

(1993) 05 RAJ CK 0014

In the Rajasthan High Court

Case No : Company Application No. 16 of 1992 in Company Petition No. 12 of 1988

Vimal Kumar

APPELLANT

Vs

Bhilwara Wool Tax Ltd.

RESPONDENT

Date of Decision : 28-05-1993

Acts Referred:

Companies Act, 1959 — Section 10

Citation : (1996) 86 CompCas 286 : (1993) 1 RLW 554 : (1994) 3 WLC 323 : (1993) WLN 231

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : G.K. Garg, for the Appellant; B.C. Meena, for the Respondent

Judgement

V.K. Singhal, J.—The official liquidator has filed this miscellaneous (company) application in Company Petition No. 12 of 1988 praying as under :

(i) That this hon''ble court, after confirmation of the jurisdiction of Bhilwara, from the Registrar of this hon''ble court may kindly transfer the file relating to the S. B. Company Petition No. 12 of 1988 in which the hon''ble High Court of Judicature for Rajasthan Bench at Jaipur, passed the winding up order dated August 10, 1990, to the hon''ble High Court of Judicature for Rajasthan at Jodhpur.

(ii) The official liquidator may be permitted to make necessary submission before the hon''ble High Court of Judicature for Rajasthan at Jodhpur to link up the S. B. Company Petition No. 12 of 1988 with the S. B. Company Petition No. 2 of 1989 and also to ratify the action of official liquidator and all the orders passed by this hon''ble court on the various miscellaneous applications filed by the official liquidator before this hon''ble court from time to time.

(iii) In case the orders for prayers Nos. (i) and (ii) are not in the affirmative this court may kindly be pleased to pass necessary orders as to the further course of

action to be taken by the official liquidator in this regard, and

(iv) Any other order/orders as may be deemed fit and proper in the circumstances of the case may also kindly be passed.

2. The arguments of both learned counsel have been heard. According to Section 10 of the Companies Act, 1956, the jurisdiction of the court has been specified as under :

(1) The court having jurisdiction under this Act shall be--

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court in pursuance of Sub-section (2) ; and

(b) where jurisdiction has been so conferred, the district court in regard to matters falling within the scope of the jurisdiction conferred, in. respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit empower any district court to exercise all or any of the jurisdiction conferred by this Act upon the court, not being the jurisdiction conferred--

(a) in respect of companies generally, by Sections 237, 391, 394, 395 and 397 to 407, both inclusive ;

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees by Part VII (sections 425 to 560) and the other provisions of this Act relating to the winding up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up."

3. From a bare perusal of the above provision it would be evident that the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situated will have the jurisdiction. The registered office of the company Bhilwara Wooltax Limited is situated at Bhilwara.

4. The jurisdiction in respect of Bhilwara district where the registered office of the company is situated is to be exercised by the Rajasthan High Court, Jodhpur Main Seat, in accordance with the notification dated December 23, 1976, which reads as under :

"RAJASTHAN HIGH COURT, JODHPUR

Notification No. 1/J-D, dated, December 23, 1976.

In pursuance of the High Court of Rajasthan (Establishment of a Permanent Bench at Jaipur) Order, 1976, and in exercise of the powers under Sub-section (2) of Section 44 of the Rajasthan High Court Ordinance, 1949, read with sections 54 and 57 of the State Reorganisation Act, 1956, the hon''ble Chief Justice has been pleased to order that with effect from January 31, 1977,--

(a) all cases arising in the revenue districts of Banswara, Banner, Bikaner, Bhilwara, Chittorgarh, Churu, Dungarpur, Ganganagar, Jaisalmer, Jalore, Jodhpur, Nagaur, Pali, Sirohi and Udaipur (except such case or class of cases as may by special order be transferred to the Jaipur Bench) shall be disposed of by the court at Jodhpur, and

(b) all cases arising in the revenue districts of Ajmer, Alwar, Bundi, Bharatpur, Jaipur, Jhalawar, Jhunjunu, Kotah, Sawaimadhopur, Sikar and Tonk (except such case or class of cases as may by special order be transferred to the court at Jodhpur) shall be disposed of by the Bench at Jaipur :

Provided that a vacation judge, whether sitting at Jodhpur or at Jaipur may hear any case irrespective of the district in which it has arisen for the purpose of deciding any matter which in his opinion requires immediate action.

5. In accordance with the administrative order passed by the Chief Justice, Mr. Justice Milap Chand has been appointed as a company judge, vide order dated June 5, 1989, and now by an order dated April 8, 1993, Mr. Justice G. S. Singhvi has been nominated as a company judge at Jaipur. The jurisdiction of both the company judges shall be only in respect of the areas as notified on December 23, 1976. The nomination of the company judge in respect of the two places of the High Court also cannot be interpreted either having a concurrent jurisdiction or overlapping jurisdiction. In the matter of liquidation of companies as mentioned above Section 10 of the Companies Act confers the jurisdiction on the High Court having jurisdiction in relation to the place at which the registered office of the company is situated. The registered office of the company at one time cannot be at two places and the notification dated December 23, 1976, specifies the place in respect of which the High Court can exercise the jurisdiction.

6. It has been submitted that Petition No. 2 of 1989 has also been admitted by the company judge, Jodhpur. The important question which arises besides the provisions of Section 10 of the Companies Act is that the proceedings for liquidation cannot be allowed to be continued at two places. Sub-section (3) of Section 10 has further clarified that the meaning of the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up shall be considered to be the registered office. Even, according to this section, Bhilwara would be considered the place for the registered office of the company and, therefore, in order to have the proper proceedings and disposal of all the miscellaneous applications the jurisdiction would vest with the company judge, Jodhpur, and the liquidation proceedings

cannot be allowed to be continued at two places even if Company Petition No. 12 of 1988 has been admitted earlier at Jaipur.

7. The State Bank of Bikaner and Jaipur has filed the present petition under Rule 19 read with Rule 117 of the Companies (Court) Rules, 1959, in Form No. 2 praying for grant of leave to carry out proceedings against the company in liquidation u/s 446(1) read with Section 529 of the Companies Act, 1956. As observed above, the petition for liquidation in respect of the company has already been admitted at Jodhpur and the company judge, Jodhpur, will have the proper jurisdiction to pass the order on the petition of the bank.

8. An argument was also raised that part of the cause of action has arisen at Jaipur and, therefore, the company judge at Jaipur, can also have the jurisdiction. Firstly, even if this contention would have been considered worth considering, the proceedings taken against the company for liquidation at Jodhpur cannot be said to be without jurisdiction and, secondly, the proceedings cannot be allowed to be continued at two places, There could not be two provisional liquidators and number of other complications are likely to crop up if the proceedings are allowed to be continued at two places. In respect of the company the proceedings for liquidation can be continued at one place only and this court having no jurisdiction cannot continue the proceedings. In order to overcome all these problems it is directed that Company Application No. 21 of 1991 may be transferred to Jodhpur. S. B. Company Petition No. 12 of 1988 and connected files may also be listed for passing the appropriate orders thereon after vacation. In respect of the orders which have so far been passed by this court, the parties may move for ratifying regularisation of such orders or for such further relief to which they are entitled in accordance with law.