(2000) 08 AHC CK 0101

In the Allahabad High Court

Case No : Miscellaneous Company Application A-26 of 2000 in Company Petition No. 30 of 1998

Vinay Kumar Jain and Others — APPELLANT

Vs

Official Liquidator and Others — RESPONDENT

Date of Decision : 10-08-2000

Acts Referred:
Companies Act, 1956 — Section 466

Citation : (2000) CriLJ 136

Hon'ble Judges : M.C. Jain, J

Bench : Single Bench

Advocate : Anurag Khanna, P.K. Singhal, Pradeep Agarwal, R.P. Agarwal, Vikram Nath, for the Appellant;

Final Decision : Disposed Of

Judgement

M.C. Jain, J.—The company in question, M/s. Srishti Video Corporation Limited, was ordered to be wound up by order dated August 16, 1999, in this case. There were four other winding up petitions against the same company made by the following concerns :

(i) Raunaq Finance Ltd.-Company Petition No. 20 of 1998.

(ii) Times Guarantee Finance Ltd.--Company Petition No. 111 of 1997.

(iii) Magma Leasing Ltd.--Company Petition No. 1 of 1997.

(iv) J. G. Finance Ltd.-Company Petition No. 38 of 1997. There were certain secured creditors also, namely, IIBI, PICUP and Syndicate Bank.

2. A-26 is an application by the company in question through Vinay Kumar Jain, promoter and the erstwhile managing director of the company with two other applicants, namely, Raj Kumar Jain and Ramesh Kumar Jain, with the prayer that the winding up order dated August 16, 1999, be recalled. The application is supported by the affidavit of Vinay Kumar Jain the promoter and erstwhile

managing director of the company. In short, the case put forth by the company (in liquidation) is that it has made agreements with the creditors who had filed the winding up petitions for the liquidation of their debts. The proposals are afoot for finalising scheme of repayment of debts of the secured creditors also and correspondence in this behalf has been exchanged with them. Applicants Nos. 2 and 3, namely, Raj Kumar Jain and Ramesh Kumar Jain are said to be interested investors willing to invest funds for the revival of the company, some payments as earnest money is also said to have been made to the creditors who presented the winding up petitions.

3. By order dated May 25, 2000, this court directed for the issuance of notice of this application to the secured creditors.

4. I have heard Sri R. P. Agarwal, learned counsel for the applicant-company, Sri Anurag Khanna for PICUP, Sri P.K. Singhal for the syndicate Bank, Sri Vikram Nath for IIBI, Sri Pradeep Agarwal for J. G. Finance Ltd. and the official liquidator.

5. The papers filed by the applicant-company indicate that agreements have been entered into by it with the creditors who presented the winding up petitions referred to above. Certain amounts have been paid to them and further payments to liquidate their debts are to be made on the revival of the company as per the terms of agreements entered into between the company and each of them. The details of the same are given below :

Sl. No.

Name of the Creditor

Winding up petition number

Document(s)

1.

M/s. Orchid Securities Limited

30 of 1998

(i) page No. 348-A to 348-D. (Copy of a settlement deed with the applicant-company)

(ii) page No.369-A to 369-C (affidavit of director of Orchid Securities Limited signifying "no objection" to the revival of the applicant co.

2.

Raunaq Finance Ltd.

20 of 1998

S. A. 1 of affidavit A-31 (affidavit of Director of Raunaq Finance Ltd.) signifying no objection.

3.

Times Guarantee Finance Ltd.

11 of 1997

(i) Page No.298 (copy of settlement deed)

(ii) Affidavit of the director of Times Guarantee Finance Ltd. signifying "objection no" (page 353)

4.

Magma Leasing Ltd.

1 of 1997

S. A. 2 of affidavit A-31 (copy of settlement deed)

5.

J. G. Finance Ltd.

38 of 1997

Page No.344 (copy of settlement deed, Affidavit of director of J. G. Finance Ltd., signifying ''no objection'' (page 368).

6.

PICUP

S. A. 4 of affidavit A-31 (copy of letter of PICUP that one time settlement is pending consideration and signifying "no objection" to the lifting of winding up order)

7.

Syndicate Bank

Indicate revival proposal of the company has been accepted by the bank of principle.

(i) A-2 of affidavit A-33 (revival proposal dated March 2, 2000, made by the company to the Syndicate Bank;

(ii) A-l of affidavit A-33. Copy of letter dated May 2, 2000.

(iii) A-l of affidavit A-33 (letter dated July 19, 2000).

6. Sri Vikram Nath representing IIBI has submitted in his argument that the proposal of the company for one time settlement is under consideration and the revival proposal is not opposed by the IIBI.

7. The official liquidator has submitted that consequent upon the passing of the winding up order he took over possession of the entire assets and properties of

the company. According to him, he has made certain realisation also.

8. As per Section 466(1) of the Companies Act, the court is empowered that it may at any time after making a winding up order, on the application either of the official liquidator or of any creditor or contributory, and on proof to the satisfaction of the court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the court thinks fit. Section 447 of the Companies Act be also taken note of which provides for an order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made out on the joint petition of a creditor and of a contributory.

9. Having regard to the facts and circumstances narrated above to that certain payments have been made by the company (in liquidation) to the creditors who filed winding up petitions before this court and its proposal for settlement and scheduling of payment with the secured creditors (PICUP, Syndicate Bank and IIBI) is under consideration and none of them has opposed the revival of the company, I think it just and proper to keep the winding up order in abeyance so long as the proposed settlements are implemented. The result would be that the winding up order would remain in a state of suspended animation. I order as under :

1. The winding up order dated August 16, 1999, shall remain in abeyance till further orders.

2. Any of the creditors would be at liberty to approach this court for withdrawing the abeyance order in case such an exigency arises because of the company not honouring the settlements and defaulting in making payment as agreed upon.

3. The possession of the assets and properties of the company shall be delivered back by the official liquidator.

4. Any realisation made by the official liquidator shall be held by him till further orders of this court. He shall make a fixed deposit initially for a period of three months in Punjab National Bank, Civil Lines, Allahabad within a week from today. Thereafter he shall seek instructions of this court for further course to be adopted by him: He shall present a report before this court within two weeks after having complied with this direction.

10. Application A-26 is disposed of accordingly.

