(1984) 12 GUJ CK 0029

In the Gujarat High Court

Case No : Company Application No''s. 148 and 225 of 1984 in Company Petition No. 20 of 1984

Prasad Mills Ltd. APPELLANT

Vs

Parikh Agencies RESPONDENT

Date of Decision : 20-12-1984

Acts Referred:
Companies Act, 1956 — Section 3, 4(1), 536(2)

Citation : (1986) 60 CompCas 727

Hon'ble Judges : I.C. Bhatt, J

Bench : Single Bench

Judgement

Bhatt, J.—This is an application u/s 536(2) of the Companies Act, 1956, by Prasad Mills Ltd., which is sought to be would up, for allowing the applicant company to enter into transactions by creating charge over the movable and/or immovable properties of the company for the purpose of borrowings/advances/ credit limits and facilities to be given by the State Bank of India, Commercial Branch, Ahmedabad, and the Industries Development Bank of India for the purpose of meeting the obligations of the company and for the purpose of keeping the business of company going on. It is prayed in the said application that the said transactions be declared as authorised, valid and binding on the company and the petitioning creditor u/s 536(2) of the Companies Act.

2. Section 536(2) of the Companies Act, 1956, reads as under :

"536(2). In the case of a winding-up by or subject to the supervision of the court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding-up shall, unless the court otherwise orders, be void."

3. A question had arisen before a Division Bench of this court in the matter of Navjivan Mills Ltd., Mehsana (Company Application No. 95 of 1984 in Company

Petition No. 105 of 1983 - [1986] 59 Comp Cas 201), whether it is competent at this state when no winding-up order is passed to sanction and validate any disposition of the properties of the company. This question has been decided by a Division Bench (Coram : B. K. Mehta and D. H. Shukla JJ.) of this court and it has been held that the court can exercise the jurisdiction of giving directions validating the transactions before the winding-up order is made. A similar view has been taken by my learned brother, S. B. Majmudar J. in Company Application No. 209 0f 1984 in Company Petition No. 163 of 1984. In Re: Commercial Ahmedabad Mills Co. Ltd., . In view of this settled position, the same question has not been raised before me and in view of such a position, there does not appear to be any serious objection from any of the parties concerned. Hence, in the present application, I have only to decide whether, in the facts and circumstances of the present case, this application should be granted or not. A few relevant facts may be stated in order to appreciate whether the transactions sought to be entered into are for the benefit of all the concerned persons and whether, on the facts and circumstances of the present case, I should exercise my jurisdiction notwithstanding the fact that no winding-up order has been passed in the present case.

4. Due to financial stringency, the applicant-company had to close down its textile unit with effect from January 12, 1984. Thereupon, the Textile Labour Association filed an application in the Labour Court at Ahmedabad, under the Payment of Wages Act. In the said application, the Labour Court passed an order of attachment of movable as well as immovable properties of the applicant company to secure wages payable to the company, namely, M/s. Parikh Agency, moved this court by filing a winding-up petition being Company Petition No. 20 of 1984 (sic). In the said petition, this court passed an order as under :

"Notice to the company returnable on February 22, 1984, Ad interim relief in terms of para 8(c) granted till further orders."

5. Thereafter, after hearing both the sides, this court modified the earlier order on February 23, 1984, as under :

"Ad interim relief modified to the extent that the respondent company shall be liberty to dispose of goods produced by the mills, i.e., cloth, yarn produced in the regular course of business. The company shall maintain true and correct inventory of accounts of the said sales and prices realised therefrom and that shall not discharge their debts qua any of the unsecured creditors therefrom."

6. Thereafter, as an endeavour to restart the operation of the company, the management of the applicant company approached the SBI, Ahmedabad, and the IDBI. Simultaneously, the company also took the matter with State of Gujarat to obtain its assistance to restart the mill immediately. The Government of Gujarat being seriously concerned about the non-employment problems, by its resolution dated May 31, 1984, sanctioned some concessions for the restart and revival of the closed textile unit of the company. Thereafter, the Government of

Gujarat, Labour and Employment Department, issued a notification dated 31, 1984, in exercise of the powers conferred by section 3 of the Bombay Relief Undertaking (Special Provisions) Act, 1958, and declared the textile unit of the applicant company, as a relief undertaking with effect from May 31, 1984. Thereafter, the Government of Gujarat in exercise of the powers conferred by section 4(1) (a) (iv) of the Bombay Relief Undertakings (Special Provisions) Act, 1958, directing that in relation to the textile unit of the applicant company, which is declared to be relief undertaking under Government notification dated May 31, 1984, issued u/s 3 of the said Act, all rights, privileges, obligations, liabilities (except the SBI) accrued or incurred before the said undertaking was declared to be a relief undertaking under the said notification and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed with effect from May 31, 1984, the date from which the said undertaking has been declared to be a relief undertaking u/s 3 of the said Act. It appears that in view of this position, an order was passed by this court (Coram : S. B. Majmudar J.) on July 16, 1984, staying all the proceedings. However, liberty was reserved to the concerned parties to move this court in case of any change of circumstances in future which might remove the impediment in the way of the progress of the petitions. The efforts of the company started yielding result and in the month of June, 1984, the SBI came out with a helping hand. However, for that purpose, it was necessary for the company to execute documents as required by the SBI and the IDBI. According to the applicant company, for the purpose of executing documents in favour of the SBI and the IDBI, there was a hurdle in the way of the company of obtaining permission from the court in view of prohibitory order passed earlier by the Labour Court. Therefore, an application was made jointly to the Labour Court by the applicant company and the said Labour Union on August 31, 1984, and the Labour Court permitted the company to create a charge on the movable and immovable properties of the company in favour of the SBI, the IDBI and the State Government as security for the financial assistance and facilities given to the company.

7. Thereafter, the company made an application being Company Application No. 148 of 1984 before this court for getting orders u/s 536(2) of the Companies Act. The said company application had come up for hearing before me on October 18, 1984, and, thereafter, on October 22, 1984. By my orders, the applicant company was allowed to enter into transaction, and I directed the SBI to make payment of a sum of Rs. 20 lakhs immediately by October 23, 1984. The learned advocate for the company undertook to complete the documentation with the SBI by October 23, 1984. I am told by the learned advocate for the respective parties that the said order has been carried out. A statement showing as to how the said amount has been received and utilised by the applicant company is annexed with Company Application No. 225 of 1984 filed by the applicant company. In the said Company Application No. 225 of 1984, further interim orders are sought for, pending final hearing of Company Application No. 148 of

1984. Now, as I am disposing of the main Company Application No. 148 of 1984, by this order, it is not necessary to pass any interim order on the said Company Application No. 225 of 1984 as prayed for.

8. The applicant company owns a textile unit which is known as "Prasad Mills Ltd.", which is engaged in the manufacture of cotton and blended textiles. The company has 461 looms and 25,000 spindles along with a processing house at Raikhad, Ahmedabad. The company has employed about 1,200 workers in its unit. I am told by the learned counsel for the applicant company that the total assets of the applicant company are about Rs. 8 crores as per market value, liabilities are to the extent of Rs. 3,75,00,000 as per books and the facilities that are going to be granted the by the SBI and the IDBI to the applicant company are worth Rs. 115.03 lakhs.

9. The company has, as stated above, already received a sum of Rs. 20,00,000 as per the earlier order passed on October 22, 1984. It is stated that upon receipt of the said amount, the company has started its production activities. It has been further stated that the company has been able to gear up its production as far as the spinning department is concerned and the blow room section; card section, inter-frame section and ring frame section have also been restarted. All these sections are working in two shifts. According to the applicant company, after a sizable stock of yarn is built up, the company proposes to restart the weaving department in appropriate stages subject to the availability of electricity energy. The applicant company has utilised the amount of Rs. 20 lakhs as shown in annexure "A" to Company Application No. 225 of 1984 and, according to the applicant company, it requires more funds for its day-to-day operations and the that the requirement of funds would increase day by day as the working is being stepped up from day to day.

10. Now, considering the facts and circumstances, the Government, by resolution dated May 31, 1984, sanctioned some concessions for the restart and revival of the closed textile unit of the company; thereafter by Government notification dated May 31, 1984, u/s 3 of the Bombay Relief Undertakings (Special Provisions) Act, 1958, declared the textile unit of the applicant company as a relief undertaking with effect from May 31, 1984, and, thereafter, their Government in exercise of the powers u/s 4(1) (a) (iv) of the said Act issued a notification dated May 31, 1984, as stated above, and in view of the further fact that the company has already started functioning, as stated above, after it was advanced Rs. 20,00,000, by the SBI, I am if the view that it will be in the interest of all concerned to permit the applicant company to enter into transactions for disposition of the properties of their company pending disposal of the winding-up petition, so that the mill company may be able to continue its functioning and manufacturing process which has already been started to some extent after receiving the loan of Rs. 20,00,000 under the order of this court. I am also if the view that this is a fit case for granting permission to the applicant company to enter into transactions with the SBI and the IDBI and execute the

documents in regard to the properties of the applicant company in favour of the SBI and the IDBI. Such a permission will not only benefit the unsecured creditors, but will also be beneficial to the workers of the mills who would otherwise be rendered jobless if the applicant company is not allowed to restart and revive the said textile unit, after entering into the said transactions.

11. Under the provisions of the Companies Act, a company which is unable to pay its debts is liable to be would up. But there is a discretion vested in the court which calls for exercise before the court passes a winding-up order. It may be possible that a company which at the moment is in adversity and is passing through evil days could be successfully revived by reason of change of circumstances and on account of the factors which may make it possible for the company to function economically once it is revived. No doubt, at a particular moment, it may be that it is unable to meet its liabilities. But if there is reasonable, if not certain, prospect of its revival and effective and effective and commercially successful functioning, then a short wait by the creditors may be worthwhile. They may get better returns. It should be their policy of the court to promote revival of a company which at the moment may not be solvent and may not be able to meet its obligations to its creditors, if it is shown that there is reasonable prospect of resurrection and survival. It is easy for a court merely on finding that a company is unable to pay its debts to bury it deep and distribute its assets, whatever is available, to the creditors standing in the queue, but it will not be more equitable, fair and just but indeed the court''s duty to make an earnest study of the prospect of the company being brought back to life, put on its feet again and provided with congenial circumstances in which it could begin once again to throb with life. The predominant test would be whether it would be in the best interest of creditors primarily and the company secondarily to attempt the revival and resuscitation of the company. Thus, while there should be an anxiety on the part of the court to promote life rather than affirm the death, the court should very judiciously determine in every case whether that would be a feasible proposition. The overall circumstances of a particular case are required to be taken into consideration for reaching a decision on the question whether it will be in the best interest of the creditors and all those who are concerned with it, to sanction disposition of properties for the revival rather than affirm the warrant of death of the company. In the instant case, if the applicant company is permitted to enter into transactions for disposition of the properties of the company with the SBI and the IDBI, it will not only regenerate employment prospects but it will be in the better interest of the unsecured creditors. As stated earlier, it will be also in the interest of the workers of the mills who would otherwise be rendered jobless. Granting the present application which is to bring substantial finance for running the mills is going to benefit all concerned including even the unsecured creditors. Considering the overall circumstances of this case, I am, therefore, of the opinion that it is in the interest of every one to grant the application of the applicant company. I see no reason for not granting the said application. Company Application No. 148 of 1984 in Company Petition

No. 20 of 1984 is, therefore, allowed. Prayer (A) shall granted as under :

It is declared that in the event of an order being made for the winding up of the applicant company, utilisation of the borrowings, advances, credit limits and facilities given by the SBI, Commercial Branch, Ahmedabad, and the IDBI, shall be treated as bona fide transactions entered into between the SBI, the IDBI and the applicant company in the normal course of business of the applicant company and for the purpose of meeting the obligations of the company and for the purpose of keeping the business of the company going and they are declared as authorised, valid and binding on the company and the creditors. The applications of the company u/s 536(2) of the Companies Act shall stand granted as aforesaid. It is, however, clarified at this state that the applicant company shall not utilise and/or disburses the funds provided by the SBI and the IDBI, pursuant to the present order, towards the satisfaction of the past dues of any of the creditors of the applicant company. Hence, no disposal of any property or assets, which may be effected by the company pending final hearing and disposal of the winding-up petition as aforesaid to or in favour of the SBI or the IDBI pursuant to the present order shall be, voided if the winding-up order is made, if at all, against the company in such position.

12. It is also clarified that the amount of Rs. 20,00,000 which was permitted to be advanced by the SBI pursuant to my order dated October 22, 1984, in Company Application No. 148 of 1984, shall be treated as a part and parcel of the advance which was being sanctioned pursuant to the present order which is the final order.

13. Company Application No. 148 of 1984 accordingly is allowed and stands disposed of finally, with no order as to costs.

14. In view of the above order, it is not necessary to pass any order on Company Application No. 225 of 1984 and the same also stands disposed of with no order as to costs.