
(1993) 11 P&H CK 0096
In the Punjab And Haryana At Chandigarh
Case No : C.P. No. 14 of 1993

Pesticides India Ltd.

APPELLANT

Vs

Bhagwanpura Sugar Mills Ltd.

RESPONDENT

Date of Decision : 18-11-1993

Acts Referred:

Companies (Amendment) Act, 1958 — Section 10
Companies Act, 1956 — Section 433, 434, 439

Citation : (1993) 105 PLR 45

Hon'ble Judges : Ashok Bhan, J

Bench : Single Bench

Advocate : P.S. Rana, for the Appellant; O.P. Goyal and Parmod Goyal, for the Respondent

Judgement

Ashok Bhan, J.—This order shall dispose of C.P.No. 14 of 1993, C.A.No. 29 of 1993, C.A. Nos. 73 and 244 of 1993.

2. C.P. No. 14 of 1993, was filed by the petitioner against Bhagwanpura Sugar Mills Ltd. with its registered office at Dhuri Distt. Sangrur, under Sections 433: 434 and 439 of the Companies Act, 1956 (hereinafter referred to as the Act) for winding up the respondent company.

3. In response to the notice issued in the main petition, C.A. No. 73 of 1993, was filed on behalf of the respondent-company praying for dismissal of the petition being not maintainable. Thereafter, an application i.e. C.A. No. 151 of 93 was filed in C.A.No. 73 of 1993 for placing on record a copy of order passed by the Board for Industrial and Financial Reconstruction (hereinafter referred to as the Board) dated 5.1.1993 by which the respondent Company had been allowed to be merged with M/s. Saraya Industries Limited with its registered office at New Delhi.

4. Petitioner thereafter filed C.A. No. 244 of 1993, under Order 6 Rule 17 C.P.C. read with Rule 102 of the Company (Court) Rules, 1959 (hereinafter referred to

as the Rules) for permission to amend the petition (C.P. No. 14 of 1993). It was prayed that M/s. Saraya Industries Limited be impleaded as a party to the main petition. Reply to the said application has been filed in which the following three objections have been taken:

(i) That this court has no jurisdiction to try this petition because the registered office of M/s. Saraya Industries Limited with which the respondent-company has been merged is at "11". Panchshheel Park, Shopping Centre, New Delhi". The company petition can be made against a debtor-company only in the High Court having jurisdiction over the registered office of the company;

(ii) that the statutory notice for demand of payment has not been served on M/s Saraya Industries Limited with which the respondent-company had been ordered to be merged by the Board on 5.1.1993 with effect from 1.4.1991; and

(iii) that an application under Order 6 Rule 17 C.P.C. is not maintainable when the proceedings have been instituted against a non-existent entity/dead person. Bhagwanpura Sugar Mills Limited did not exist on the date of filing of the petition in this Court i.e. 19.1.1993."

5. I have heard counsel for the parties at length. Objections 2 and 3 need not be dealt with at this stage because the petition is liable to be dismissed on first objection itself i.e. regarding the jurisdiction of this Court to try the petition.

6. Counsel for the petitioner argued that as per the sanctioned scheme, if any, suit, appeal or other proceeding of whatever nature by or against the transferor company are pending then the same shall not abate, discontinued or in any way prejudicially affected by reason of the transfer of the undertaking of the transferor company and the same shall be continued, prosecuted and enforced by or against the transferee company. It was argued that in view of this clause of the sanctioned scheme, the proceedings pending in this court could be continued and this court shall have the jurisdiction over the transferee company also although its registered office was at New Delhi.

7. I do not find any substance in this submission. The clause, referred to above the scheme only provides regarding the pending suits, appeal or other proceedings whereas C.P. No. 14 of 1993, was filed in this Court on 19.1.1993 i.e. after the Board had ordered the amalgamation of the respondent-Company with the transferee company on 5.1.1993 with effect from 1.4.1991. On 19.1.1993 when the present petition was filed, respondent-company was not in existence and the proceedings having been commenced after the passing of the amalgamation order by the Board, could not be said to be pending which could be continued in terms of the clause of the scheme regarding the continuation of the pending proceedings.

8. Admittedly, the registered office of M/s Saraya Industries Limited is at New Delhi, this Court shall not have the jurisdiction to try the present petition in view of section 10 of the Act which provides that the High Court having jurisdiction in

relation to the place at which the registered office of the company concerned is situated, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance to Sub-section(2) of the Act. The registered office of the transferee company being at New Delhi, this Court has no jurisdiction to try the present petition. Accordingly this petition is dismissed with liberty to the petitioner to take the proceedings in the Court of competent jurisdiction in accordance with law, if so advised.

9. Accordingly, C.P. No. 14 of 1993 is dismissed with liberty to the petitioner to take the proceedings in appropriate Court in accordance with this order. C.A. No. 73 of 1993 is dismissed as having been rendered infructuous. C.A. No. 244 of 1993 for amendment of C.P. No. 14 of 1993 is also rendered infructuous and stands disposed of. O.A. No. 29 of 1993 for appointment of provisional liquidator is also rendered infructuous and is dismissed as such.