
(2018) 04 CAL CK 0043

In the Calcutta High Court

Case No : CA 90 of 2018 With CP 487 of 2016

RE: PRECISION ENGINEERING & FABRICATORS PVT. LTD.(IN APPELLANT
LIQN.)-ANDDADHIBHAL SHAW

Vs

O/L, HIGH COURT, CALCUTTA RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Citation : (2018) 04 CAL CK 0043

Hon'ble Judges : ASHIS KUMAR CHAKRABORTY, J

Bench : Single Bench

Advocate : Dadhibal Shaw, S. Barua, Gurdeep Singh Sahni, K.S. Hareesh Kumar, Amit Kumar Chowdhuary

Final Decision : Dismissed

Judgement

The Court: This application is moved by Gurdeep Singh Sahni, appearing in person. He claims himself to be one of the exdirectors of the company (in liquidation).

The applicant has prayed for recalling of the order dated February 7, 2018 passed by this Court directing winding-up of the company and the Official

Liquidator to take possession of all the assets and properties of the company presently in liquidation including the affairs of its business.

The Official Liquidator submitted that he has taken possession of the registered office, the factory and one of the immovable properties of the

company (in liquidation) situated at Kalyani in the district of Nadia.Â The petitioning creditor at whose instance the winding up application was

admitted by the order dated March 23, 2017 is personally present in Court.He strongly opposed the prayer made by the applicant in this application.

One of the secured creditors of the company (in liquidation), namely, the Union

Bank of India is represented by its officers. They submitted that the bank be allowed to remain out of the winding up proceeding of the company (in liquidation).

Briefly stated the facts of the case are that in the year 2016, the petitioning creditor filed the application for winding up of the company on the ground

of nonpayment of his dues which was contested by the company.Â By an order dated March 23, 2017 a learned Single Judge of this Court admitted

the winding-up application at the instance of the petitioning creditor for Rs.40,74,610/- together with interest thereon at the rate of 9% per annum

after expiry of sixty days from the date of receipt of the invoices till the date of the order and further interest at the said rate.Â The petitioning

creditor was directed to publish the winding-up application once in the English newspaper â??The Statesmanâ? and once in the Bengali newspaper

â??Bartamanâ?. The said order dated March 23, 2017 was not assailed before the Division Bench.Â After advertisement of the winding-up

application, various other creditors of the company presently in liquidation appeared before the learned Single Judge who were directed to file their

respective affidavits in the application. Once the winding up application assumed representative character even the company, presently in liquidation

was also granted an opportunity to file its affidavit to substantiate that it is not in involved circumstances. However, the company, presently in

liquidation chose not to file any affidavit to oppose the prayer of its winding-up.Â On February 7, 2018 when the winding-up application was taken up

for hearing by this Court, the company remained unrepresented even in the second call.Â Under the circumstances, this Court passed the order dated

February 7, 2018 containing the directions already mentioned above.

In this application, it is the case of the applicant that during the pendency of the winding-up application before this Court one of its creditors, namely,

Berger Paints India Ltd. filed an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 before the learned National Company Law

Tribunal, Kolkata Bench (hereinafter referred to as the â??NCLTâ?) and by an order dated April 4, 2017 the NCLT admitted the said application for

initiating the corporate insolvency resolution process and to declare a moratorium.Â On April 11, 2017 the NCLT appointed the Interim Resolution

Professional and consequently the management of the affairs of the company

stood vested in the Interim Resolution Professional.Â According to the applicant, the petitioning creditor ought to have had notice of the public announcement caused to be made by the Interim Resolution Professional on April 11, 2017 and there was no impediment for submission of his claim before the Interim Resolution Professional.Â On these grounds, the applicant has prayed for recalling of the order dated February 7, 2018. He also pressed for an ad-interim order.

In the present case, it appears that the applicant as one of the directors of the company (in liquidation) was all along aware of the company contesting the winding-up application, as well as the passing of all the orders by this Court.Â The company on its own volition chose not to file any affidavit disclosing any fact that it is not in involved circumstances.Â The applicant withheld from this Court the factum of the proceeding initiated by one of its creditors, namely, Berger Paints India Limited before the NCLT.

Â The applicant could not substantiate that the order dated February 07, 2018 passed by this Court is either without jurisdiction or that the same was obtained by any fraudulent means.

Considering the facts of this case, as discussed above I do not find that the applicant has been able to make out any prima facie case for an interim order.Â Accordingly, the prayer for an ad interim order of stay of operation of the order dated February 7, 2018 is rejected.

Let, the creditors of the company (in liquidation) who appeared before this Court on February 7, 2018 as well as the petitioning creditor file their respective affidavits-inopposition to this application within three weeks from date; reply thereto, if any be filed within a week thereafter.

Â The point of maintainability of this application is kept open and the same shall be decided at the final hearing.

The applicant is directed to communicate this order to the creditors of the company (in liquidation) who were present before this Court on February 7, 2018.

In the event, Union Bank of India, the secured creditor of the company (in liquidation) seeks to file any affidavit in this application, they may do so, within two weeks from date.

Let this application appear, under the heading â??Company Matter (Adjourned)â??. in the monthly list of May, 2018.

The applicant shall file an affidavit of service on the next date of hearing,