
(1984) 03 DEL CK 0005
In the Delhi High Court

Shyam S. Rastogi

APPELLANT

Vs

Nona Sona Exports P. Ltd.

RESPONDENT

Date of Decision : 16-03-1984

Acts Referred:

Citation : (1986) 59 CompCas 832

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Judgement

D.R. Khanna, J.—The company , Nona Sona Exports Pvt. Ltd., is now in liquidation from April 27, 1982. This was as a result of a winding-up petition moved by a creditor , namely, the Madras Handloom Weavers Co- operative Society Ltd. (C.P. No. 49 of 1981), on the ground that the company had not discharged its substantial liability for the goods purchased. In fact, the company did not care to appear and the winding-up order was made in its absence. It later applied for setting aside the same, but without success.

2. At present prosecution against the directors is pending at the instance of the official liquidator as they failed to file the statement of affairs. At one stage, even a warrant had to be issued for production of a director.

3. In the meanwhile, the landlord of premises bearing No.S-81, Panch Sheel Park, New Delhi, which has been in the possession of the company as a tenant applied for its restoration on the ground that large arrears of rent were due and continued to mount and, as such, there was no justification for the official liquidator to continue incurring liability of Rs.2,000 per month which was the rent. These pleas prevailed with the court and it was, Therefore, directed on November 14,1983, that the official liquidator should deliver possession of the ground floor of that property which has been under demise with the company to the landlord.

4. Soon thereafter, a number of applications started moving from Shyam S. Rastogi, who was the managing director of the company for preventing the

delivery of possession. In C.A. No. 705 of 1983, it was mentioned that he had entered into certain agreements which would revive the company. It was, however, noticed that no positive scheme whatsoever has been put forth , and the mere generalised averments should not justify stay of the order directing the handing over the possession .

5. Now, a petition, C.A. No. 71 of 1984, has been moved u/s 391 of the Companies Act, 1956, purporting to be a scheme for the revival of the company. I have heard the parties on the property of its admission and whether there is any viable scheme worth at all consideration by the creditors and members. After hearing them and going through the proposed scheme, I am of the opinion that it calls for rejection straight-away and its motive appears to be just to thwart the taking-over of possession by the landlord and exercise a sort of lever on him to bargain for the delivery of possession.

6. The company had been doing garments export business and, according to the averments made in the petition, it had suffered enormous losses and is indebted to a number of banks to the tune of Rs. 10 to 12 lakhs. The last balance-sheet which it had prepared was for the period ending September 30, 1979, but no copy of that has been placed on record to bring out its financial position. It is not shown that any balance-sheets and profit and loss accounts were prepared thereafter, and if not, why not? No list of its assets has been filed and it has been simply stated that its subscribed capital has been of Rs.1,10,000. How many others are the creditors apart from the banks and what are the liabilities due to them have also not been brought out. The winding-up petition shows that over Rs.1,15,000 were due to the Tamil Nadu Handloom Weavers Co-operative Society from the respondent. The substratum of the company has thus gone. It has no export quota issued in its favor, nor any documents have been placed on record to show that it has any ready commitments or orders for effecting exports. It is also not brought out what investments are to be made by the petitioner and who are going to be associates with him as mentioned in the petition and whether any financial assurances exist from any quarter. The scheme is entirely generalised, vague and without any viable suggestions. Even the list of assets and liabilities which are sought to be squared up by the scheme has not been filed. The directors are already facing prosecution for their failure to file the statement of affairs before the official liquidator which should have been done within 21 days of the winding- up order. Here the following observations of Buckley J. in *Telescriptor Syndicate Ltd., In re* [1903] 2 Ch 174 may be reproduced with advantage:

"Where application is made in bankruptcy to rescind a receiving order or to annul an adjudication, the court refuses to act upon the mere assent of the creditors in the matter, and considers not only whether what is proposed is for the benefit of the creditors , but also whether it is conducive or detrimental to commercial morality and to the interests of the public at large. The mere consent of the creditors is but an element in the case. In *In re Hester* [1889] 22 QB 632 (CA),

some trenchant observations of Fry L.J. will be found on the idle notion that the court is bound by the consents of the creditors. The court has to exercise a discretion. It is bound to regard not merely the interests of the creditors. It has a duty with regard to the commercial morality of the country."

7. Company court is not a mere conduit pipe or stamping authority to whatever scheme that may be laid before it. Not unoften, motivations in the moving of such schemes are oblique. It is in fact for the court to first look at the scheme whether it has any strength or merits of its own and is financially viable or a mere attempt to take back the affairs and the assets of the company which had been earlier perforce taken over at the time of winding up. In my considered opinion, there is no scheme worth giving a trial which has been put forth by the applicant and, Therefore, has to be rejected.

8. It is correct that separate ejectment proceedings before the Rent Controller against the company are pending. Strangely they are being pursued by the ex-managing director although he has no right or status after the winding-up to represent the company. It is for the official liquidator to represent the company and considering the circumstance of that this court has already directed the handling over to the possession to the landlord, there is no need to grant any permission to the official liquidator to defend those proceedings. The landlord has also brought a suit for the recovery of rent against the company. It was asserted that the rent was Rs.2,000 per month. The company, however, pleaded that the rent was Rs.1,100 per month. The civil court, however, decreed the suit holding that the rent was in fact Rs.2,000 per month. In the meanwhile, the company came under winding up. However, the ex-managing director claiming to represent the company filed an appeal against the civil court's decree on October 11, 1982, which is said to be still pending. It is not understood what competency he has to file such appeal when the company has gone into liquidation and the official liquidator alone could have represented the company . Even the factum of winding up has not been disclosed there. All this course of conduct shows that the applicant is interested only in retaining the possession and preventing the landlord to obtain the same. At one stage the official liquidator had also to complain to the court that he had not been handed over possession of the premises and the court had to order him to do so with the permission to even break open the lock.

9. I, Therefore, dismiss all these three applications and direct the official liquidator to hand over possession of the premises to the landlord forthwith and not later than four days.