

JSN

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY PETITION (L) NO.737 OF 2015

Mr. A.M. Khire, Liquidator of Shivrajpur
Syndicate Ltd.

...Petitioner

Mr. Raj Patel, *i/b. M/s. Sonal Doshi, for the Petitioner.*

CORAM: G.S. PATEL, J.
DATED: 18th March 2016

P.C.

1. This Company Petition, in my view, is wholly unnecessary. It has been filed only because of some ‘suggestion’ mooted by the office of the Registrar of Companies (“ROC”), on that I think is entirely without basis in law.

2. The Company was incorporated on 18th November 1905. Its main business was mining. Changes in government policies caused it to stop business in 1972. On 2nd March 1972, a notice was issued to all shareholders for a General Meeting at which a Special Resolution for the voluntary winding up of Company was proposed. That resolution was passed in a general meeting held on 5th April 1972. This was published in the Government Gazette on 13th April 1972. A private Liquidator, Mr. F.L. Berarwalla, was appointed as Liquidator of a Company. In 1998, Mr. Berarwalla resigned as

Liquidator. On 16th June 2003 one Mr. Sakarwalla was appointed as the Liquidator. On 11th July 2003, the Collector passed an order under the Gujarat Land Revenue Code staying the sale of the Company's immovable properties. In 2008, Mr. Sakarwalla resigned and one Mr. Sanat Parekh was appointed Liquidator. He too resigned that year. On 10th August 2008 one A.M. Khire, the present Applicant, was appointed as Liquidator. In 2012 the stay of sale of immovable properties was vacated.

3. On 30th March 2015, due to another change in the policies of the Government, the Company issued a notice to its shareholders calling a General Meeting to cancel or withdraw the winding up of or liquidation process. This meeting was held, and a resolution was passed in those terms on 30th April 2015. The present Applicant, Mr. A.M. Khire, was authorised to take all necessary steps for cancellation of the voluntary winding up.

4. It is on this basis that cancellation of the voluntary winding up procedure and leave to resume or carry on business is sought.

5. Mr. Patel for the Applicant points out that it is unclear under which provision of the Companies Act 1956 the ROC or anyone else can require the Liquidator to file such a Petition. He says that the Liquidator has filed this Petition *ex majore cautela* under Section 518 of Companies Act, the provision that he believes lies closest to the so-called requirement. Section 518 speaks of the power to apply to the Court to have questions determined or powers exercised. The Liquidator may apply to the Court to determine any question arising in the winding up, or to exercise, as regards the enforcing of

calls, the staying of proceeding or any other matter, all or any of the powers which the Court might exercise. The only question therefore to be answered or determined is whether the process of winding up should be cancelled. If this is a question to the Court, the answer can only be yes. There is no possible other answer since the shareholders of the Company have in a properly convened General Meeting passed a lawful Special Resolution authorising the cancellation of the process of winding up.

6. This order is passed only because this Company Petition has been filed. To dismiss it would be to create a needless complication. In my view, there is no requirement in law for the filing of any such Petition at all. The Registrar of Companies is not entitled to insist that any such application or petition be filed, or even to direct a Company or its liquidator “to obtain a High Court order”.

7. The Liquidator/Applicant shall proceed with the cancellation or withdrawal of the voluntary winding up in accordance with law.

8. The Company Petition is disposed of in these terms. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)