

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22nd March, 2012

+ Co.App.27/2012

% M/S MAHABIR INDUSTRIES Appellant
Through: Mr. R.K. Saini with Mr. Mayank
Kumar, Advocates.

Versus

M/S H.M. DYEING LTD. Respondent
Through: Mr. Mayank Goel, Advocate.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the order dated 28th February, 2012 of the learned Company Judge dismissing Company Application No.362/2012 filed by the appellant. The said application was filed by the appellant in Company Petition No.159/2006 filed by ICICI Bank Ltd. for winding up of M/s H.M. Dyeing Ltd. and in which proceedings order of winding up had been made. Company Application No.362/2012 was filed to restrain sale of machinery and for release of the plant, machinery and building at the factory premises at Panipat, to the appellant.

2. It is the case of the appellant that a partnership firm in the name and style of the appellant was constituted in January, 1998 with Shri Anil Kumar Manik as one of the partners; that the said partnership firm, between the years 1998 and 2003, acquired and set-up the factory aforesaid at Panipat with financial assistance from Punjab National Bank; that on 10th May, 2005 the partnership firm was dissolved and its assets including the factory premises, plant, machinery installed therein came to the share of Shri Anil Kumar Manik (supra) who is now the sole proprietor of the appellant. It is further the case of the appellant that the Company in liquidation was incorporated on 3rd August, 2005 with authorized share capital of ₹ 5 lacs only and of which the appellant contributed ₹2 lac. It is yet further the case of the appellant that on 7th September, 2005 a Memorandum of Understanding/Agreement was executed between the appellant and the Company in liquidation, whereunder the appellant agreed to sell and transfer all fixed assets including industrial plot (supra) at Sector 29, Part-II, HUDA, Panipat and the outstanding liabilities of the bankers Punjab National Bank and the machines etc. to the Company in liquidation.

3. The counsel for the appellant before us has also fairly admitted that the factory premises, plant, machinery sale whereof in liquidation proceedings of the Company is now sought to be restrained, since 7th September, 2005, has been in possession of and in use of the Company in liquidation.

4. The argument however of the counsel for the appellant is that since the document dated 7th September, 2005 (supra) is not a document of transfer of title and further since the consideration thereunder has not been received by the appellant, the factory premises aforesaid with **machinery**, at Panipat cannot be said to be belonging to the Company in liquidation to be sold in the liquidation proceedings.

5. The argument aforesaid though *prima facie* attractive, has no merit. The learned Single Judge in the order impugned before us has noticed that during the liquidation proceedings, Serious Fraud Investigation Office (SFIO) was set-up to look into the affairs of the Company in liquidation; that the SFIO has submitted its final report *inter alia* to the effect that -

“the Company in liquidation had taken over the business and assets of the appellant; that Shri Anil Kumar Manik who claims to be the sole proprietor of the appellant was one of the promoter Directors of the Company in liquidation; that the Company in liquidation had been carrying on its business from the factory premises aforesaid; that the said Shri Anil Kumar Manik was in-charge of the day-to-day management of the Company in liquidation and used to visit the factory daily and used to sign the cheques for payments/withdrawals; that the said Shri Anil Kumar Manik had illegally and unlawfully

withdrawn cash from the bank accounts of the Company after the winding up of the Company; that he was unable to give any explanation therefor; that he was thus guilty of siphoning off funds of the Company in liquidation and liable for punishment under Sections 405, 406, 409, 418, 421 & 422 of the Indian Penal Code, 1860; that he had as a ex Director also failed to handover the assets of the Company to the financial liquidator.”

The learned Single Judge further found that the appellant had in moving the Company Application No.362/2012 also suppressed material facts and once again tried to mislead the Court. Accordingly Company Application No.326/2012 was dismissed.

6. As far as the argument of the counsel for the appellant of the appellant having not received the consideration under the document dated 7th September, 2005 is concerned, the same records “that the total deal has been made at a lump sum price of ₹80.00 lacs (Rupees Eighty Lacs only)”; “that the net assets value of the proprietary firm as on today works out at ₹15 lacs only which shall be converted into the paid up capital of the Company”; “that the outstanding liabilities i.e only MTL against Machine & C.C. Account (Against Stock & Debtors) of Punjab National Bank, Jatal Road, Panipat would now become the liabilities of the Company”. It is thus clear that though the said document mentioned the value of the deal as

₹80 lacs but which was paid by the Company to the appellant by taking over the liabilities of the appellant and by issuing the capital of ₹15 lac to the appellant. It will thus be seen that the entire consideration for the factory premises, plant, machinery stood paid by the Company in liquidation to the appellant in such manner. The argument that consideration has not been paid thus appears to be fallacious.

7. The counsel for the appellant however contends that the shares of the value of ₹15 lacs were not issued to the appellant. We are of the opinion that even if the said shares have not been issued, the claim of the appellant, after having in part performance of the said agreement of transfer of the property, delivered the possession of the factory premises, plant, machinery to the Company, is only of enforcing the same against the Company in liquidation, if such claim is within time and otherwise maintainable and the appellant cannot claim back the factory premises, plant and machinery or interfere in the sale thereof in liquidation of the Company.

8. We are even otherwise of the opinion that the present is a fit case for piercing of the corporate veil. From what has been recorded in detail by the learned Company Judge and as found by us, it is apparent that the appellant is using the cloak of the Company for defrauding the creditors of the Company. The appellant as aforesaid was a substantial shareholder in active management of the affairs of the Company. The appellant let others

deal with the Company by representing that the factory premises, plant, machinery etc. belonged to the Company. The appellant cannot now, when such other persons are enforcing their claims against the Company, be heard to contend otherwise.

9. The Supreme Court in ***Delhi Development Authority Vs. Skipper Construction Company (P) Ltd.*** (1996) 4 SCC 622 held that the concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the Court would ignore the corporate character and look at the reality behind the corporate veil i.e. the persons who actually work for the corporation, to pass appropriate orders to do justice. In ***Kapila Hingorani Vs. State of Bihar*** (2004) SCC (L&S) 586, the Supreme Court observed that the doctrine of lifting the corporate veil is a changing concept and its horizon is expanding (as also held in ***State of U.P. Vs. Renusagar Power Company*** AIR 1988 SC 1737). It was further held that whenever a corporate entity is abused for an unjust and inequitable purpose, the Court would not hesitate to lift the veil and look into the realities so as to identify the persons who are guilty and liable therefore. Corporate veil was held to be pierceable when the corporate personality is found to be opposed to justice, convenience and interest of the revenue or workman or against public interest.

10. We are therefore satisfied that there is no infirmity in the order of the learned Single Judge and dismiss this appeal. We refrain from imposing any costs on the appellant.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 22, 2012

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