IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPLICATION (L) NO. 803 OF 2015
IN
COMPANY PETITION NO. 40 OF 1967

Dattatraya Waman Chitale ...Applicant

In the matter between

Anant Sadashiv Netravali ...Petitioner
vs.
The Official Liquidator ...Respondent

Mr.Rahul Narichania, Senior Advocate with Mr.Prathamesh Kamat, with Mr.Ashish Parwani and Mr.Ankur Singhania i/b. Rajani, Singhania & Partners for Applicant.
Mr.Naushad Engineer for Official Liquidator.

CORAM : S.C. GUPTE, J.

28 JANUARY 2016

P.C. :

This company application is filed by a shareholder of Chitale Agricultural Products Ltd. (In Liquidation) ("Company") under Section 466 of the Companies Act, 1956 for a permanent stay of winding up of the Company and permission to revive the Company. The Applicant, who is a promoter and contributory of the Company, presently holds along with members of his immediate family 40.67% of the total equity share capital and 6.45% of the total preference share capital of the Company.

2 On 12 September 1967, the Company was ordered to be wound up by this court on account of its inability to pay debts. During the course of the administration of assets in winding up, the Official Liquidator has disposed of the assets of the Company and paid claims of workmen and secured creditors of the Company. The balance unclaimed dividend has been transferred to the Registrar of Companies on 6 January 1995. There are no other claimants proving their

debts against the Company. The Liquidator has in his possession no further records to carry on the administration of assets. The Company used to own lands, but, apparently, these lands have been acquired or are in the process of being acquired. Whilst some of the lands have been surrendered to Maharashtra State Farming Corporation Ltd. ('the acquiring body'), both the Applicant and the Official Liquidator are clueless about any balance land available to the Company. Apparently, the only property, which the Official Liquidator accepts as belonging to the Company and lying with the Official Liquidator towards administration in winding up, is a sum of over Rs.50 lakhs kept in fixed deposits in various Nationalised Banks and a sum of over Rs.1.25 lakhs lying in the bank account of the Company. Since the administration of assets is virtually complete and there are no debts outstanding against the Company, the Applicant, on behalf of majority stakeholders of the Company, seeks a permanent stay of winding up and intends to revive the local sugar granules wholesale trading business of the Company. It is submitted by the Applicant that the Company has a reasonably good prospect of revival and as such, revival be encouraged rather than allowing the Company to be finally dissolved. As far as the lands originally owned by the Company are concerned, it is proposed by the Applicant to take steps in the matter of acquisition and distribution of the same before the competent authority and if any land is available for the Company, to make beneficial use of the same for farming of sugarcane, which will be ancillary to the business to be undertaken by the Company upon its revival.

3 Since the assets of the Company have already been administered and all known debts of the Company have been fully paid, whatever assets, including liquid assets left with the Company, are now only to be distributed amongst the beneficiaries. The Applicant represents the majority shareholders, who between them hold over 40% of the total equity share capital of the Company. The Applicant has also received consent letters from other equity shareholders and preference shareholders, who want to stand by the Applicant and support revival of the Company. As of date, majority of equity shareholders holding approximately 53.28% of equity share capital and preference shareholders holding 32.03% of preference share capital of the Company are in

support of the application. The Company has liquid assets in the sum of Rs.53,60,000/- in fixed deposits of Nationalised Banks and Rs.4,45,160/- in bank account of the Company. Besides these liquid assets, there is a prospect of recovering some of the lands surrendered by the Company to the State, or in the alternative, to get compensation in respect thereof. The Liquidator has no record with him in respect of these lands or the acquisition proceedings in respect thereof. The Sub-Divisional Officer, Malshiras Division, District Solapur, who had initiated proceedings regarding acquisition of the property of the Company, was directed to appear before this Court and place on record the particulars of the land and the status of the acquisition proceedings. Despite attempts by the court office to serve the order and the notice on the Sub-Divisional Officer, service could not be effected and in the premises, particulars concerning these lands could not be ascertained. Be that as it may, it is clear that if at all any land is available to the Company or any compensation is to be recovered by the Company, the same shall be only to the benefit of the contributories, the majority of whom are either represented by, or support, the Applicant. Besides, the Official Liquidator, who has not taken any steps in the matter so far, cannot be expected to take steps now to recover the lands or any compensation in lieu thereof. The Official Liquidator, in fact, in the premises, has no objection to the order of permanent stay of winding up being granted provided he gets a complete discharge in the matter of administration of assets in winding up and the Company undertakes to pay all legally sustainable claims against the Company and indemnifies the Official Liquidator in respect of any loss or expenses incurred by the Official Liquidator on account of revival of the Company. The Applicant and the Company have offered to submit suitable undertakings in this behalf.

4 In the premises, it is in the interest of justice that the order of winding up is permanently stayed under Section 466 of the Companies Act, 1956 and the Company is allowed to be revived. Accordingly, there will be a permanent stay on the order of winding up of Chitale Agricultural Products Ltd. and the Applicant is permitted to revive the Company on the following terms and conditions :

(i) The Official Liquidator is completely discharged as a liquidator of the Company appointed in Writ Petition No.40 of 1967 subject to appointing a firm of Chartered Accountants on his panel for making up and finalising the accounts of the Company;

(ii) The Company shall submit accounts and returns after one year from the date of this order with the help of the Chartered Accountants, appointed as above, to establish that the Company has, in fact, been revived in accordance with the scheme proposed by the Applicant;

(iii) The amount lying to the credit of the Company shall be released to the Company after deducting Official Liquidator's commission, costs, charges and expenses. The Liquidator shall submit a report of such costs to the Applicant and the Company;

(iv) The Official Liquidator shall also hand over all documents in his custody concerning the Company to the Applicant within a period of four weeks from today;

(v) The Applicant shall be at liberty upon revival of the Company to reconstitute the board of directors by appointing Mr.Dattatraya Waman Chitale and Ms.Kiran Dattatraya Chitale, as initial directors of the Company, with all rights, duties and obligations including the right to appoint additional directors in accordance with the provisions of the Companies Act, 1956 or Companies Act, 1930. The Applicant and the Company shall be at liberty to adopt such steps as may be permissible in the matter of recovery of lands belonging to the Company or compensation in lieu thereof from the acquiring authority.

(vi) All legal compliance, such as ROC, filing of Income-tax, etc., shall be followed by the Company after its revival;

(vii) The Applicant and the Company undertake to this court that they shall deal with and pay all legally sustainable claims of any workman, creditor or shareholder / contributory. In the event any shareholder does not wish to be a part of the revival, he shall be given an exit option. In such case, the Company shall value the shareholding of such shareholder through an independent valuer and pay such value to the shareholder. It is, however, clarified that the exit option provided herein shall be exercised by the shareholders of the Company not later than one year from today. The value of the shares in case of such exit option shall be determined as of the date of expiry of one year from today;

(viii) The Applicant and the Company indemnify the Official Liquidator in respect of any loss or expenses caused to, or incurred by, him in any manner whatsoever as a result of the stay of winding up and revival of the Company;

(ix) The Company Application is disposed of accordingly.

(x) There shall be no order as to costs.

(S.C. Gupte, J.)