
(1992) 05 DEL CK 0001
In the Delhi High Court
Case No : C.W. No. 587 of 1991

SKIPPER CONSTRUCTION CO. PVT. LTD. and Another APPELLANT
Vs
UNION OF INDIA and Others RESPONDENT

Date of Decision : 29-05-1992

Acts Referred:

Citation : (1992) 106 CTR 363

Hon'ble Judges : Sat Pal, J

Bench : Division Bench

Judgement

SAT PAL, J. :

A complaint was received by the Government of India, Ministry of Industries, Department of Company Affairs from M/s. Jhandewalan tower Flat Buyers Association registered under the Societies Act (for short called the Association) for action against the petitioner-company under s. 408 of the Companies Act, 1956 (hereinafter referred to as the Act) on the ground that the affairs of the petitioner company were being conducted in manner which is highly oppressive and prejudicial to the public interest. In the complaint it was alleged, inter alia, that (1) M/s. Skipper Construction Co. Pvt. Ltd., offered a bid to purchase a plot of land in Jhandewalan in public auction held on 8th October, 1980 for Rs. 9.82 crores on perpetual lease from the Delhi Development Authority (for short called DDA) though its paid-up capital was only Rs. 25 lakhs; (ii) the company started selling flats even prior to the date of auction and continued booking of flats promising completion and hand over possession within two and a half years by 1983; (iii) the company collected 55% of the price of the flats within 11 months of the date of booking and before the submission of plans by threatening forfeiture of the amount already paid; (iv) though the total collection by the company amounted to about Rs. 15 crores from the public, the company neither complied with the conditions of the auction nor paid the balance 75% of the bid amount within the stipulated period of 90 days and the company siphoned off funds to other closely-held companies of the Skipper Group; (v) the accumulated

losses of the company as on 31st July, 1988 amounted to Rs. 1.09 crore wiping out the entire paid-up capital; and there are glaring irregularities committed by the management of the company which were adversely commented upon by the auditors in their report and that the directors are guilty of fraud.

2. After making preliminary enquiries the Government India, Ministry of Industries, Department of Company affairs, referred the matter to the Company Law Board for consideration and necessary action under s. 408 of the Act.

3. On receipt of the reference from the Central Government, the Company Law Board issued show-cause noticed dt. 22nd August, 1990 to the petitioner company under s. 408 of the Act. The summary of the main allegations mentioned in the show-cause notice is given below :

"(i) It has been alleged that M/s. Skipper Construction Co. Pvt. Ltd. purchased a plot in Jhandewalan on 8th October, 1980 in a public auction on perpetual lease from DDA, that the company started selling the flats in the proposed tower even prior to the auction and promised to hand over the possession of these flats by 1983; that the company neither fulfilled the conditions of the auction by making full payment to DDA within 90 days nor did it fulfill its promise to the flat buyers till date; that the company collected advance on the false promise under one excuse or the other and did not make any payment to DDA and also did not start any construction at the site;

(ii) That the company collected advance amounting to Rs. 15 crores from the public which was siphoned off to other closely held companies to the extent of nearly Rs. 12 crores; that the company had introduced fictitious loans running into several crores in benami names;

(iii) That against a meagre capital of Rs. 25 lakhs the company bid for the plot of Rs. 10 crores and has incurred liabilities to the tune of Rs. 16.73 crores as per their balance sheet of 31st July, 1988 without creating any material asset to that extent;

(iv) That although no construction has been undertaken, the company has shown losses to the tune of Rs. 1.09 crore thereby wiping out its share capital. There are glaring irregularities and the company is guilty of defrauding public funds of huge amount without even acquiring possession of the flat."

The petitioner company filed its reply dated nil denying the allegations made in the show-cause notice.

Hearing of the case were held on 17th November, 1990, 23rd November, 1990 and 28th December, 1990 before the Company Law Board and thereafter the impugned order dt. 28th February, 1990 was passed by the Company Law Board under s. 408 of the Act. The aforesaid order has been challenged by the petitioner company in this writ petition.

4. Learned counsel for the petitioner urged following contentions :

(1) The Company Law Board initiated proceedings suo motu without any reference from the Central Government and as such the aforesaid proceedings are illegal being contrary to the provisions of s. 408 of the Act.

(2) Even assuming the proceedings were initiated on the basis of reference from the Central Government, the same were illegal as no opportunity was given by the Central Government to the petitioner before making the reference.

(3) The condition precedent for initiating action under s. 408 of the Act did not exist in the present case.

(4) Even on merits the petitioner has bona fide reasons for delay in executing its project and as such the impugned order was illegal and liable to be set aside.

5. We, however, find no merit in any of the contentions urged by the learned counsel for the petitioner.

As regards contention No. 1, we have perused the original records produced by respondent No. 1 and we find that a complaint was received by the Ministry of Industries, Department of Company Affairs from the Association alleging various irregularities and misfeasance by the management of the petitioner company. After making preliminary enquiries the Department of Company Affairs of the Central Government referred the matter to the Company Law Board for initiating action under s. 408 of the Act. On receipt of the reference from the Central Government the Company law Board initiated proceedings under s. 408 of the Act against the petitioner company. Thus, the action taken by the Company Law Board was in accordance with the provisions of s. 408 of the Act.

6. We do not find any substance in contention No. 2 also. Making of reference by the Central Government is in exercise of its administrative power. The only requirement at this stage is that there should be some cogent material before the Government for making such a reference. As noticed above a complaint from the Association was received by the central Government and after making preliminary enquires, the Central Government made the reference to the Company Law Board. However, the petitioner is not entitled to any hearing at the stage of making reference. In this connection reference may be made to a Division Bench judgment of this Court in Colgate-Palmolive (India) P. Ltd. vs. Union of India (1980) 50 C C 456. In this writ petition reference made by the Central Government against the petitioners in that case of Monopolies And Restrictive Trade Practices Commission under s. 31(1) of the Monopolies & Restrictive Trade Practices Act, 1969 was challenged by them on the ground that no hearing was given before making reference and as such there was violation of principles of natural justice. The said writ petition was dismissed by a Division Bench of this court and it was held that no hearing is necessary before the Central Government at the stage of making reference and the grievance on account of denial of natural justice is misplaced and without merit.

7. The contention No. 3 urged by the learned counsel for the petitioner is again

misconceived and without any merit. In support of this contention the learned counsel for the petitioner placed reliance on *South India Viscose Ltd. vs. Union of India* (1982) 52 CC 247 and *Hariganga Cement Ltd. vs. Company Law Board* (1988) 64 CC 603 but the ratio of these judgments is not applicable to the facts of the present case. As stated hereinabove a complaint containing various allegations against the petitioner company was received by the Central Government from the Association and after making preliminary enquiries the Central Government referred the matter to the Company Law Board for necessary action. From these facts it is clear that there was a prima facie case for initiating proceedings against the petitioner company under s. 408 of the Act.

8. The contention No. 4 urged by the learned counsel for the petitioner is again misconceived and without any merit. In support of this contention the submission made by the learned counsel for the petitioner was that the delay in executing the project was bona fide as the building plans submitted by the petitioner company were sanctioned by the competent authority at a very late stage. We, however, find no substance in the submission made by the learned counsel for the petitioner. As stated in the impugned order passed by the Company Law Board, the petitioner company had collected from the flat buyers Rs. 478.65 lakhs in 1980-81 and Rs. 697.16 lakhs each in the years 1981-82, 1982-83, and 1983-84, 1984-85, 1985-86 and Rs. 739.57 lakhs in 1986-87. Though the petitioner company deposited 25% of the bid amount against the price of the plot in question on 9th October, 1980 but it did not deposit the remaining balance of 75% of price within the stipulated period of 90 days and the petitioner company had to pay a substantial amount to the DDA on account of interest for the delayed payments. The payments to the DDA are shown to have been made even up to 1988-89. Similarly, though the petitioner company had been collecting substantial amounts from the flat buyers from time to time but it submitted the building plans to the DDA as late as in April, 1987. Similarly, the impugned order indicates that the auditors of the petitioner company had also pointed out various irregularities in the accounts of the company for the years ending 31st July, 1988. Keeping in view the various irregularities and discrepancies mentioned in the impugned order the Company Law Board held that a large number of flat buyers who are members of the public and who had invested their earnings continued to suffer on account of the mismanagement of the company.

9. In view of the above discussion we find no merit in any of the contentions raised by the learned counsel for the petitioner and as such we dismiss the writ petition in limine.

An oral prayer is made for staying the operation of our order, to enable the petitioner to go up in appeal to the Supreme Court. We find no justification in granting interim order. The oral prayer is declined.