IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP-272-1998 (O&M)
Date of decision: 17.05.2022

M.M.Sehgal

....Petitioner

AND

M/s Sehgal Papers Limited (in liquidation) and others

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Dhingra, Advocate
and Mr. Deepak Singh Saini, Advocate
for the petitioner

Mr. Hitesh Malik, Advocate with
Mr. Prashant Baliyan, official liquidator.

Mr. Aman Pal, Advocate, Ld. Receiver in person

Mr. IPS Mangat, Advocate for IARC.

Mr. Deepak Sabharwal, Advocate for HSVP.

Mr. Suneet Goel, Sr. Advocate with
Mr. Abhinav Gupta, Advocate
and Mr. Akash Yadav, Advocate
for intervener.

Mr. Chanakya Batta, Advoate for
Mr. Parshottam Lal Singla, Advocate
for the applicant in (CA-386-2008)

ANIL KSHETARPAL, J

In the considered opinion of the Court, the following issue arises for its consideration:-

"Whether an application for revival of the Company (in liquidation) can be allowed and the vast plot of land, the price of which has risen exponentially, be restored to the Company, particularly, when it is still incapable of satisfying the debt and resolving the dispute with its creditors even after nearly 39 years. At the outset, it must be noticed that this is second application filed by the petitioner who claims to be founder, promoter and original subscriber of the Company (in liquidation). The first petition for revival of the Company was dismissed by the High Court on 29th November, 1985. After failing to get relief in the writ petition, a Special Leave Petition was filed before the Supreme Court which was also dismissed, while granting liberty to the petitioner to file an application for revival and reconstruction of the Company after at least Rs. 7 crores are realized by the sale of the properties and paid to the secured creditors. The order passed on 4th August, 1986 is extracted as under:-

> "Special Leave Petitions are dismissed.
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> Shri Kapil Sibel, the learned counsel for the petitioner-Mr. M.M. Sehgal submits that the High Court of Punjab & Haryana may be directed to sell the properties of the company Sehgal Pvt. Ltd. subject to the rights of the secured creditors in reasonable lots so that the company may realise the maximum amount by way of sale. We direct that if the petitioner makes an appropriate application before the learned Judge concerned suggesting the manner in which the properties shall be sold, the learned Judge will consider the application in accordance with law and pass appropriate orders after hearing all the parties. If the parties want any further directions to be issued, they are at liberty to apply to this Court.
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> The petitioner may submit an application to the Company Judge for the revival and reconstruction of the company after at least Rs. Seven Crores are realised by the sale of the properties and paid to the secured creditors. When such an application is made the Company Judge shall dispose it of in accordance with law."

This petition which was filed in October 1998, has remained pending. As per the current position, the Company (in liquidation) has substantial land holding in the form of plots in Industrial Area, Dharuhera, located on the Delhi to Jaipur National Highway. The plant, machinery and building has ceased to exist. The petitioner has failed to resolve the dispute with its secured creditors namely ICICI Bank. Apart therefrom, Haryana Shehri Vikas Pradhikaran, the agency which allotted the plots, claims more than Rs.367 crores is due on account of payment of price of the plots allotted. Repeated efforts to resolve the dispute have failed. On the directions of the High Court, a meeting between all concerned parties was held but the parties could not arrive at a settlement. Learned counsel representing the petitioner has tried to highlight that the amount demanded by the Haryana State Shehri Vikas Pradhikaran Limited and the ICICI Bank is exorbitant. However, the question remains as to whether the Company Judge is required to revive a Company, having a huge asset, i.e a vacant plot, particularly when the plant, machinery and building has ceased to exist. It is further noted here that International Asset Reconstruction Company Limited has issued possession notice to take over the assets of the Company in exercise of powers under the Securitization and Reconstruction of Financial assets and Enforcement of Security Interest Act, 2002. The alleged secured creditor claims that it has to recover an amount of Rs.99,71,75,874.12 as on 30th September, 2001.

On examination of the various case laws on the subject, this Court has found that revival and reconstruction of the Company under

Section 391, 392, 393, 394, and 395 can be ordered by the court, only after satisfying as to the compliance of the following tests:-

1. Such revival would be in the interest of the Company, creditors and its members.

2. The request for revival is not a ruse or a racket for siphoning off the assets or the funds of the Company.

3. It will not be prejudicial to the public interest.

4. There are strong and sustainable chances of resurrection and survival of the Company.

5. The applicant or the Company will be and are in position to mobilize funds and resources for reviving the Company.

6. The creditors, if any, and the members of the Company are supporting in favour of the request for revival of the Company.

7. It is obligatory that a module or scheme of revival of the Company has already been prepared.

8. The winding up order was passed on the ground of misfeasance and/or on the ground of allegations against the Directors /management of the Company.

9. The applicant is required to satisfy the court that the request is genuine, bonafide and in the interest of the public.

10. The court is also required to preserve, protect and safeguard the properties and the assets of the Company.

The court is required to approach the matter with a higher degree of care, caution and circumspection before passing an order of revival of the Company.

Reference in this regard can be placed on judgement passed by the Supreme Court in **Meghal Homes Private Limited versus Srinivas Girni K. Smiti and others (2007) 7 SSC 753**. The list of tests laid down is merely illustrative and not exhaustive. The court, iin the facts of each case is required to find out as to whether a genuine scheme for revival of the Company to make it commercially solvent has been filed and such scheme clear the tests noticed above. Similar view has been expressed in **Neelkanta Koley vs.The Official Liquidator 1996 Calcutta 171.**

Some facts are required to be noticed. The applicant Shri M.M.Sehgal is stated to have promoted the Company (in liquidation) in the year 1975. HUDA predecessor of the Haryana Shehri Vikas Pradhikaran Nigam (HSVPN) allotted plots bearing number 27, 28, 29, 33 and the land facing plot number 27 and 28 Dharuhera, Haryana measuring approximately 179 acres to the Company. The State government also provided financial support by way of purchase of 2.5 lakh shares at face value of 10 each. The shares were purchased out of promoter's quota with an undertaking by the promoter to buyback the shares. In a public issue of shares, 25000 persons became equity shareholders of the Company. It is claimed that the Company started manufacturing papers in the year 1979-80. It had borrowed Rs.11.60 crores from six Financial Institutions /Banks led by IFCI including IDBI, ICICI, LIC, PNB and the State Bank of India. On account of proceedings for winding up, initiated by the secured creditor, the Company was ordered to be wound up by an order dated 8th April, 1983.

Thereafter, an application for revival was filed, which ultimately resulted in passing of the aforementioned order by the Supreme Court.

In the intervening period, the plant, machinery and the building of the Company have withered away. As per the Receiver's recent report, except from small construction by the encroachers, only plain land is available. It may be noted here that HSVPN has already resumed the possession of plot No. 33 measuring 74.94 acres which has subsequently been allotted to some other entity.

During the pendency of the revival application, as many as five secured creditors namely IFCI, IDBI, LIC, UPI, SBOP and Punjab National Bank have assigned their debt M/s Kent properties, a firm floated by the applicant's wife and daughter but even then the claim of ICICI as well as the HSVPN is pending.

Heard learned counsel for the parties at length and with their assistance perused the voluminous file. Various applications filed by the parties are pending. In these circumstances, it was considered appropriate to hear the arguments in the main case, particularly when this application for revival is pending for the last 24 years.

The learned counsel representing the applicant has filed detailed written arguments. It has been projected that in view of the revival scheme, the Company can be resurrected and can become commercially solvent. The proposed scheme for settlement was filed in the year 1998. It is evident that the applicant has presumed that the plant ,machinery and the building exist on the spot which can be put in operation by minor repair and maintenance. However, as already noticed, not a single brick is existing in the name of building. No plant and machinery is in existence at the present time. No efforts have been made to file a fresh scheme of revival. It appears that the Company (in liquidation) has not yet become the owner of the landed property because there appears to be no conveyance deed in favour of the Company (in liquidation). The building was established on the basis of allotment and the allotting agency i.e HSVPN claims that more than Rs.357 crores are due against the Company (in liquidation) towards the price of the land which includes enhanced price on account of enhancement in the land acquisition cost.

In the written arguments, it has been projected by the learned counsel representing the applicant that the business rivals/ competitors have through IFCI, the lead financial institution, destroyed the Company. It has also been projected that that despite appointment of the Official Liquidator, the plant, machinery and building of the Company could not be saved. It has further been projected that ICICI Bank and HSVPN are demanding an unreasonably high amount.

Keeping in view the facts as already noticed, which do not require repetition, and the tests laid down in the various judgements a few of which have been enlisted, this Court is of the considered view that at this stage, it is not considered appropriate to order revival of the Company, particularly, when the HSVPN's claims a huge amount of more than Rs.367 crores. Another amount of Rs.100 crores approximately is being claimed by yet another secured creditor i.e.International Asset Reconstruction Company Ltd. Consequently, CP

No. 272 of 1998 and miscellaneous applications i.e CA-766 of 2000, 12 of 2006, 20 of 2008, 185 of 2014, 270 of 2015, 402 of 2015, 583 of 2015, 584 of 2015, 585 of 2015, 48 of 2020, 240 of 2016, 241 of 2016, 294 of 2004, 63 of 2001 and 77 of 2001 filed by Shri M.M Sehgal shall stand dismissed. Since, only land is available, with the Company, therefore, it is not appropriate to continue with the Receiver, who is required to be paid Rs.50000/- per month. Hence, while expressing gratitude for the services rendered, he is ordered to be relieved. The Official Liquidator attached to the Court is requested to take over and make efforts to preserve, protect and safeguard the assets/properties of the company (in liquidation). The Official Liquidator is also called upon to proceed the dissolution of the Company.

All the pending miscellaneous applications, if any, are also disposed of.

CA-21 , 22 of 2019, 139 of 2021, 459 of 2004, 54 of 2005, 438 of 2016, 386 of 2008 and OLR-10 of 2021

List on 20.07.2022.

17.05.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No