IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.02.2020

Delivered on : 18.05.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

Comp. A. No.429 of 2019
in
C.P.No.114 of 2003

Canara Bank
ETT Section, FMS wing
Head Office,
112, J.C. Road,
Bangalore.
(As Debenture Trustee of M/s.Hindustan
Photofilms Mfg. Co. Ltd.) ... Applicant

Vs.

1. Board of Industrial and Financial Reconstruction,
Jawahar Vypar Bhavan,
1. Tolstoy Marg,
Delhi - 110 001.

2. M/s. Hindustan Photofilms Mfg. Co. Ltd.
Managing Director,
Indunagar, Udhagamandalam, Tamil Nadu -643 005.

3. Government of India,
   Joint Secretary,
   Ministry of Heavy Industry,
   Udyog Bhavan, New Delhi.

4. Secretary to Government of Tamil Nadu,
   Industries Department,
   Madras - 600 009.

5. State Bank of India,
   Chairman & MD
   Central Office,
   Madam Cama Road,
   Mumbai. (As Leader of Consortium Lender) ... respondents

<u>Prayer</u>: Application filed to transfer the present Company Petition No.114 of 2003 to the National Company Law Tribunal, Chennai Bench, to initiate Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 for speedy and expeditious disposal of the Company petition.

For Applicant :Mr.Ravi
(For M/s.Indumathi Ravi)

For Respondent-2 :Ms. Rita Chandrasekar,
For Respondent-3 :Mr.V. Rajagopalan,
Additional Solicitor General,
assisted by Mr.Venkataswamy Babu
Senior Counsel for R3

ORDER

The application before this Court seeks transfer of C.P.114 of 2003 pending before this Court to the file of the National Company Law Tribunal, Chennai Bench, to initiate Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016 for speedy and expeditious disposal of the Company petition. The application has been moved in the light of the orders of the Hon'ble Superme Court in its Judgment reported in ***2019 (4) SCC 227 "Jaipur Metals and Electricals Employees Organisation Vs. Jaipur Metals and Electricals Ltd."***. The appellant herein is the Debenture Trustee of M/s.Hindustan Photo Films Manufacturing Ltd. (hereinafter called "the Company") which is sought to be wound up in the above company petition.

2. The records would reveal that originally 2 petitioning Creditors had filed petitions for winding up the Company in C.P. No.75 of 1993 and

C.P.No.21 of 1995. Meanwhile, the BIFR has also sent its recommendation dated 30.01.2003 in case No.503 of 1995 for winding up the company and the same has been numbered as C.P.No.114 of 2003. The records would reveal that C.P.No.75 of 1993 was admitted by order of this Court dated 10.11.1995.

3. The notes of the order would further show that on 08.09.2017, this Court had passed the following orders.

> *" The learned Counsel for the workmen, who represented on behalf of the applicant, has stated that the winding up of the Company by the Board for Industrial and Financial Re-construction (BIFR), New Delhi, has been final approved. The Writ Petitions have also been disposed of. Particularly, the Writ Petitions challenging the payment of wages to the workers with respect to voluntary retirement scheme has also been disposed of. The Official Liquidator has to take charge of the assets and examine the books of records and make necessary disbursement in accordance with the priority. For this purpose, it is requested that the entire papers*

may be filed and given under one typed set of papers to the Official Liquidator who may also examine the same. Call the matter again on 15.09.2017."

4. By a further order dated 25.01.2018, this Court had sought the participation of the Official Liquidator in the proceedings to inform the cost and the steps taken by him to take charge of the Company so as to enable this Court to decide the nature of further orders to be passed. When the mater was listed on 27.02.2018, the learned Senior Counsel for the workmen had submitted that the Supreme Court by its order dated 19.02.2018 has dismissed the appeals filed by the Central Government and the Company against the orders passed in the Writ Appeal arising out of the proceedings initiated by the Workmen of the Company. The effect of the dismissal was the Central Government had to pay the 160 workers their dues in accordance with the rules covering the voluntarily retirement.

5. Thereafter, the applicant has filed the above company application. The Company has not filed a Counter but the counsel appearing for the

company would submit that since notice has been issued and all parties are before this Court, the Company petition cannot be transferred to the NCLT. The learned Senior Counsel appearing on behalf of the workmen would contend that the only order to be made in the company petition is the order of winding up and at this juncture, the filing of the petition was a retrograde steps. She would however, concede that as regards the amounts due to the workmen, the Central Government by orders of this Court in a writ proceeding, as confirmed by the Hon'ble Supreme Court was bound to pay the 160 workmen of this Company.

6. The Official Liquidator has filed a report dated 21.11.2019 in which he had referred to the earlier report in which the official liquidator has sought for the following directions:

(a) To pass an order on the recommendation of the BIFR to wind up the affairs of the Company M/s. Hindustan Photo Film Manufacturing Co. Ltd.

(b) To pass an order appointing the Official Liquidator as Provisional Liquidator of M/s. Hindustan Photo Film Manufacturing Co. Ltd. in order to comply with the direction given by the Hon'ble Courts till date in the matter and also to initiate steps as required under the provisions of the Companies Act, 1956.

(c) To pass any order that the Hon'ble Court deem fit and proper in the circumstances of the case.

The Official Liquidator would submit that this application is pending before this Court. The report would clearly show that winding up orders have not been passed and the Official Liquidator has not been appointed as the Provisional Liquidator of the Company.

7. The Third respondent viz. The Government of India represented by the Joint Secretary, Ministry of Heavy Industries, has filed a counter, *inter alia*, contending that this Court has already accepted the BIFR order of

the winding up and therefore, the liquidation of the Company, taking over management and disposal of assets has become a Court supervised process which has to be implemented by the Official Liquidator who is yet to take charge of the Company. They opposed the transfer on the following grounds:

(a) There is no possibility of a revival and the Department of the Heavy Industry has approved to implement the VRS scheme for the remaining employees.

(b) The company is prepared to hand over the assets to the Official Liquidator.

(c) 16 years have elapsed since BIFR recommended for closure and the matter has reached the final stage of winding up and the Official Liquidator asked to take charge of the Company by orders of this Court dated 08.09.2017.

(d) Transferring at this Stage will once again push back the entire process to the start and any gains made in the interregnum would be set at naught.

The counsels for the respondents have not addressed the impact of the Judgment in the "Jaipur Metals Case" extensively though the present application has been filed only on the basis of this Judgment.

8. The Hon'ble Supreme Court in ***"Jaipur Metals and Electricals Employees Organization Vs. Jaipur Metals and Electricals Ltd.***" was dealing with the order passed by the High Court of Judicature of Rajasthan refusing to transfer winding up proceedings pending before it to the National Company Law Tribunal (NCLT) and further setting aside the order dated 13.04.2018 of the NCLT admitting a creditor's petition under Section 7 of the Insolvency and Bankruptcy Code, 2016.

9. The winding up proceeding therein was also a winding proceeding referred by the BIFR. The Learned Judges taking into account the amendment to Section 434 of the Company Act, 2013 dated 15.11.2016 and 17.08.2018 read with Rule 5 and 6 of the Companies (Transfer of pending proceedings) Rules (hereinafter called "the Rules") which came into effect

on 01.04.2017 and the amendment to Rule 5 on 29.06.2017 observed as follows:

> *14. It is clear that under Section 434 as substituted by the Eleventh Schedule to the Code vide notification dated 15.11.2016, all proceedings under the Companies Act, 2013 which relate to winding up of companies and which are pending immediately before such date as may be notified by the Central Government in this behalf shall stand transferred to the NCLT. The stage at which such proceedings are to be transferred to the NCLT is such as may be prescribed by the Central Government.*
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> *15. When Rules 5 and 6 of the 2016 Transfer Rules (un- amended) are read, it is clear that three types of proceedings are referred to. Under Rule 5(1), petitions which relate to winding up under clause (e) of Section 433 of the Companies Act, 1956 on the ground of inability to pay debts that are pending before the High Court are to be transferred to the NCLT in case the petition has not been served on the respondent. They shall then be treated as applications under Sections 7, 8,*

or 9 of the Code and dealt with in accordance with Part II of the Code. Similarly, all petitions filed under clauses (a) and (f) of Section 433 of the Companies Act, 1956 pending before the High Court, in which the petition has not been served on the respondents, shall be transferred to the NCLT. Only such petitions will continue to be treated as petitions under the provisions of the Companies Act, 2013. The third category of cases dealt with by Rules 5 and 6 is contained in Rule 5(2). This category relates to cases where the BIFR has forwarded an opinion to the High Court to wind up a company under Section 20 of the SIC Act. All such cases, whatever be the stage, shall continue to be dealt with by the High Court in accordance with the provisions of the SIC Act.

10. After taking into account the entire gamut of Section 434 of the Companies Act, 2013 with its amendments, Rule 5 and 6 of the Rule and Section 20 of SICA the Bench concluded as follows:

"17. .... This is further made clear by the amendment to Section 434(1)(c), with effect from

17.08.2018, where any party to a winding up proceeding pending before a Court immediately before this date may file an application for transfer of such proceedings, and the Court, at that stage, may, by order, transfer such proceedings to the NCLT. The proceedings so transferred would then be dealt with by the NCLT as an application for initiation of the corporate insolvency resolution process under the Code. ***It is thus clear that under the scheme of Section 434 (as amended) and Rule 5 of the 2016 Transfer Rules, all proceedings under Section 20 of the SIC Act pending before the High Court are to continue as such until a party files an application before the High Court for transfer of such proceedings post 17.08.2018. Once this is done, the High Court must transfer such proceedings to the NCLT which will then deal with such proceedings as an application for initiation of the corporate insolvency resolution process under the Code."***

The Bench has in the above para carved out an exception to the winding up cases falling under Sec 20 of the SICA

11. The Language of this Judgment is therefore, emphatic and imperative that as a rule all proceedings under Section 20 of the SICA pending before the High Court shall continue to be heard by the High Court. However, if any party files an application to transfer such proceedings to the NCLT post 17.08.2018, the High Court is left which no other alternative but to transfer the proceedings.

12. In the instant case, the proceeding is only at the notice stage and it is only C.P.No.21 of 1995 that has been admitted. The Official Liquidator is yet to be appointed as per the provisions of the Act. The argument of the Third respondent that once the recommendation of the BIFR has been approved by this Court what remains is only the Ministerial Act of winding up cannot be countenanced. Once the petition is received from the BIFR it is thereafter numbered as a Company Petition and the entire procedure envisaged for a winding up proceedings has to be followed to the letter. Further the creditors and contributories of the company are also to be paid their dues first as the case of the Workmen.

13. Therefore, in the light of the Language of the Judgment in ***"Jaipur Metals and Electricals Employees Organisation Vs. Jaipur Metals and Electricals Ltd"***, this Court has no other alternative but to allow the application. It is needless to state that this order does not affect the rights of the workmen granted to them in the Writ proceedings as upheld by the Hon'ble Supreme Court.

14. In the result, A.No.429 of 2019 is allowed and C.P.No.114 of 2003 stands transferred to the file of the National Company Law Tribunal, Chennai Bench, to initiate Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.

18.05.2020

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Speaking order/Non-speaking order

P.T. ASHA, J.,

Lbm/mps

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