

(2006) 12 AHC CK 0070
In the Allahabad High Court

United Western Bank Ltd.

APPELLANT

Vs

Khaitan Hostombe Spinel Ltd.

RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Companies Act, 1956 — Section 235, 237

Citation : (2008) 145 CompCas 612 : (2009) 91 SCL 221

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Judgement

Sunil Ambwani, J.—Present Shri Rajnath N. Shukla appearing for the official liquidator, Shri S.K. Saxena, the official liquidator and Shri Pankaj Bhatia for M/s. Mukund Ltd. The other counsel, namely, Shri P.K. Jain, Shri R.P. Dubey, Shri Rakesh Bahadur, Shri R.P. Agarwal and Shri K.G. Srivastava are absent.

2. Some of the company petitions were tied up with hon'ble Mr. Justice Sushil Harkauli. They have released on November 27, 2006 and have been listed along with the decided Company Petitions Nos. 19 of 1996, 111 of 1996, 77 of 1999 and 78 of 1999.

3. Now since all the matters have been connected, the order dated September 1, 2006, passed in Company Petition No. 48 of 1999, in the matter of United Western Bank Ltd. and in the matter of Khaitan Hostombe Spinel Ltd., have become relevant.

4. A perusal of the events as they have unfolded in this Court in these 19 petitions shows that the Company Petition No. 25 of 1996 was filed by M/s. Hindustan Thompson Associates Ltd., to wind up Khaitan Hostombe Spinel Ltd. (KHSL), for non-payment of Rs. 38,76,000 as on October 31, 1995. Notices were issued on this petition on August 19, 1996. The company petition was followed by Company Petition No. 63 of 1997 by Mukund Ltd. to wind up KHSL for non-payment of Rs. 2.02 crores and the Company Petition No. 48 of 1999 by the United Western Bank Ltd., for non-payment of Rs. 2 crores.

5. The number of other company petitions namely Company Petitions Nos. 34 of 1997, 35 of 1997, 36 of 1997, 37 of 1997 and 46 of 1998 by Sinclairs Hotels and Transportation Ltd., Company Petitions Nos. 43 of 1997, 69 of 1997, 45 of 1998 and 17 of 2001 by M/s. Bennett Coleman, and Company Petition No. 17 of 2000 by M/s. DCM Financial Services Ltd., were also filed by creditors to wind up KHSL Industries Ltd.

6. It appears that in order to get out of situation the board of directors of KHSL resolved to propose a scheme of amalgamation by which Khaitan Dairy and Allied Industries Ltd. (KDAIL) (transferor company No. 1), Khaitan Hostombe Spinel Ltd. (KHSL) (transferor company No. 2) and Khaitan Supermag Ltd. (KSL) (transferor company No. 3), were to merge with Khaitan Overseas and Finance Ltd. (KOFL). The court in Company Petition No. 19 of 1996 filed on December 4, 1996, directed the meetings to be convened. The notices of confirmation petition were published in the newspapers Pioneer and Swatantra Bharat and by order dated May 27, 1997, the "scheme of amalgamation" was sanctioned. M/s. Hindustan Thompson Associates Ltd., filed Company Application No. 9014 of 1998 on February 4, 1998, and Mukund Ltd., filed Company Application No. 17088 of 1998 on March 6, 1998, for recalling the order dated May 27, 1997, confirming the amalgamation petition.

7. The Bank of Madura filed Special Appeal No. 347 of 1997, challenging the order of amalgamation dated May 27, 1997, on the ground that it had no notice of the meetings and that the merger will deprive the bank of the security of pledge of the equity shares of KHSL Industries and that scheme was not approved by three-fourth of the majority under the law of merger.

8. By an interim order dated August 14, 1997, passed in the special appeal the effect of impugned judgment dated May 22, 1997, was stayed.

9. In the backdrop, without disclosing the filing of the company petition and that the amalgamation has been stayed, Khaitan Overseas and Finance Ltd., was wound up by this Court in Company Petition No. 77 of 1999, filed by Dhandhanias Bros. P. Ltd., and Company Petition No. 78 of 1999, filed by M/s. R.D. Fan Ltd. (see Dhandhanias Brothers P. Ltd. and R.D. Fan Ltd. Vs. Khaitan Overseas and Finance Ltd., The court was not informed of the pendency of earlier company petitions, the order of merger, and the interim order dated August 14, 1997, in appeal. The court directed that Khaitan Overseas and Finance Ltd., with its registered office at Somdutt Plaza (11th floor), The Mall, Kanpur, be wound up by the court.

10. The ex-directors of KOFL have not filed the statement of affairs. It was reported that they have some property in Champawat in the State of Uttaranchal and at Nawabganj, Bareilly, which were attached by the Recovery Officer in pursuance of recovery certificate issued by the Debts Recovery Tribunal, Calcutta in favour of PICUP. One Shri Atiq Malik purchased the properties of KOFL at Champawat. He has filed writ petition in Uttaranchal High Court staying the order

dated May 5, 2005, by which the recovery proceedings of auction sale were stayed.

11. Prima facie I am satisfied that the ex-directors of Khaitan Hostombe Spinel Ltd., Khaitan Dairy and Allied Industries Ltd., Khaitan Supermag Ltd., and Khaitan Overseas and Finance Ltd., have played fraud with the creditors and with the court. They took advantage of the proceedings of the court by firstly making defaults in payment of the creditors, getting a scheme of amalgamation approved without informing the fact of pendency of the winding up petition and giving notice to all the creditors and thereafter in getting Khaitan Overseas and Finance Ltd., wound up without much contest. They did not file statement of affairs and it is reported that they have left the country. They appear to have succeeded. The law, however, is above all, must take stock of the situation, and punish those, who are guilty of misappropriation of crores of rupees or may be transferring crores of rupees outside the country. The public money should not be allowed to be siphoned off without fixing accountability and if possible recovery from the hands of all those, who possess the same.

12. In the circumstances, the court directs as follows:

(a) The official liquidator will make an application in special appeal, placing on record the order dated September 1, 2007, in company petition No. 48 of 1999 and the order passed today.

(b) The Application No. 9014 of 1998 dated February 4, 1998, filed by Hindustan Thompson Associates Ltd., and Application No. 17088 of 1998 dated March 6, 1998, filed by Mukund Ltd., for recalling the order dated May 27, 1997, sanctioning the scheme of amalgamation shall be listed for hearing on December 14, 2006.

13. The official liquidator will inform the Central Government to cause an enquiry into the affairs of these companies under Sections 235 and 237 of the Companies Act and to submit report to the court on or before January 4, 2007. The official liquidator will call a meeting of the secured and unsecured creditors of Khaitan Hostombe Spinel Ltd., Khaitan Dairy and Allied Industries Ltd., Khaitan Supermag Ltd., and Khaitan Overseas and Finance Ltd., and all the petitioning creditors in the pending winding up petitions of these companies. The meeting may be called at the office of the Bank of Madura Ltd. The meeting will take stock of the situation with reference to order dated September 1, 2006 and the order passed today, and will resolve regarding the steps to be taken by the official liquidator to recover the dues.

14. List on December 14, 2006, and thereafter on January 11, 2007.