kishan Kaul, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Mr. Ashok Sapra, for the Appellant; Mr. J.P. Sengh, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—This appeal has been preferred against impugned order dated 11th May,1993 ordering winding up of the appellant Company and appointing official Liquidator as the Liquidator of the Company.

2. learned Company judge in the impugned order had considered the interpretation of the agreement dated 19th November, 1986 entered into between the Management and the workmen which agreement has admittedly not been honoured by the Management of the appellant company.Learned Company Judge considered the Conduct of the appellant company in not making payment to the workmen including the plea raised by the appellant Company that the wages had become time barred and concluded that in the absence of the termination of service, liability to pay wages under the contract of employment should continue. Learned Company Judge apart from the fact that the fact that the Company was unable to pay its debts, came to the conclusion that in view of the dismal picture of the Company, the appellant Company was liable to be wound up even on just and equitable ground.

3. The appeal was initially listed for admission and an order was passed by Division Bench for purposes of settlement of the dues of the workers in terms of the agreement dated 26th November, 1996 and a Local Commissioner appointed

to do the needful. In view of the fact that the appellant company did not comply with the undertaking to pay the entire amount due to the workmen, the appeal was dismissed in terms of order dated 1st march, 1994. Aggrieved by the said order, the appellant Company approached the Supreme Court by Special Leave Petition. The petition was registered as Civil Appeal No. 9255/96 and by order dated 15th July, 1996, the Supreme Court was pleased to set aside the order of Division Bench dated 1st March, 1994 and directed the appeal to be decided in accordance with law on merits.

4. The appeal has been listed thereafter from time to time before the Division Bench. On 2nd May, 2000 an order was passed on an application filed by the appellant (CM No. 1924/98) staying the liquidation proceedings during the pendency of the appeal. Subsequently CM No. 566/2000 was moved on behalf of the workmen seeking vacation of the order dated 2nd May, 2000. Ultimately the said stay was vacated vide order dated 24th January, 2001.

5. We have heard learned counsel for the parties on the merits of the appeal. Mr. Ashok Sapra, learned counsel for the appellant contended that the learned Company Judge has not taken into consideration the fact that the amount of Rs. 4 lacs sought to be disbursed to the employees in terms of he clause 22 of the agreement dated 19th November, 1986 could not be disbursed in view of the delays occasioned in the permission of the court to withdraw the FDR of the Hira Singh Trust. a reading of the agreement dated 19th November, 1986 shows that in terms of clause 1, the appellant Company had agreed and bounded itself to pay all workers in terms of the Annexure `A' to the agreement in terms of the settlement. The payment had to be made by draft issued in the name of each individual employees specially in terms of clause 4 of the said agreement and in terms of clause 5, the appellant Company had bound itself to make payment latest by fifteen days from the release of the fund of the fixed deposit of Hira Singh Trust by the High Court. The clause 8 of the said agreement further stipulate that in the event of the appellant Company defaulting in making of the payment of the sums mentioned in the agreement, the Company would not be entitled to ask for indulgence on any ground.

6. It is admitted position that payment had not been made and the appellant Company has not been carrying on any business. Eight years have elapsed since the passing of the impugned order. Learned counsel for the appellant, however, submitted that the appellant Company will make efforts to settle the matter with the creditors and that it had arrived at a settlement with the Union Bank of India, Sarafa Market, which is the principal creditor in terms of certain RBI guidelines and had paid part of the amount. This settlement admittedly has not been filed in any proceedings. The land is stated to have been mortgaged to the Bank and it thus appears that the settlement, if any, with the bank is towards the object of saving the land and in view of the proceedings which are pending before Debts Recovery Tribunal. Learned counsel for the appellant admits that there is no scheme before the learned Company Judge but contends that the appellant

Company is in process of making/propounding a scheme.

7. Taking into consideration all the facts and circumstances of the case and the fact that the dues of the employees have not been paid and no business has been carried on by the Company Judge has considered all the facts and circumstances of the case and has rightly concluded that the appellant Company failed to comply with its understanding with the workmen contained in the agreement dated 19th November, 1986. The appellant Company has repeatedly tried to wriggle out of its obligations to the workmen and had even raised plea of limitation as defense to the claim of the workman for their wages which was rightly rejected by the learned Company Judge.

8. The Company has been unable to meet its financial commitment to the workmen and has not carried on business even thereafter for the last eight years. Learned Company Judge has rightly found that it was a fit case for winding up of the company u/s 433(e) and (f) of the Companies Act, 1956.

9. We find no merit in the appeal and same is dismissed with costs of Rs. 10,000/-