
(1984) 02 BOM CK 0023
In the Bombay High Court

Podar Mills Ltd.

APPELLANT

Vs

J.K. Synthetics Ltd.

RESPONDENT

Date of Decision : 13-02-1984

Acts Referred:

Companies Act, 1956 — Section 433

Textile Undertakings (Taking Over of Management) Act, 1983 — Section 10, 2, 3(3), 3(7), 8

Citation : (1986) 59 CompCas 11

Hon'ble Judges : N.K. Parekh, J

Bench : Single Bench

Judgement

Parekh J.

1. This judge's summons dated January 19, 1984, has been taken out by the applicants for an order that all further proceedings in Company Petition No. 352 of 1983 be stayed, and for an order that the respondents be restrained by an order and injunction from taking any further steps in Company Petition No.352 of 1983 including advertising the notice of the hearing of the petition, and for such other and further reliefs as may be deemed fit and proper. The respondents have resisted the summons.

2. At the hearing of this matter, Mr. Kapadia, the learned counsel for the applicants, argued that a company petition being Petition No. 352 of 1983 was filed by the respondents against the applicants. At the stage of admission, consent terms were filed , where under the respondent agreed to pay a sum of Rs. 45,11,798.47 by monthly installments. The first monthly installments was payable on September 20, 1983, and the subsequent installments were to be paid on 20th of each succeeding month. The consent terms further provided that in the event of default as provided in the consent terms, the respondents would be entitled to advertise the petition. That, in view of the consent terms, the applicants paid to the respondents the first installment. That the next monthly installment was due on October 20, 1983 . However, on October 18, 1983, the

Central Govt. took over the management of the textile undertakings of the applicants under the Textile Undertakings (Taking over of Management) Ordinance, 1983. Later, an Act came to be passed. That the provisions of the Ordinance and the Act are identical. That it is in the view of the said Ordinance and the Act the applicants have now taken out the present judge's summons.

3. Mr. Kapadia argued that s. 2 of the said Act provides for definitions, and section 2(d) reads as follows:

"2(d) `textile undertaking ' or `the textile undertaking' means an undertaking specified in the second column of the First Schedule;"

4. That Chapter II provides for taking over of the management of certain textile undertakings and s. 3 provides that " the management of certain textile undertakings to vest in the Central Government". That s. 3, sub-ss. (3) and (7), provides as follows:

"3. (3) Any contract, whether express or implied, or other arrangement, in so far as it relates to the management of the business and affairs of the textile undertakings and in force immediately before the appointed day, or any order made by the court in so far as it related to the management of the business and affairs of the textile undertaking and in force immediately before the appointed day shall be deemed to have terminated on the appointed day."

"(7) For the removal of doubts, it is hereby declared that any liability incurred by a textile company in relation to the textile undertakings before the appointed day shall be enforceable against the concerned textile company and not against the Central Government or the Custodian."

5. That s. 8 (under Chapter IV) speaks of application of the Act I of 1956 and s. 8, sub-cl.(cl), reads as under:

"8. (c) no proceeding for the winding-up of the textile company or for the appointment of a liquidator or receiver in respect thereof shall lie in any court with the consent of the Central Government."

6. That s. 10 reads as follows :

"10(1). No suit, prosecution or the legal proceeding shall lie against the Central Government or the Custodian or the Additional Custodian or any officer or other employee of the Central Government or the Custodian for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the Custodian or the Additional Custodian or any of the officers or other employees of the Central Government or the Custodian for any damage caused likely to be caused by anything which is in good faith done or intended to be done under this Act."

7. That the relevant portion of the First Schedule reads as under:

" THE FIRST SCHEDULE

(See	section	2(d)	and	(e))
the	undertaking	Name	of	the owner
				S. No. Name of
				1 2 3
				- 9. Podar Mills
				The PODAR Mills Ltd., N.M. Joshi Marg, Bombay. Podar Chambers, Syed Abdulla Brelvi Road, Fort, Bombay - 1
				10. Poddar Mills (Process House), The Poddar Mills Ltd. Ganpat Rao Kadam Marg, Poddar Chambers, Bombay. Syed Abdulla Brelvi Road, Fort, Bombay - 1."
				Mr. Kapadia

argued that what has come about is that the management of two of the units of the applicants have been taken over, whilst the rest of the establishment of the applicants is not affected. That in view of the provisions of s. 8(c) (reproduced above), no liquidator can be appointed in respect of these two units. But then, these two units form part of the larger establishment of the applicants and it would be inconceivable that if a liquidator of these two units cannot be appointed, then a liquidator of the applicants can be appointed. Mr. Kapadia argued that if an official liquidator has to be appointed, he must necessarily take charge of all the assets of the company, i.e., including these two units. But by operation of the provisions of this Act, two of the units of the applicant company have been taken over and by reason of s. 8, sub-clause (c) (reproduced above), no proceedings for winding up can be instituted against a textile company so taken over, hence any proceeding adopted and / or pending must come to an end or be stayed, for the words used in s. 8, sub-cl. (c), are "no proceeding for the winding up of the textile company or for the appointment of a liquidator or receiver in respect thereof shall lie."

8. Mr. Parekh, the learned counsel for the respondents, argued that the Act needs to be interpreted as it stands. That a reading of the provisions of the Act, must make it abundantly clear that the Act can only apply to such units as are taken over by the Government and no more. That, by implication, the provisions of the Act cannot be stretched to establishments not taken over by the Government under the Act. That admittedly only two units of the company have been taken over under the Ordinance and now the Act and the Government has chosen to keep the other units of the applicants outside the purview of the Act. If this be so, then the provisions of s. 8 (c) or s.10 cannot apply in so far as the other units or establishment of the applicants are concerned. That in s. 8, sub-cl. (c), the words used are "in respect thereof", i.e., referring only to the units taken over under the Ordinance and/or the Act and no more. That if an official liquidator of the applicants is appointed, he may not be in a position to take charge of the said units described in the schedule, but that does not prohibit the court from entertaining a petition for winding up of the company barring the units taken over and / or from appointing an official liquidator, nor does it bar the official liquidator from acting in respect of the other assets of the company. Mr.

Parekh added that the consequences of such a situation could be a little lopsided, but that is how the legislation stands and the court can only interpret the legislation as it stands. I uphold Mr. Parekh's submission.

9. In the result, the judge's summons is dismissed with costs. Advertisements no to be published for ten days from today.