IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CAPP No.14 of 2012 (O&M)
Date of decision : 03.08.2015

M/s Punjab Processed Foods Pvt. Ltd. and ors.

...Appellants

Versus

Sunil Kumar

...Respondent

2. CAPP No.15 of 2012 (O&M)
Date of decision : 03.08.2015

Atul Jalota

...Appellant

Versus

M/s Punjab Processed Food Pvt. Ltd. & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Anand Chhibbar, Sr. Advocate with
Mr. Lalit Thakur, Advocate for the appellants
(In CAPP No.14 of 2012)
for the respondent Nos.1 to 3
(In CAPP No.15 of 2012)

Mr. Avneesh Jhingan, Advocate for the appellant
(In CAPP No.15 of 2012)

Mr. Anil K. Aggarwal, Advocate for the respondent
(In CAPP No.14 of 2012)
for the respondent No.4
(In CAPP No.15 of 2012)

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AMIT RAWAL, J. (Oral)

This order of mine shall dispose of two appeals i.e. CAPP No.14 of 2012 filed by the respondent before the Company Law Board and CAPP No.15 of 2012 instituted at the instance of subsequent allottees of shareholders who have purchased the shares and extended the loan of ₹60 lacs.

The respondent herein, petitioner before Company Law Board, in CP No.63 (ND) of 2010 while invoking the provision of Sections 397-398 of the Companies Act alleged oppression and mismanagement. During the pendency of the aforementioned company petition, vide interim order, auditors were appointed and auditors submitted their report dated 26.11.2010. On the basis of the report of the auditors, the Company Law Board disposed of the company petition vide impugned order dated 18.04.2012 and passed the following directions:-

> *"37 In view of the foregoing, in the facts and circumstances of this case, in the interest of the company which is paramount, and to do substantial justice between the three equal groups, for smooth running of the company, it is hereby ordered that:-*
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> *I. Cancelling the illegal allotment of additional shares, and cancelling all statutory filings with the ROC in this regard, equal shareholding of 1/3rd shares each as it stood prior to the dilution of the shareholding of the*

petitioner is hereby restored.

II. The petitioner shall have equal representation on the Board of the R-1 company.

III. The petitioner shall also be one of the authorized signatories to the Bank Accounts of the R-1 company.

IV. The respondents are hereby directed to take steps to shift the Registered Office either to the initial Registered office of the company or to a place agreeable to all the three groups.

V. The R-2 and R-3 are hereby required to bring back the siphoned off amounts, as already ascertained by the Auditors, to the bank accounts of the R-1 Company within three weeks of receipt of this order.

VI. The respondents must ensure that the petitioner is enabled to participate in the affairs of the company and is allowed access to the accounts and other documents of the R-1 company.

38. CP No.63(ND)/2010 is disposed off in the above terms. All CAs also stand disposed off with this order. All interim order stand vacated. No order as to cost."

The other appellant aggrieved against the impugned order dated 18.04.2012 had filed CAPP No.15 of 2012 on the premise that before passing such order, despite the fact Company Law Board was aware of the matter that the appellants have been allotted 1,20,000 shares (One Lac Twenty Thousand Shares) and were not impleaded as respondents, thus, a sum of ₹60 lacs was extended as loan through bank transaction, the directions contained in the impugned order have seriously prejudiced to their right, interest and claim. The Company Law Board ought to have heard the allottees in regard to allotment of additional shares of 1,20,000 shares

(One Lac Twenty Thousand Shares).

Mr. Anand Chhibbar, learned Sr. Counsel appearing on behalf of the petitioner submits that during the pendency of the matter before the Company Law Board, bank has initiated proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter to be referred as 'the SARFAESI Act') i.e. under Section 13(2) on 02.01.2012. He further submits that prior to issuance of notice (ibid), bank account of the company was declared NPA on 31.12.2011.

He further submits that after passing of the impugned order, proceedings under Section 13(4) of SARFAESI Act were initiated and the possession of the property was taken on 22.12.2012 and, thereafter, the assets of the company have been sold on 18.04.2013. The sale certificate in favour of the subsequent purchaser has also been issued on 01.03.2014.

He further submits that in view of such scenario, indulgence of this Court vide CMA No.42 of 2015 is sought for invoking the provision of Section 397, for winding up the company, as the company assets has been sold and the company is no longer in working condition.

Mr. Anil K. Aggarwal, learned counsel appearing on behalf of respondents submits that appellants have challenged the action initiated under SARFAESI Act by filing Securitization Appeal No.154 of 2012 and the same is pending adjudication.

He further submits that as per the provision of Section 37 of the SARFAESI Act, the Act is not derogation but in addition to the Companies Act, 1956 and various other acts.

He further submits that direction contained in the impugned order is required to be complied with by the appellants for the reasons the moment the money is deposited in the account of company, the liability of the Directors/Promoters/Guarantors shall considerably be reduced.

He further submits that though there was no interim order with regard to the directions contained in the impugned order, the respondents have also filed the execution proceedings under Section 634 (A) of the Companies Act, 1956 and same order has been passed, though copy of the order has not been annexed. The execution application has been transferred to District Court, Amritsar for compliance.

Mr. Avneesh Jhingan, learned counsel appearing on behalf of appellant in CAPP No.15 of 2012 submits that direction contained in the impugned order is not sustainable for the reasons that the appellants have not been heard as they are allottees of 1,20,000 shares (One Lac Twenty Thousand Shares) and had extended to loan of ₹60 lacs to the company and prays that in view of such situation, the impugned order is liable to be set aside and the matter may be remitted back to the Company Law Board and appellant be given an opportunity to defend their allotment by raising appropriate/legal defence before the Company Law Board.

Mr. Anil K. Aggarwal, learned counsel appearing on behalf of respondent has rebutted the contention made by Mr. Avneesh Jhingan, Advocate by contending that whenever illegal allotment of shares is made, allottees may not be arrayed as party, the Company Law Board is enjoined upon an obligation to look into the affairs of the company. The petition filed before Company Law Board was of oppression and mismanagement at the hands of the Directors who were in control of the affairs of the company i.e. appellants No.2 and 3 in CAPP No.14 of 2012. Though, his client namely Sunil Kumar was also Director.

I have heard learned counsel for the parties and appraised the paper book.

Considering the aforementioned facts and as well as subsequent events which have taken place during the pendency of the petition before the Company Law Board and as well as in this Court, the question which has to be determined by this Court whether the order of the Company Law Board can be executed in view of the fact that the assets of the company by invoking SARFAESI Act have been taken over. There is another aspect of the matter which cannot be ignored. Bank has also filed Original Application bearing No.771 of 2013 intending for recovery of ₹6,68,44,557/- from the company as the Guarantors/principal borrowers of the Guarantors. Since the amount which is to be recovered from all the Directors, much less, Guarantors is yet to be determined in Original Application, it would not be fitness of thing that order dated 18.04.2012 should liable to be sustained. The bank has extending loan to the company besides taking into account equitable mortgage of the properties of equal amount but it also pertains to the personal guarantee of the principal borrowers and the Guarantors. It has not been disputed before this Court that respondent herein and petitioner before Company Law Board have not extended any guarantee/personal guarantee. The directions contained in the impugned order thus in my considered view have seriously prejudiced the interest of the allottees i.e. appellants in CAPP No.15 of 2012, therefore, I deem it appropriate to remit back the matter to the Company Law Board by setting aside the order dated 18.04.2012 with the directions to the Company Law Board to hear the matter afresh keeping in view the subsequent events which have surfaced. Appellants shall be at liberty to move an appropriate application of impleading them as respondents and on moving such application, Company Law Board shall decide the application after calling reply from the concerned/contesting parties & decide the same pragmatically, thereafter decide the matter afresh, much less, in accordance with law.

Parties through their counsels are directed to appear before Company Law Board.

In view of the aforementioned directions, both appeals are disposed of.

It is made clear that parties to the lis are permitted to file additional documents and submissions duly supported by an affidavit and Company Law Board shall take into consideration while deciding the petition.

03.08.2015 **(AMIT RAWAL)**
pawan **JUDGE**