IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP-1-2022 (O&M)
Reserved on: 01.06.2022
Date of decision: 13.07.2022

JASBIR SINGH DHILLON

..Petitioner

Versus

PUNJAB ENGINEERING AND CUTTING TOOLS LTD. (IN LIQUIDATION) AND ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Anand Chhibber, Sr. Advocate
with Ms. Ateevraj Sandhu, Advocate
for the petitioner.

Mr. Hitesh Malik, Advocate
with Mr. Prashant Baliyan, Official Liquidator.

Mr. V.M. Gupta, Advocate,
for the respondent No.2 and 3.

ANIL KSHETARPAL, J.

1. This order shall dispose of a petition filed under Section 391 of the Companies Act, 1956, read with Rule 9, 67 to 87 of the Companies (Court) Rules, 1959, for sanctioning a scheme of the revival of the Company i.e. Punjab Engineering and Cutting Tools Limited that is currently undergoing liquidation. The petitioner before this Court is a shareholder and Director of the Punjab Engineering and Cutting Tools Limited. Pursuant to the order passed by the High Court on 15.03.2001, the Company was ordered to be wound up and the Official Liquidator was appointed to take over the possession of the assets/properties of the Company in liquidation. In pursuance to the order dated 01.10.2004, the office of the Official Liquidator, in association with PSIDC and PFC (secured creditors) had attempted to sell movable and immovable assets, but

due to non-receipt of any suitable offer for purchase the same could not materialize. The application for revival of the Company has been moved on the ground that PSIDC and PFC have agreed to settle the dues of the Company in liquidation under the OTS Scheme for Rs.2.30 Crores and since the Official Liquidator has an amount of Rs.1.40 Crores on account of some part of the factory land of the Company, having been acquired by the National Highway Authority of India, which should be paid to the PSIDC and PFC in order to facilitate the payment of the amount towards OTS Scheme.

2. The Company was incorporated with the following main objects:-

> *"(1) To manufacture, fabricate, produce, buy, sell, deal in all kinds of carbon steel, high speed steel and carbide triped engineer's Cutting tools for all types of industries in engineering and allied fields.*
>
> *(2) To carry on all or any any business of Engineers Cutting Tools, mechanical engineers and engineering and manufacturing consultants and manufacturers of all types of cutting tools.*
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> *(3) To manufacture and deal in Cutting tools, used in engineering products of ferrous and non-ferrous metals and to carry on the business of mechanical engineers and of manufacturers, dealers, importers, exporters, assemblers, factory builders and repairers and contractors of Cutting tools, steels, allow steels, other kinds of special steels and cutting tools machinery and their accessories.*
>
> *(4) To carry on the business of manufacturers, producers, importers exporters, buyers, sellers, dealers in all varieties of engineers cutting tools, tool steels and cutting tools machinery."*

3. As per the proposed scheme of revival i.e. Annexure P-7, the Company, its promoters/ex-management with the help of strategic investor intends to revive the Company. The name of the alleged investor has not been disclosed by the Company. It has been stated that after payment to the secured creditors under the OTS Scheme, the Company will become free

from all the debts which will enable the Company to re-establish financially. In the objects of the scheme, it has been pointed out that the Company wants to start the garment business.

4. An application jointly filed by PSIDC and PFC for disbursement of the amount lying with the Official Liquidator as an interim measure to the secured creditors under the OTS Scheme, has already been withdrawn. From the careful reading of the file, it is evident that the OTS Scheme has come to an end, but the offer was kept alive in view of the interim order passed by this Court.

5. In view of the withdrawal of the application by the PSIDC and PFC, now the position is that the shareholders/former promoters of the Company have failed to discharge the liability even after a passage of 21 years. As per the case of the applicant, the remaining factory land has become extremely valuable. As per the application filed by the Official Liquidator, the Company has a liability of payment of more than 4 crores each towards the PSIDC & PFC as on 15.03.2001. After defraying the expenses towards the liquidation charges, the Company is liable to pay the amount to the former workmen as per the orders passed by the Courts. The Official Liquidator proposes to reimburse the advance received from secured creditors to the tune of Rs.27,02,192/- and also to seek permission to disburse an amount of Rs.6,15,251/- to the workmen and Rs.1,34,18,311/- to the PSIDC and PFC in the ratio of 48.65% and 51.35%, respectively.

6. There are no assertion that the plant and machinery is still in a workable condition.

7. While deciding the case bearing No.***CP-272-1998, titled as***

"M.M.Sehgal Vs. M/s Sehgal Papers Limited (in liquidation) and others", this Court after examining the various judgments passed by the Supreme Court has culled out the following tests, before an order of revival of the Company is passed which is extracted as under:-

> *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.*

8. It is well settled that the winding up proceedings are not for enjoying moratorium and, thereafter,the Companies apply for revival once the immovable assets of the Company become highly precious. The revival petition is not expected to be allowed merely at the wish of the shareholders of the Company or its ex-management. The Court is required to examine the real intent behind the petition for revival of the Company. In the present case, the shareholders or the ex-management of the Company have failed to pay-off the creditors. There is no assertion that the former management except entering into an OTS Scheme with PSIDC and PFC, has paid off the creditors. Furthermore, the proposed revival scheme is alleging that the

Company wants to restore its garment business which is not in consonance with the Company's Article of Association.

9. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper book.

10. It may be noted here that the learned Senior counsel while relying upon the judgments passed by the Supreme Court in ***Central Bank of India Vs. Ravindra and others (2002) 1 SCC 367***, ***Sardar Associates Vs. Punjab and Sind Bank and others, (2009) 8 SCC 257***, ***M/s Rishabh Agro Industries Ltd. Vs. PNB Capital Services Ltd. 1998 SCC (Online) (P&H) 567*** and ***Avinash Chand Kapoor Vs. R.P. Hydro Oils Ltd. (in liquidation) and another 2004 SCC (online) (P&H) 174***, contends that the petition be allowed and the Company should be allowed to be revived. This Court has carefully read the judgments passed by the Courts in the aforesaid cases. A Five Judge Bench while interpreting the principle sum, adjudged as occurring in Section 34 of the Code of Civil Procedure, 1908, concluded as under:-

> *"**58.**Subject to the above we answer the reference in following terms :*
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> *(1) Subject to a binding stipulation contained in a voluntary contract between the parties and/or an established practice or usage interest on loans and advances may be charged on periodical rests and also capitalised on remaining unpaid. The principal sum actually advanced coupled with the interest on periodical rests so capitalised is capable of being adjudged as principal sum on the date of the suit.*
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> *(2) The principal sum so adjudged is 'such principal sum' within the meaning of Section 34 of the Code of Civil Procedure Code, 1908 on which interest pendente lite and future interest i.e. post-decree interest, at such rate and for such period which the Court may deem fit, may be awarded by the Court.*
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> *(3) Corporation Bank v. H.S. Gowda and Anr., [1994] 5 SCC 213 and Bank of Baroda v. Jagannath Pigment & Chem. have been correctly decided."*

11. In ***<u>Sardar Associates case (supra)</u>***, the Supreme Court was examining the source of power on the part of the Reserve Bank of India to issue circulars and guidelines as regards the one time settlement. After discussing the various provisions and judgments passed by the Courts, the Supreme Court held that such circular is binding on the banks and the Courts can get it enforced.

12. In ***<u>M/s Rishabh Agro's case (supra)</u>***, the Division Bench was deciding the application filed under Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. The Court after examining the matter held that Section 22 (1) of Sick Industrial Companies (Special Provisions) Act, 1985, is not attracted in the present case.

13. In ***<u>Avinash Chand Kapoor's case (supra)</u>***, the Court directed the Official Liquidator to disburse the amount of one time settlement to the Bank.

14. As is evident from the analysis of the judgment that none of the judgment is examining the question which arises in the present case.

15. Keeping in view the overall facts, the petition filed for revival of the Company is found without merit, therefore, dismissed.

16. CA-108-2022 in CP-33-2001, filed by the Official Liquidator is allowed and the Official Liquidator is permitted to reimburse the liquidation expenses of Rs.27,02,192/- advanced by the secured creditors to them and disburse the interim payment to the secured creditors and workmen of the Company (in liquidation) out of the funds available.

17. Furthermore, the Official Liquidator is requested to make another attempt to sell the property of the Company in liquidation in association with PSIDC and PFC without any further delay.

18. With these observations, the CA-107 & 108 of 2022 as well as CP-1-2022 shall stand disposed of.

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

13th July, 2022 **(ANIL KSHETARPAL)**
Ay **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No