

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ Co.Appeal.70/2002

% Date of decision: 28.04.2008

KULBIR SINGH ... APPELLANT
Through: Appellant in person.

Versus

NATIONAL CHEMICAL INDUSTRIES LTD. ... RESPONDENT
*Through: Mr. S.K. Luthra, Advocate for the
Official Liquidator.*

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. A petition for winding up of M/s National Chemical Industries Pvt. Ltd. (hereinafter referred to as the said company) was filed before this Court and a winding up order was passed on 19.2.1981. The scheme propounded u/s 391 of the Companies Act, 1956 (hereinafter referred to as the said Act) was sanctioned by the Company Judge on 1.3.1983 to facilitate revival of the said company. It is stated that the order sanctioning the scheme provided for no alienation of immovable properties and the Official Liquidator was made

as the observer to supervise and report on the progress of revival and implementation of the scheme. The consequence of this order was stated to be the stay of the winding up order.

2. It is the case of the appellant that the company was actually never revived in pursuance to the scheme and the Official Liquidator failed to report the non-revival.
3. The appellant and his mother were the shareholders of the said company in terms of an arrangement arrived at and the shares were sought to be transferred. The appellant and his mother were objecting to the scheme and it is in those circumstances that the orders are stated to have been passed on 24.9.1984.
4. The appellant moved an application for release of the amount of Rs.50,000/- out of Rs.1.00 lac retained in respect of the liability of the Estate Duty. The application was accompanied by a Estate Duty certificate. The appellant also claimed interest on the amount of Rs.50,000/-. This application was opposed on behalf of the company. The appellant claims that in terms of the order dated 30.8.1991, the Registry was directed to release Rs.50,000/- and interest thereon to the appellant but only a sum of Rs.50,000/- was released on 28.10.1991 but not the interest contrary to the mandate of the order dated 30.8.1991. The appellant, thus, moved C.A.746/1991 for release of the

amount along with interest @16% P.A. on the sum of Rs.50,000/-. It is stated that this application was disposed of by an order dated 9.1.1992 without any order for release of the amount. The review application was also disposed of.

5. The appellant once again moved an application C.A.797/1992 for release of interest as the amount of Rs.50,000/- is stated to have been paid to the appellant. The interest was claimed for the period 6.12.1984 till date in terms of the order dated 30.8.1991.

6. The appellant claims that in C.A.797/1992 an order came to be passed that the interest was to be calculated on the amount of recovery for the period of stay obtained by the respondent company and the office was directed to calculate the interest. The office calculated the interest for the period of 6 years and 10 months but not for the stay period. The appellant, thus, moved C.A.788/1995. The Company Court by the order dated 26.7.1996 directed the release of Rs.54,666/- being the interest calculated by the Registry. The respondent is stated to have carried out the matter further right till the Supreme Court, but unsuccessfully.

7. The appellant kept on agitating the grievance and in terms of the impugned order dated 12.11.2002 passed in C.A.788/1995 the prayer of the appellant for any higher multiplier/period for grant of interest has been rejected.

8. The appellant has been heard in person. The orders passed by the learned Company Judge show that the appellant was opposing the scheme of rehabilitation and in view of the interest of the appellant and his mother by reason of holding of shares, the shares were sought to be transferred on payment of consideration of Rs.8.00 lacs as per an agreed order with interest. The amount of Rs.1.00 lacs was, however, detained on account of the Estate Duty liability arising from the demise of the father of the appellant Mr.Girdhara Singh (whose shares were inherited by the appellant and his mother) and the appellant moved C.A.759/1983 attempting to wriggle out of the settlement. The said request was not acceded to in terms of the order dated 30.1.1984. The mother of the appellant, Smt.Piar Kaur, also passed away in November, 1985. A perusal of the order itself shows that the application arose out of the increase in the value of land and machinery of the company but the plea was rejected on the ground that the same cannot be the basis for re-consideration which would also have been the position if the price had gone down.
9. An amount of Rs.1.00 lac was detained towards the Estate Duty clearance as is apparent from the order dated 6.12.1984 and the same was to await the final certificate to be produced by the applicants. The order thereafter passed on 30.8.1991 again makes the position clear that in view of

the Estate Duty clearance certificate in respect of the estate of late Shri Girdhara Singh out of which the appellant and his mother had to receive payment, 50% of the amount retained along with interest was to be released and the balance was to be detained in Court. On 6.7.1993 the appellant prayed that interest may be paid on diminishing basis and the Registry was directed to calculate interest on diminishing basis. The order dated 28.4.1995 provided that the respondent would have to deposit the interest on the amount which was stayed. The calculations of the Registry show that the payment of Rs.50,000/- was given to the petitioner on 28.10.1991 which was actually due on 6.12.1984. There was, thus, a delay of 6 years and 10 months and interest of 16% P.A. was calculated on the said amount. The noting is dated 16.10.1995.

10. The aforesaid facts and circumstances show that the appellant and his mother were paid the due amounts for the transfer of shares and only a sum of Rs.1.00 lac was detained that too for production of the Estate Duty certificate. On production of the certificate, 50% of the amount of Rs.50,000/- along with interest was directed to be paid. The appellant kept on making grievance in respect of the interest. The calculation of interest is based on the period of delay which is from 1984 to 1991 and the amount along with the interest have been paid @16% P.A. We, thus,

see no merit in the plea of the appellant that there is any other or further interest due and payable to the appellant apart from the staleness of the claim of the appellant. Another connected appeal, bearing Co. Appeal No.35/2006 has been dismissed today which also showed an endeavour of the appellant to somehow keep the issues alive even though the claim of the appellant stood satisfied.

11. We see no reason to interfere with the effect of the order in appeal since the appellant has been paid the principal amount as also the interest for the period of delay. What the appellant seeks is to appropriate the payment towards the overdue interest first instead of the principal amount but that is not what the arrangement envisaged. Thus, the principal amount having been paid, interest has been calculated on the principal amount for the period of delay, which also stands paid.
12. There is no merit in the appeal.
13. Dismissed.

SANJAY KISHAN KAUL, J.

April 28, 2008
'sp'

MOOL CHAND GARG, J.