(2021) 04 NCLT CK 0003

In the National Company Law Appellate Tribunal

Case No : Company Petition No. 84(ND) Of 2020

Pardeep Singh Deswal APPELLANT

Vs

M/S Pooja Roller Floor Mills Pvt. Ltd. And Ors. RESPONDENT

Date of Decision : 09-04-2021

Acts Referred:

Companies Act, 2013 — Section 248, 248(8), 271(e), 272(2), 273, 274(3)
Insolvency And Bankruptcy Code, 2016 — Section 255
Companies Act, 1956 — Section 560

Citation : (2021) 04 NCLT CK 0003

Hon'ble Judges : Dr. Deepti Mukesh, J;Sumita Purkayastha, Member (Technical)

Bench : Division Bench

Advocate : Maya Gupta

Final Decision : Disposed Of

Judgement

1. The Company Petition bearing No. 84(ND)/2020 is filed by the Petitioner Mr. Pradeep Singh Deswal being the contributory of the Respondent No. 1 M/S Pooja Roller Floor Mills Pvt Ltd U/s 271(e) and Section 248(8) of the Companies Act, 2013 read with Section 255 of the Insolvency and Bankruptcy Code,2016 by inter alia seeking to wind up the Respondent No.1 Company with all consequential directions as main relief.

2. The Petitioner is a contributory holding 2991 equity shares and the same are registered in his name since incorporation of the Company and therefore met with the requirement as prescribed in Section 272(2) Companies Act, 2013. The Petitioner has served the copy of the Petition to other Directors of the Respondent No.1 Company through email dated 21.11.2020.

3. The Respondent No.1 Company was incorporated as a Private Limited Company on 09.11.1981 with an Authorized Capital of Rs. 20,00,000/- and Subscribed Capital and Paid-up Capital of Rs. 10,50,000/-. The CIN of the Respondent No.1 Company is U15311DL1981PTC012614 and its registered office is at 30, Community Centre, Ashok Vihar, New Delhi 10052. The Respondent

No.1 Company is involved in the business of manufacturing of grain mill products, starches and starch products and prepare animal feed.

4. Brief facts leading to the filing of the present Petition are that due to unfortunate circumstances the directors and promoters could not carry out the business activity upto 1994. It is submitted that due to the adverse market impact, the business of the Respondent No.1 Company thereafter incurred losses and thereafter the business could not be continued by the directors and promoters since 1994. The Respondent No.1 Company could not comply with any statutory filing with the RoC and the PAN was never applied due to shutting down of the business in the said year. The name of the Respondent No.1 Company was struck off under Section 560 of the Companies Act, 1956 by the RoC. The status of the Respondent No.1 Company is shown as struck off in the Company-s master data.

5. The Petitioner submits that the Respondent No.1 Company only has a piece of Agricultural land having substantial value as an asset located at Khasra No.39/ /11(9-0), 20/1(6-9) Village Binjhol, Tehsil Panipat. The registered sale deed dated 13.05.1981 has been placed on record.

6. The Petitioner has placed on record the Statement of Affairs of the Company dated 25.06.2020 which shows a fixed asset (one parcel of land) to the value of Rs.15,37,758/-. The Petitioner has also placed on record the financial statements for the year 1993-94 of the Respondent no.1 Company which reflects that there are no assets other than the land and no liabilities or statutory demand pending against the Respondent No.1 Company.

7. The Petitioner has placed on record the no dues certificate issued by the Financial Creditor "Haryana Financial Corporation" dated 12.08.1998 and the charge of the above-mentioned Financial Creditor has been vacated in the revenue records on the land measuring 15 kanal 9 marla situated at village Binjhal, Panipat which was mortgaged to the financial Creditor vide mortgaged deed dated 26.12.1884.

8. The Tribunal vide its order dated 24.11.2020 directed RoC and the Income Tax Department to file their objections if any, within two weeks however, none was filed hence, it is presumed that there are no objections to be raised by the said authorities.

9. It is submitted by the Petitioner that the directors of the Company, who are also the shareholders and contributories to the Company in the aforesaid matter have also given unconditional undertaking and/or indemnity dated 17.11.2020 as required under the provision of Section 248 of the Companies Act, 2013, to settle all the lawful claims arising in future.

10. The registered office of Respondent No. 1 Company is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this Petition.

11. The Petitioner states that in order to realize the value of the said property

and also in order to ensure the fair distribution of the said value to the Stakeholders of the Respondent No.1, the Petitioner seeks to invoke the provisions of Section 271(e) of the Companies Act, 2013 so the Respondent No.1 Company can be put into liquidation and the value of the said property can be realized and distributed by the Company Liquidator in accordance with applicable law.

12. For the aforesaid reasons and circumstances of the case, and the law on the issue, we are of the considered opinion that prima facie case is made out by the Petitioner. Mr Tarun Batra, Insolvency professional having registration number IBBI/IPA-001/IP-PO0572/2017-18/11013 as proposed by the Petitioner to be appointed as the Company Liquidator for winding up of the Respondent No.1 Company.

13. As a result, by exercising powers conferred on the Tribunal, especially under Section 273 and other relevant provisions of the Companies Act, 2013, we hereby pass the following directions:

a. We admit the Company Petition 84(ND)/2020 and appoint Mr. Tarun Batra as the Company Liquidator for winding up of the Respondent No.1 Company;

b. The Company Liquidator shall file a declaration disclosing conflicts of interest or lack of independence in respect of his appointment if any, within 7 days of appointment;

c. We direct the existing Management of the Respondent No.1 Company to extend full cooperation to the Company Liquidator to carry out his duties under the extant provisions of the Companies Act, 2013. It will be the duty of such of the persons as are liable to submit the books of account of company completed and audited up to the date of order under section 274(3) to attend on the Company Liquidator at such time and place as he may appoint and to give him all information he may require;

d. The Petitioner is directed to make appropriate publication in the Business Standard English and Hindi Edition, within 14 days of the date of this order;

e. The Company Liquidator shall initiate appropriate action in accordance with the extant provisions of the Companies Act, to take control of the Management of the Respondent No.1 Company and to take custody or control of the property, effect and actionable claims to which the Respondent No.1 Company is or appear to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the Respondent No.1 Company and to avoid misuse of the property;

f. The Company Liquidator is further directed to strictly adhere to the extant provisions as applicable in the instant case, as mentioned under Chapter XX Part 1 of the Companies Act, 2013;

g. The Registry is directed to communicate this order to all the Parties to the case and also to the Official Liquidator;

h. The Petitioner shall serve a certified copy of this order on the Registrar of Companies not later than one month from this date;

14. The Petition C.P.No. 84(ND)/2020 is allowed and disposed off in terms of above orders.

