

(2010) 09 SHI CK 0056
In the High Court Of Himachal Pradesh
Case No : Company Appeal No. 2 of 2009

Union of India (UOI)

APPELLANT

Vs

Morepen Laboratories Ltd.

RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Companies Act, 1956 — Section 391, 392, 393, 394

Citation : (2010) 09 SHI CK 0056

Hon'ble Judges : Surjit Singh, J; Surinder Singh, J

Bench : Division Bench

Judgement

Surjit Singh, J.—These applications have been moved by deposit holders or transferees from deposit holders or those who have purchased the deposit documents in the open market, for being impleaded as party in the present appeal, as according to them, they are likely to be adversely affected, in case the appeal is allowed.

2. Learned Additional Solicitor General of India says that he has no objection in case the applicants in these applications are permitted to intervene. Hence, the applications are allowed. All the applicants are ordered to be impleaded as respondents.

3. Necessary corrections shall be carried out by the Registry. Amended Memo of Parties be also filed, in the course of the day, by the appellant. All the applications stand disposed of.

Company Appeal No. 2/2009

4. This appeal, u/s 391(7) of the Companies Act, is directed against the order dated 4th August, 2009 of learned Single Judge, passed in a petition, under Sections 391 to 394 of the Companies Act, 1956, by which an arrangement for discharge of the debts of fixed depositors, has been approved.

5. Appeal has been filed by the Central Government, which, per Section 394A of

the Companies Act, has the right to make representation and the Court is duty bound to consider such representation.

6. In the present case, six opportunities were granted to the Central Government to make representation, but it failed to file the same. Learned Single Judge, thereafter, heard the matter and passed the impugned order, approving the arrangement.

7. Main grievance of the appellant-Central Government is that it ought to have been afforded one more opportunity to file representation. Learned Additional Solicitor General of India, who is representing the appellant (Central Government) submits that on 4th August, 2009, when the impugned order was passed, representation of the appellant was ready. He submits that the representation had been dispatched from Delhi, through a Special Messenger, but the Messenger reached the Court at Shimla at 4.10 p.m. and by that time the matter had already been disposed of. Learned Additional Solicitor General of India further submits that vigilance enquiry has been ordered against the officials, who were responsible for delay in making the representation, despite several opportunities. He submits that the Central Government deserves to be granted one more opportunity to make representation, because interests of a large number of persons, which, according to him is around 85000, are going to be affected by the arrangement proposed by the Company and approved by the learned Single Judge. According to him, hard earned money of depositors is required to be refunded to them and in case the Central Government is not permitted to make representation all those depositors will be put to huge financial loss. He submits that very important and significant facts had not been brought to the notice of the learned Single Judge, when the impugned order was passed, and that those facts find mention in the representation, which had been dispatched from Delhi and was filed on the day next following the day of passing of the impugned order.

8. Learned Counsel representing the Company submits that the Central Government does not have the right to file the present appeal. Submission has been noticed only to be rejected. As noticed hereinabove, Central Government has the right to make representation, u/s 394A of the Companies Act, and such representation is required to be taken into consideration by the Court, while passing order on the application for approval of arrangement. Central Government may not be party to the Company Petition, but if it feels aggrieved by the order, rejecting its representation or shutting its right to make representation, it has the right to file appeal. Law is well settled on this aspect of the matter. Reference in this regard may be made to a Division Bench judgment of Bombay High Court in The Securities and Exchange Board of India (SEBI) Vs. Sterlite Industries (India) Ltd., and Northern Plastics Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd. and Others, .

9. Petition for approving the arrangement was filed in a pending Company Case of 2004, on 10th December, 2008. Learned Counsel for the Central Government

appeared in the Court on 8th January, 2009 and sought time for making representation. Matter was adjourned to 5th March, 2009. On that day, representation was not filed and matter was adjourned to 30th April, 2009. That day also, representation was not ready and the matter was then adjourned to 22nd May, 2009. Again, the representation was not file and the matter was adjourned to 25th June, 2009 and then to 24th July, 2009 and finally to 3rd August, 2009.

10. On 3rd August, 2009, learned Single Judge heard the matter. Arguments could not be concluded on that day and the matter was again taken up on 4th August, 2009, when the impugned order was passed. From a reading of the impugned order, it is made out that the learned Counsel representing the appellant (Central Government) had been requesting, throughout the hearing of the matter, for affording atleast one more opportunity to make representation, but his request was turned down.

11. It is true that the time granted to the Central Government, for making representation, was more than sufficient, but in view of the submissions made by learned Additional Solicitor General of India that the delay took place on account of acts of dereliction of duty on the part of some officials of the concerned Ministry, for which vigilance enquiry is being conducted, we are of the considered view that interests of the depositors, who in this case number more than 85000, should not be allowed to suffer, because of some acts of omission and commission on the part of the servants of the appellant. Consequently, we allow this appeal, set aside the impugned order and remand the case to the learned Single Judge, who will consider the representation, which was filed and was placed on the record of the Company Petition, after the passing of the impugned order, and decide the petition afresh, after hearing all the parties and taking into consideration the aforesaid representation.

Appeal stands disposed of accordingly. Pending application, if any, also stand disposed of, having become infructuous.