
(1981) 02 RAJ CK 0006
In the Rajasthan High Court
Case No : Misc. Application No. 210 of 1979

Official Liquidator

APPELLANT

Vs

Golcha Properties (P) Ltd.

RESPONDENT

Date of Decision : 21-02-1981

Acts Referred:

COMPANIES ACT, 1956 — Section 237, 392, 448, 451, 452

Citation : (1981) RLW 167 : (1981) WLN 474

Hon'ble Judges : P.D. Kudal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.D. Kudal, J.—In S.B. Company Petition No. 15 of 1979 u/s 392 of the Companies Act, 1956, an order was passed on 19th October, 1979. The Official Liquidator feeling aggrieved sought permission of this Court to file an appeal against this order. The application for seeking permission was submitted on 25th October, 1979. The question of granting permission came up before the Court for consideration on 31st October, 1979. The office submitted this application for consideration on 29th October, 1979 before this Court. Before this petition dated 25th October, 1979, could be considered the Official Liquidator had already filed an appeal against the order of this Court dated 19th October, 1979. The permission which was sought was ex-post-facto permission. The Official Liquidator did not obtain sanction from this Court prior to the filing of the appeal.

2. On 31st October, 1979, four points were framed for consideration:

(a) Whether the Official Liquidator is competent to file an appeal against the orders of the Court ?

(b) Whether any action can be instituted or an appeal can be filed before obtaining permission of the Court ?

(c) Whether any post-facto sanction can be granted when the appeal has already

been filed ?

(d) Whether before granting sanction to file an appeal the other parties are also to be heard in the peculiar circumstances of the case?

3. Notice of framing of these points was issued to the Official Liquidator and to the Management of M/s. Golcha Properties (P) Ltd.,

4. Learned counsel for the Parties have been heard. Mr. Rastori appearing on behalf of the Official Liquidator has placed reliance on Sailendra Nath Sinha and Another Vs. Jasoda Dulal Adhikari and Another, This is a case under the Companies Act, 1913 Section 179 deals with the powers of the Official Liquidator to institute or defend proceedings with the sanction of the Court and Section 237(1) deals with the powers of the Court to give direction for prosecution of the delinquent directors etc But neither Section 179, nor Section 237(1) indicates that if the Liquidator takes action without sanction of the Court, the action would be illegal or invalid or it would invalidate a prosecution. This Section 179 of the Companies Act, 1913 deals with the case of launching a prosecution against a defaulting director and is distinguishable on facts with the present case. Reliance was placed on J. Loomchand Sait Vs. The Official Liquidators, Peerdan Joharmall Bank Ltd., , wherein it has been held that in the absence of specific terms that sanction should be previously obtained, sanction required by the Official Liquidators could be given by the concerned authority at any time, even after the proceedings have actually been instituted or even in the course of the proceedings. This case was also with reference to Section 179 of the Companies Act, 1913.

5. Reliance was placed on Discount Bank of India Ltd., Delhi Vs. Triloki Nath and Others, wherein it was held as under:

In a winding up the liquidator acts not merely for creditors but for contributories and for the company also. A liquidator is an agent employed for the purpose of winding up of the company, in some respects he is a trustee; but he is not a trustee for each individual creditor. His principal duties are to take possession of assets, to make out the requisite lists of contributories and of creditors, to have disputed cases adjudicated upon, to realise the assets subject to the control of the court in certain matters and to apply the proceeds in payment of the company's debts and liabilities in due course of administration, and, having done that, to divide the surplus amongst the contributories and to adjust their rights. u/s 179, he can institute to defend any suit with the sanction of the Court and he can take any other legal proceedings, civil or criminal also with such sanction.

6. Reliance was also placed on Krisharao v. The State AIR 1953 Nag 288, wherein it was held as under

It is true that the Official Liquidator is not a party to the liquidation proceedings; but the official liquidator is appointed to carry on the liquidation proceedings in the interests of the general body of share-holders. He is the court's nominee as

an officer of the Court to carry on the liquidation proceedings under the directions of the Court.

7. On behalf of M/s. Golcha Properties (P) Ltd., a preliminary objection has been taken. It has been contended that the appeal was filed without obtaining prior permission and sanction from the Court. It has been further contended that the authority of the Official Liquidator had come to an end except for the purpose of distribution of the outstanding claims of the creditors and recovery of his costs, charges and expenditures as may be determined by the Court. In support of this contention, reliance was placed upon the scheme as sanctioned on 15th December, 1975 in S.B. Company Petition No. 3 of 1971. Reliance was placed on clause 12 of scheme which reads as under:

The above Scheme becomes operative. Winding up order of the High Court of Rajasthan, Jaipur shall be vacated and the authority of the Official Liquidator shall also cease to function except for purposes of disbursements as contemplated in clause (1) above and further upon discharge of the Official Liquidator as stated in Clause IV above, the management of the business including the entire assets, moveable and immovable, of the company, shall be handed over to the former Directors immediately.

8. It was further contended that the meeting, in which the above compromise was arrived at, was attended by the Official Liquidator apart from other persons. The Official Liquidator was a party to the meeting which adopted unanimously the scheme which was sanctioned by this Court on 15th December, 1975. It was also contended that the scheme as sanctioned contemplates that as soon as the amount mentioned in clause III of the Scheme is paid, the Official Liquidator shall immediately hand over the complete property of the authority including its moveable and immovable properties to the Directors as provided hereinabove. The Official Liquidator shall for purposes of this scheme, ever retain the amounts that maybe required to be paid to the creditors and the Income Tax Department as provided in clause (f) for purposes of disbursements to the creditors and to the Income Tax Department.

9. That an appeal before the Division Bench was filed against the order of this Court dated 15-12-1975. This Division Bench Appeal was registered as D.B. Special Appeal No. 4 of 1979. During the pendency of the appeal a special and independent arrangement/agreement had been arrived at between the Income Tax Department on the one hand and the sponsors of the scheme on the other for purposes of making payments to the Income Tax Department for their alleged dues to their own satisfaction. It was further contended that this arrangement/agreement as had been arrived at between the Income Tax Department and the sponsors was the subject-matter of consideration in the Company Petition No. 15 of 1979. The final order was passed on 19-10-1979. It was further contended that the scheme as sanctioned by this Court on 15-12-1975 and further modified on 19th October, 1979 has acquired a statutory force in view of the ratio decidendi laid down on AIR 1938 284 (Privy Council) It was also contended on

behalf of the respondent Company that once the Company has gone out of liquidation the provisions relating to the winding up proceedings would no more be applicable in relation to the company and its affairs. It was also contended that the Official Liquidator is at best an adjunct of the Court and he has no power independent of the Court to institute proceedings or file an appeal. Attention of the Court has been invited to Sections 448, 451, 452, 455, 456(2), 457(i) and (ii) 459. Reliance was also invited to Sections 460, 549 and 546. It was also contended that a perusal of the Sections would show that the integral schema of the Act is that the Official Liquidator is supposed to be under the direct supervision and control of the Company Judge. He has no overriding power in himself. He cannot undo the wishes of the Company Judge, when they are reflected in the orders, which he passes.

10. It was further contended that if the Official Liquidator is an agent of the Company, he cannot act against the interests of the Company. Filing of an appeal and claiming of some interests is obviously against the interests of the Company and, therefore, he could not have filed an appeal and cannot seek permission after filing the same. It was also contended that official liquidator comes into picture only by virtue of winding up order passed in relation to a company. Now, as there is no winding up order the Official Liquidator lost all his authority in relation to the company, when it was at one time under winding up proceedings. It was also contended that after the order of 19th October, 1979, the learned Division Bench passed the order dated 2-11-79. As a consequence of these orders the possession of both the cinemas has been given to the ex-management. As the instance of the sponsors the possession of Maratha Mandir Cinema has been given to another Company, known as Fida Films and Hotels Company Private Ltd. It was also contended that the Official Liquidator enjoys powers under the Companies Act only when winding up of a Company is ordered and it is to be looked after by him. In absence of winding up of a Company, the Companies Act does not provide any function or duties to be carried out by the Official Liquidator. Reliance has been placed on *In Re Hathising Manufacturing Co. Ltd.* (6) 1976 Company Cases 59, wherein it has been held as under:

Now, that the scheme is being sanctioned, what should be done with the winding up order. The scheme envisages the running of the Mill and Co. being restored to its position prior to winding up. The Company is expected to stand on its legs. The Liquidator must quit and that can only be done if winding up order is cancelled. At one stage there was cleavage of opinion, whether the winding up order once made it can be cancelled, alternative suggestion being that it can permanently be stayed. This aspect was examined by me in *In Re Patlad Bulakhidas Mills Company Ltd. (In Liquidation)* Company Petition No. 32 of 1969, wherein after examining all the aspects, a conclusion was reached that winding up order made by the court can be cancelled by the Court. I, therefore, need not rediscuss that position here. Following my earlier judgment, I would direct that the order for winding up this company passed on 16th August, 1965, in Company Petition No. 9 of 1965 is hereby cancelled simultaneously with my granting sanction by

this order to the scheme of compromise and arrangement.

The Liquidator is accordingly directed to hand over all the assets and block and all the relevant papers which he has in his custody to the sponsor on 16th December, 1974.

That brings me to the last question about the costs. Mr. V.S. Patel stated that as the winding up proceedings lasted for several years, the Central Government should be paid fees as required by Rule 291 of the Companies Court Rules. It is mere appropriate according to Mr. Patel because winding up order will have to be cancelled for the working and implementation of the scheme.

11. Reliance was also placed on *Ratan Lal Chowla v. John Vasica* (7) AIR 1950 EP 355, wherein it was held as under:

The liquidator himself cannot file an appeal against the order setting aside an order of winding up under the supervision of the Court or an order holding that there has been no proper and valid voluntary liquidation. In such a case the person really interested is the Company and not the liquidator.

12. Reliance was also placed on *Chose Company Law* Vo. I, 12th Edition, page 1115, wherein it has been laid down that if Official Liquidator takes proceedings in his own name, he will be personally liable for costs

13. Respective contentions have been considered and the record of the cass perused.

14. Against the order of the Company Judge dated 15th December 1975, a special appeal was pending before the Division Bench. A compromise was entered into between the Income Tax Department and the representative of the respondent company The Division Bench had dismissed the special appeal on the ground of this compromise, The matter came up for consideration before the Single Bench. The rights of the creditors were determined by the scheme which was framed on 15th December 1975 The rights of the creditors as contained in this scheme were not affected in any way The mode of payment of the Income Tax Deptt., was, however, worked out in the compromise. In what manner the Income Tax Department was prepared to accept this payment was not the concern of the creditors The amount which had been paid to the creditors was ordered to be paid cent. The only question which was agitated was at what rate the interest should be paid to the creditors. The Company Act, 1956 envisages that interest not exceeding 4% should be paid if there is any surplus This aspect of the matter has been thoroughly examined in the order dated 19th October 1979. Probably this is a solitary case where the creditors have been paid cent per cent. The Official Liquidators under the provisions of the Companies Act, 1956 can institute or defend suits only with the sanction of the Court. He has no independent functioning. As a matter of fact, the Official Liquidator being an officer of the court is an adjunct to the Court and cannot file any appeal against the order of the Court. The Official Liquidator was not in any way prejudiced by

the orders of the Court. If any body could be aggrieved of the orders of the Court dated 19-10-1979, it were the creditors. The creditors were paid before the order dated 19-10-1979 was passed. The creditors could file a special appeal if it was permissible under the law, if they thought proper. It is strange that the official Liquidator who is an adjunct of the Court should take up the matter on behalf of the creditors and file an appeal. The creditors did not themselves intend to file any appeal against the orders of this Court.

15. For the reasons stated above, I am of the considered opinion, that the Official Liquidator has no locus standi to file an appeal before the Division Bench unless he obtains sanction u/s 457 of the Companies Act.

16. As no points have been made out on behalf of which leave-sanction can legally be granted to the Official Liquidator to file an appeal against the order of this Court dated 19th October, 1979, the application filed by the Official Liquidator on 25th October, 1979 is hereby dismissed.