(2012) 10 BOM CK 0206

In the Bombay High Court

Case No : Company Application No. 218 of 2012 in Company Petition No. 275 of 1995

Omprakash J. Mehra, Prop. of M/s. Omprakash Durgada, 470, Bharat Bhavan, Kalbadevi Road, Bombay 400002 and S.K. Sarpotdar, Indian Inhabitant of Mumbai	APPELLANT

Vs

Official Liquidator of M/s. Surlex Diagnostic Ltd. High Court, Bombay 5th Floor, Bank of India Building, M.G. Road, Fort, Mumbai 400023	RESPONDENT

Date of Decision : 08-10-2012

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 151
Companies Act, 1956 — Section 446, 446(2), 466

Citation : (2013) 112 CLA 225 : (2012) 116 SCL 382

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : M.M. Vashi instructed by M/s. M.P. Vashi and Associates, for the Appellant; T. Pandian, Official Liquidator, Mr. K.S. Reddy, Dy. Official Liquidator, Mr. Radharaman O. Mehra, legal heir of Petitioner (Creditor), Mr. S.K. Sarpotdar, Applicant and Mr. Lal Goel, Promoter Director, for the Appearing Parties

Judgement

Anoop V. Mohta, J.—The Petitioner/Applicant in this Application u/s 466 of the Companies Act, 1956 is recalling winding up order dated 10th February, 1999 passed by this Court and also prays for dismissal of the Company Petition. The Applicant is the shareholders contributories and members of a public limited company viz. Surlux diagnostic Limited in liquidation. The Respondent is the official liquidator, High Court, Bombay. The company in liquidation was incorporated under The Companies Act, 1956 and its shares were listed on the Bombay Stock Exchange.

2. On 10th February, 1999, one Mr. Omprakash Mehra proprietor of M/s. Omprakash Durgadas having his office at 40, Bharat Bhavan Kalbadevi Road, Mumbai 400 002 had filed the company winding up petition. The debt was of Rs.

15 lakhs. It was ordered to be wound up and the respondent was appointed as the liquidator.

3. The case of the Applicant is that the company in liquidation was not only a profitable company, but the same was also discharging important function of providing diagnostic services to people at large. Unfortunately, due to a temporary lean phase, the company in liquidation could not pay amount of Rs. 15 lakhs with interest thereon. The company in liquidation has genuine disputes with Omprakash Mehra, now dead. Now the Applicant has come forward with necessary finance to pay all creditors and revive of the company in liquidation in the interest of the creditors and the shareholders like Applicant, but also public at large.

4. Pursuance to the winding up order, the Official Liquidator on 3rd August, 1999 took possession of the Diagnostic Centre situated at 18, 19, 20 Swastik Chamber, Chembur, Mumbai 400 071 based upon the address mentioned in the Register of the Company. As the property belongs to M/s. Surlux Health Centre, a sister concern of the Company. The proceedings were taken out and submitted to release the property. The order was passed accordingly.

5. In Company Application No. 498 of 1999 in Company Petition No. 275 of 1995, Court passed order on 28th February, 2000 in terms of prayer clauses (a) and (b) as set out in paragraph 3 of the proceedings. The directions were also issued to the Official Liquidator to open the premises for the purpose of servicing the machinery in the presence of the Official Liquidator''s representative and the Petitioner. By order dated 16th March, 2000, the Court has further directed the Official Liquidator to prepare an inventory of all the equipments/instrument and machinery situated in the premises. The inventory was accordingly prepared of all the assets lying in the said premises. The report was accordingly filed on 16th June, 2000. As the property could not sold, another report was filed on 24th January, 2003. By order dated 6th February, 2003, it was allowed in terms of prayer clauses (a) and (b).

6. Thereafter, another report filed by the Official Liquidator for early disposal of the Company Application No. 498 of 1999. On 11th January, 2008. The said application was dismissed. The security guards were withdrawn by the Official Liquidator on 21st May, 2009. On 22nd August, 2012, this Court directed the Official Liquidator to issue an advertisement inviting claims from the creditors/ workers of the Respondent Company. The steps were taken accordingly.

7. In pursuance to the advertisement, the claim from Mr. Vinesh D. Sathe and Mr. Digambar Sathe (share holders) for Rs. 3,000/- received. The Official Liquidator, therefore, submitted the report on 29th August, 2012 and pointed out the claims. The matter was listed again on 25th September, 2012. The learned Counsel appearing for the Applicant on instructions sought further time to settle the matter by making requisite payment as per the Official Liquidator''s report. By a further report dated 25th September, 2012, the Official Liquidator in

paragraph 2 gave details of all the claims. The reference was also made about Summary Suit No. 4017 of 1996 and decree passed in favour of Mr. Omprakash J. Mehra (dead). It is necessary to note that the Applicant has filed affidavit on 24th September, 2012 in support of the Application and shown their bona fide to settle the matter. Another Affidavit dated 4th October, 2012 is also filed. The learned Counsel appearing for the Applicant accordingly makes a statement that necessary drafts are prepared and brought in the Court and they are willing to hand it over to the concerned parties. The submission also made that in view of this, the order of the winding up be recalled and the Company Petition be disposed off.

8. The learned Counsel appearing for the Applicant has relied upon Sudarsan Chits (I) Ltd. Vs. O. Sukumaran Pillai and Others, in which the Apex Court has considered the scope and purpose of Section 446(2) of the Companies Act, 1956 in the following terms:-

... It is now well-settled that a winding-up order once made can be revoked or recalled but till it is revoked or recalled it continues to subsist.

9. Rule 224 of the Companies Act, 1956 r/w Section 151 of the Code of Civil Procedure, 1908, apart from Section 446(2) of the Companies Act, provided provisions of re-calling the said winding up order. There is no time bar. The winding up order definitely affects the running business of the Company. The whole object is that the Creditors and/or such other persons should get their due and payable amount. The concerned persons if unable to make payment and/or settle the matter and/or amount remained unpaid, bound to face the effect of the winding up of the Company. Therefore, the concerned person or the Company if able to make the payment and/or satisfied the claims of the Creditors and/or the workers, I see there is no reason that the Court should not recall the winding up order and/or proceedings arising out of such petition.

10. In the present case, as recorded above, the Applicant is willing to settle the matter claims and dues in all respects and accordingly filed an additional affidavit and also brought in the Court the requisite Demand Drafts to be paid to the concerned. The sole legal heir and representative of the original Petitioner Radhesham O. Mehra and the Promoting Managing Director, the Applicants are present in the Court. The Official Liquidator is also present. The report so filed on record is in no way sufficient to deny the case of recalling the order of winding up as they are concerned with the requisite payments to be made and/or paid to cover the liability and/or due/claim as recorded in the Official Liquidator''s report. The Applicants, as recorded above, are willing to fulfill the same.

11. The learned Counsel and all the parties concerned have accepted the Cheque and/or Demand Draft and have no objection of any kind, as the matter is settled.

12. So far claim of Security Guard is concerned, as raised by the Official Liquidator, pursuance to the demand made by the concerned Agency at the relevant time, has been settled out of the Court. An Affidavit is filed accordingly.

The Official Liquidator in view of the settlement has no objections to grant the prayers. Therefore, a case is made out to recall the order of winding up as passed in the year 1999. The order is passed accordingly.

13. As there is no winding up order, the Official Liquidator stands discharged. The steps and/or action so taken as referred above by the Official Liquidator including taking possession of the premises which is still with the Official Liquidator should also go. In the result, the Official Liquidator is bound to hand over the possession of movable and immovable property to the Company as per the inventory as directed by the Court at " As is where is basis".

14. Now the next question is to dispose off the Company Petition which is revived and as observed above. In the commercial matters monetary claims can be settled at any stage. The dues of the Creditors and/or Workers of the Respondent if paid and settled, there is no question to continue with the order of winding up. The Court, in such a situation, can dispose off the Petition as it is settled out of the Court. There is no bar that Court cannot permit the parties to settle the matter at any point of time. Therefore, in the presence case, as no claims survive and/or there are no dues payable to any one, including Creditor and/or Workers of the Respondent Company and as there is no claim and/or objection received in spite of advertisement published by the Official Liquidator on 26th July, 2012, I am inclined to observe that there is no point in keeping Company Petition No. 275 of 1995 pending. I am inclined to observe that in view of Section 446 of the Companies Act also, the present Petition can be disposed off as settled out of the Court, with liberty.

15. The learned Counsel appearing for the Applicant, on instructions of legal heir of the Petitioner, who is present in the Court, makes statement that he is not willing to proceed further with the matter and wants to withdraw the Company Petition itself. The reliance is placed accordingly in the matter of Shreeji Concast Limited v/s. Shreeji Oxygen Private Limited and Another in 2007 (138) Company Cases 717. Paragraph 23 of the judgment reads as under:-

23:- On its restoration, Mr. Premal Joshi, learned advocate appearing for the original petitioning creditor submits that in view of the consent terms, the original petitioning creditor seeks permission to withdraw Company Petition No. 66 of 2002. Since no other winding up petition is pending against the company and no one enters in the shoe of the petitioning creditor, the original petitioning creditor can be permitted to withdraw Company Petition No. 66 of 2002. However, as per the present roster, this court cannot hear the said petition and hence, registry is directed to place the said company petition before the appropriate court as per the present roster.

16. Similarly, in the matter of Niranjan B. Shah, Ex. Managing Director of Asian Transformers v. Suresh Steel Corporation and others in Company Application No. 225 of 2009 particularly in paragraph 40 observed as under:-

40:- The winding-up order dated 22-11-1976 passed in the Company Petition No.

34 of 1976, in view of the aforesaid facts, circumstances and directions, is recalled. The Company Petition is restored to file and is permitted to be withdrawn.

17. This Court also in Company Application No. 1294 of 2006 in Company Petition No. 642 of 1993 has recalled the order of winding-up, as in that case also, the Petitioner sought liberty to withdraw the Petition. The learned Judge of this Court, therefore, permitted to dispose off the Company Petition as withdrawn.

18. Even otherwise, as recorded above, there is no amount due and payable to anybody and as there are no claims received even after advertisement as ordered for recalling of the winding-up of the order, I see there is no reason not to dispose off the Petition as withdrawn. However, liberty is granted to all the concerned persons to claim and/or file the Petition for their dues, if any.

19. It is made clear that the order of disposal is subject to the requisite charges towards miscellaneous expenses of Rs. 50,000/- to be paid within one week to the Official Liquidator.

20. The Official Liquidator stands discharged after the receipt of the amount. The Official Liquidator is directed to hand over possession of the movable and/or immovable properties within two weeks thereafter to the Company. It is made clear that the Company to take all necessary steps and in accordance with law after the receipt of the order.

