IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.3783 OF 2022
IN
COMPANY SCHEME PETITION NO.243 OF 2012
IN
COMPANY APPLICATION NO.560 OF 2012
IN
COMPANY PETITION NO.895 OF 1998

Bhagwan S. More and others … Interveners / Applicants

In the matter between:
Rasiklal S. Mardia, Ex-Chairman of
Amar Dye Chem Ltd. (In Liquidation) … Petitioner
Vs.
M/s. Amar Dye Chem Limited and others … Respondents

Dr. D. S. Hatle for Interveners / Applicants.

Mr. Shanay Shah for Official Liquidator.

Mr. Zal Andhyarujina, Senior Advocate a/w. Mr. Rohaan Cama, Mr. Shrey Sancheti i/b. Devanshu P. Desai for Respondent Nos.1 and 2.

CORAM : MANISH PITALE, J.
DATE : JANUARY 10, 2024

P.C. :

. This application is filed by individuals, who were in the employment of respondent No.1 i.e. the company, which went into liquidation, but subsequently a scheme in respect of the company was approved by this Court by order dated 17.10.2019. It is an admitted position that the applicants were members of respondent No.6 Trade Union i.e. the Mazdoor Congress. The applicants have made certain statements and allegations in the application and on that basis, the applicants have prayed for recall of the aforesaid order dated 17.10.2019, whereby the company scheme petition was allowed. It is alleged that the scheme violates the very aim and object of the specific undertaking of respondent No.1. Alternatively, the applicants have prayed for a number of reliefs pertaining to their claims towards backwages, consequential benefits etc., as also an order to restrain the respondents from creating third party interest in immovable property belonging to respondent No.1.

2. The respondent No.1 company was engaged in the business of manufacturing and selling synthetic organic dye-stuffs, colours and colouring material, including organic intermediaries and products used in the manufacture of the same. The company was operating from its manufacturing facilities, including a facility at Shahad, District Kalyan. In the year 1993, the net worth of the company was eroded and it was registered as a 'sick company' under the provisions of the Sick Industries Companies (Special Provisions) Act, 1985. The Board of Industrial and Financial Reconstruction appointed ICICI Limited as an operating agency to look for a new promoter for the company. The Mardia Group infused finances into the company as per the scheme propounded for revival. However, the company could not be revived and eventually Company Petition No.895 of 1998 was filed in this Court for winding up of the company. On 09.12.1998, this Court passed the winding up order and the respondent No.5 - Official Liquidator was appointed on the company.

3. During the process of liquidation, Company Scheme Petition No.243 of 2012 was filed in this Court under Sections 391 and 394 of the Companies Act, 1956 (hereinafter referred to as the 'Companies Act'). Eventually, as noted hereinabove, by order dated 17.10.2019, this Court approved the scheme. The order was passed in the presence of the respondent No.6 Trade Union - Mazdoor Congress, which represented the interest of the workers, including the applicants herein, who were admittedly the members of the said Trade Union. Subsequent to the

scheme being approved, the sponsor deposited an amount of Rs.27,09,60,232/-. It is brought to the notice of this Court that dues of workers were paid from the said amount and such disbursal was made in favour of the applicants also, some of whom actually received and picked up the amounts.

4. The company scheme petition was placed for compliance before this Court on 06.01.2020 and 30.01.2020. On the said date i.e. 30.01.2020, this Court passed an order in respect of 250 workers, who claimed that their cases were not represented by the respondent No.6 Trade Union - Mazdoor Congress. It was stated that a separate application would be moved on their behalf, although the learned counsel appearing for the Union - Mazdoor Congress stated that the said 250 workers were already part of the Union and their interests were indeed represented by the Union. Yet, by the said order, this Court directed the Official Liquidator to permit inspection of documents by the learned counsel representing the 250 workers. In that regard, the petitioner in the company petition scheme i.e. ex-chairman of the respondent No.1 company was directed to ensure that records were made available to the official liquidator.

5. Thereafter, the petition was listed on 12.03.2020 before this Court when the advocates representing all the parties were present before the Court, including the advocate representing the aforesaid 250 workers. On the said date, this Court passed its order, recording that the counsel stated that nothing survived in the petition. Accordingly, this Court disposed of the petition. It is relevant to note that neither the learned counsel appearing for the respondent No.6 Trade Union - Mazdoor Congress, nor the learned counsel claiming to represent 250 workers pressed any surviving grievance.

6. On 29.09.2021, the respondent No.1 company filed an application

before the Collector of District Thane for converting the land at Shahad from Occupant Class II to Occupant Class I i.e. from leasehold to freehold. On 18.02.2022, the Collector passed his order rejecting the said application. Aggrieved by the same, the respondent No.1 company filed a revision application. By an order dated 03.03.2022, the revision application was allowed. The order of the Collector was set aside and the Collector was directed to rectify the records and to process the application filed by the respondent No.1 company for conversion, subject to conditions mentioned in the said order.

7. In the meanwhile, the Official Liquidator filed reports before this Court, indicating as to the manner in which amounts were disbursed to workers, creditors as well as statutory authorities. Some of the workers including the applicants herein filed Writ Petition (L) No.21331 of 2022 before this Court challenging the said order passed by the revisional authority. The present application was also filed in this backdrop, whereby the applicants sought the aforementioned reliefs. On 16.11.2022, a learned Single Judge of this Court dismissed the aforesaid writ petition. In the said order, the learned Single Judge of this Court took note of the order dated 17.10.2019, passed by this Court, approving the scheme in Company Scheme Petition No.243 of 2012. The pendency of the present application was also noted and it was found that the petitioners therein i.e. the workers were duly represented by the respondent No.6 Trade Union - Mazdoor Congress. It was observed that since this Court had already approved the scheme as being fair and reasonable and the company scheme petition having been allowed, it was held that the writ court would not have jurisdiction to consider the grounds raised in the petition, whereby even the legality of the scheme was sought to be challenged. The learned Single Judge of this Court, while dismissing the writ petition, observed that it would be subject to the outcome of the present application.

8. The said order of the learned Single Judge dismissing the writ petition was challenged by the petitioners therein by filing Special Leave Petition (Civil) Diary No.13330 of 2023. On 06.07.2023, the petitioners withdrew the special leave petition, while reserving their right to pursue the present application for recall of scheme pending before this Court. The learned counsel for the parties were heard in the aforesaid factual background.

9. Dr. D. S. Hatle, learned counsel appearing for the applicants submitted that the applicants were entitled to pray for recall of the scheme itself, for the reason that the respondent No.1 company, upon the scheme being approved by this Court by order dated 17.10.2019, had taken no steps to revive the business of the company. In fact, the entire business was illegally changed to the detriment of the workers, including the applicants. It was alleged that no efforts were made by the respondent No.1 company to revive the business and / or to employ the applicants in the new business sought to be undertaken. It was alleged that the respondent No.1 company was venturing into real estate development, which had nothing to do with its original business and in the process, various provisions of law had been violated, thereby depriving the applicants / workers of their rightful dues. It was submitted that the respondent No.6 Trade Union - Mazdoor Congress had failed to protect the interests of the applicants / workers, as a consequence of which, they were constrained to move the present application. The learned counsel appearing for the applicants relied upon judgements of this Court in the cases of *Board for Industrial & Financial Reconstruction Vs. KMA Limited* (judgement and order dated **06.01.2016** passed in **Company Application No.593 of 2011 in Company Petition No.778 of 2005**) and *Topworth Steels and Power Private Limited* in **Company Application No.389 of 2011 in Company Scheme Petition No.43 of 2011**.

10. The learned counsel for the applicants also relied upon the aforementioned judgement and order dated 16.11.2022 passed in Writ Petition (L) No.21331 of 2022 and order passed by the Supreme Court in Special Leave Petition (Civil) Diary No.13330 of 2023, to contend that this Court, as well as the Supreme Court, had reserved liberty for the applicants to pursue the prayers made in the present application.

11. The learned counsel for the applicants referred to the statements made in the application as well as the alternative prayers made in prayer clauses (b) to (h), to contend that the scheme approved by this Court did not take care of the said grievances of the applicants, thereby indicating that the entire scheme deserved to be recalled, as being violative of the rights of the applicants. It was submitted that there could be no legal impediment in considering the prayer for recall of the scheme, in the facts and circumstances of the present case. It was specifically submitted that clause 4.4 of the scheme approved by this Court by order dated 07.10.2019, which pertained to workers, did not sufficiently protect the interests of the applicants / workers.

12. It was submitted that in the event this Court was not inclined to favourably consider the prayer for recall of the scheme, prayer clauses (b) to (h) deserved to be considered and reliefs ought to be granted in favour of the applicants.

13. On the other hand, Mr. Zal Andhyarujina, learned senior counsel appearing for respondent Nos.1 and 2 as also Mr. Shanay Shah, learned counsel appearing for respondent No.5 - Official Liquidator opposed the contentions raised on behalf of the applicants. A preliminary objection was raised on behalf of respondent Nos.1 and 2, to the very maintainability of the present application. Specific reliance was placed on judgement of this Court in the case of *Unique Delta Force Security Private Limited Vs. Sumeet Facilities Private Limited*, **2012 SCC**

OnLine Bom 1191, to contend that once the scheme approved by this Court had been brought into effect, there was no question of considering such an application for recall of the scheme. It was submitted that in pursuance of the order dated 17.10.2019, passed by this Court approving the scheme, the aforesaid huge amount of Rs.27,09,60,232/- was infused by the sponsor and amounts were disbursed to the creditors as well as to the workers towards satisfaction of their dues. This included the applicants, some of whom even withdrew and enjoyed the amounts disbursed in their favour. On this basis, it was submitted that since the scheme had been given effect to, as per settled law recognized by this Court in the aforesaid judgement, the application itself is not maintainable.

14. As regards prayer clauses (b) to (h), it was submitted that the grievance pertained mainly to workers dues, which were covered under clause 4.4 of the scheme. The respondent No.6 Trade Union - Mazdoor Congress being party to the entire proceedings and having agreed to the scheme, the applicants, admittedly being members of the said Union, cannot be permitted to raise individual grievances in this manner before this Court, particularly when the company scheme petition also specifically stood disposed of by order dated 12.03.2020, with an observation that nothing survived in the petition. The learned counsel for respondent Nos.1 and 2 further contended that reliance placed on Section 25-O of the Industrial Disputes Act, 1947 was absolutely misplaced, for the reason that in the facts and circumstances of the present case, there was no question of any notice of closure or any payment of closure compensation being made to the applicants, in the light of the aforesaid scheme approved by this Court, to which the applicants were parties through the respondent No.6 Trade Union - Mazdoor Congress. Attention of this Court was invited to clause 8(i) of the scheme, which provided for the option available with the respondent

No.1 company to diversify into any other business activity if the earlier business was found to be unviable. On this basis, it was submitted that there was no question of the applicants raising any dispute on that count.

15. The learned counsel appearing for the official liquidator referred to the statements made in the reply affidavit, which give details of the amounts disbursed to the workers including payments made towards provident fund claims etc. It was submitted that since all the dues as per the scheme were disbursed in favour of the workers including the applicants, thereby demonstrating that the scheme itself had been given effect to, there was no question of considering the reliefs claimed in the present application.

16. Heard learned counsel for the parties and perused the material on record. A preliminary objection with regard to the very maintainability of the present application is raised on behalf of the respondents. The first prayer i.e. prayer clause (a) in the application pertains to recall of the order dated 17.10.2019, whereby this Court approved the scheme in Company Scheme Petition No.243 of 2012. Specific reliance was placed on behalf of the respondents on judgement of this Court in the case of **Unique Delta Force Security Private Limited Vs. Sumeet Facilities Private Limited** *(supra)*. In the said judgement, this Court considered an identical submission and upon referring to Sections 391 and 392 of the Companies Act, held that minor modifications of the scheme could be permitted only for better working of the scheme already approved by the Court. In that context, it was held that the Court has no power to recall / rescind / cancel the scheme already approved. In the process, this Court referred to judgements of the Supreme Court. This Court in the said judgement held as follows:-

> "14. It is therefore well settled by the above decisions of the Hon'ble Supreme Court, that once a scheme is sanctioned and effected, the changes allowed therein should be minor

> ones and not "wholesale changes" which would tamper with the essence of the scheme and that if a Company desires to modify a scheme though not necessary to do so for the proper working thereof it is required to follow the procedure prescribed under Section 391 of the Act. In view thereof, allowing the prayers sought by the Applicants to recall/rescind/ cancel the scheme in the garb of exercising inherent powers would not only amount to exercising powers not vested in this Court but would also amount to overreaching the law laid down by the Hon'ble Supreme Court. In view thereof I hold that this Court is not only not vested with power to abrogate / rescind / cancel the scheme or to even modify the scheme if it is not necessary for the proper working thereof but this Court cannot exercise inherent powers to abrogate / rescind / cancel the scheme once sanctioned and effective. The decision of the Hon'ble Apex Court in the case of *S.K. Gupta* (supra) relied upon by the learned Advocate for the applicants is of no assistance to the Applicants and in fact as set out hereinabove supports the submissions made on behalf of the Regional Director. The decisions relied on by the learned Advocate for the Applicants in the case of *Bedrock Ltd*, (supra) and in the case of *L.A.Chougule* (supra) are also of no assistance of the Applicants."

17. It was further held in the said judgement that once the scheme had become effective and certain vested rights had been created under the scheme, there was no question of considering a prayer for recall of the scheme. The principles analogous to Order XXIII of the Code of Civil Procedure, 1908 were invoked in that context.

18. In the said case also, while praying for recall of the scheme, reliance was placed on judgement of the learned Single Judge of this Court in the case of **Topworth Steels and Power Private Limited** *(supra)*. The said judgement was distinguished on the basis that, in the said case, the scheme had not come into effect when the prayer for recall was made.

19. The Supreme Court in the case of *S. K. Gupta and another Vs. K.*

P. Jain and another, **(1979) 3 SCC 54**, held that once a scheme is sanctioned by the company court, it does not merely operate as an agreement between the parties but it has statutory force and it is binding on the company as well as dissenting creditors or members, as the case may be. In the said judgement also, it was laid down that modifications of the scheme may be permitted, only with a view to better working of the scheme. This was reiterated in the judgement of the Supreme Court in the case of *Meghal Homes (P) Limited Vs. Shree Niwas Girni K. K. Samiti and others*, **(2007) 7 SCC 753** as also, in the case of *Reliance Natural Resources Limited Vs. Reliance Industries Limited*, **(2010) 7 SCC 1**. In the said judgement, it was further held that the Court has wide power to make changes in the scheme, in order to ensure proper working of the scheme, emphasizing that while doing so, the Court cannot change the basic fabric of the scheme. Thus, as per settled law, the Court may exercise power in the aforesaid circumstances. In the present case, the applicants / workers have not been able to demonstrate as to whether any modification of the scheme is necessary for its better working.

20. Thus, the crucial factual aspect in such cases is that, when a scheme has been approved by the Court and it is brought into effect, thereby creating rights, the Court has no power to recall the scheme. In the present case, admittedly, upon the scheme being approved by the order dated 17.10.2019, the sponsor pumped in Rs.27,09,60,232/-. Huge amounts were disbursed towards workers dues, dues payable to creditors and statutory dues. All such details have been elaborately placed on record in the reply affidavit filed on behalf of the respondent No.5 - Official Liquidator. The applicants have not been able to dispute the said statements. In fact, the material on record shows that the amounts have been disbursed even in favour of the applicants / workers, some of whom even withdrew such amounts and enjoyed the dues so disbursed in their favour.

21. Thus, the material on record amply demonstrates that the scheme has indeed come into effect, and therefore, the prayer at prayer clause (a) in the present application for recall of the scheme cannot be considered. There is substance in the contention raised on behalf of the respondents that the present application is not maintainable and that it deserves to be dismissed as such.

22. Nonetheless, to satisfy the conscience of the Court, the material on record was perused to consider as to whether the applicants have made out any case as regards reliefs sought in prayer clauses (b) to (h). The said prayer clauses have been considered by this Court and it is found that they pertain to grievances with regard to workers' dues in respect of backwages, closure compensation, direction to the respondent Nos.1 and 2 to continue to give work to the applicants / workers, direction to restrain the said respondents from creating third party rights in the immovable properties and direction to pay interest on backwages or earned wages.

23. In the light of the rival submissions made with regard to the prayer clauses (b) to (h), it would be relevant to refer to the scheme approved by this Court by order dated 17.10.2019. A perusal of the same shows that clause 3(v) defines 'cut-off date' as 9th December 1998 i.e. the date on which the statement of affairs of the company was drawn and the very date on which the Official Liquidator of this Court was appointed as the liquidator of the respondent No.1 company. Clause 4.4 pertains to 'workmen'. The sub-clauses of the said clause 4.4 pertain to the manner in which the dues of workers were to be settled. Since the said clause is relevant for the grievances sought to be projected on behalf of the applicants / workers, it would be appropriate to refer to the said clause in its entirety. Clause 4.4 reads as follows:-

> "4.4 Workmen.
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> i) "workmen's dues" as ascertained by the Official

Liquidator and reported to the High Court at Bombay vide the official liquidator's report in Company Petition No. 895 of 1998 shall be treated as the amount settled, due and payable.

ii) Any interest or additional amount of whatever nature other than the sum settled in (i) above shall not be considered, calculated or paid.

iii) Amount due and payable as per sub clause (I) shall be paid to the workmen towards the full and final settlement of their dues.

iv) If any amount that is paid by the erstwhile company or the liquidator or that has been appropriated by the workmen after the cut off date, the same shall be deducted from the amount so payable under sub clause (i) and the balance thereafter alone shall be payable.

v) Such sum shall be paid within 3 months from effective date.

vi) Upon settlement of dues of the workmen in terms of the above, all the rights of workmen and all the obligations of the company with respect to all or any of them arising out of, from or on account employment, terms related thereto and anything connected therewith or incidental thereto shall cease to exist and finally extinguished with effect from the cut off date.

vii) If any suit, writ petition, appeal, revision or other proceedings of whatever nature against the Company are filed by any of the said workmen, the same shall be withdrawn by or settled in terms of the arrangement of this clause by the respective litigants and shall not be proceeded against the Company or its directors.

viii) The Company/ Sponsor shall make endeavor to redeploy the workmen on fresh terms and conditions and give preference to those who have not attained the age of superannuation.

ix) Notwithstanding the above, Parties are at liberty to arrive at any other mutually agreed to terms and conditions for the settlement and payment of dues."

24. Clause 4.5(vi) states that 'employees dues' may be determined in

accordance with the provisions of Section 530 of the Companies Act and the same shall be treated as the amount settled, due and payable. Such sum shall be paid within three months from the effective date. The expression 'effective date' is defined in clause 3(ix) as the date on which the certified copy of the order of this Court sanctioning the scheme is filed with the Registrar of Companies at Mumbai. Clause 8(i) pertaining to 'business, accounting and managerial aspects' reads as follows:-

> "8. Business, Accounting and Managerial Aspects
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> i) In contemporary facts and circumstances, the original business of the company i.e. manufacturing of dyes, dyes intermediates, chemicals, if not found viable by the company / sponsor, the company shall diversify into such other business activities which may be found suitable, viable and permissible in accordance with the laws of the land."

25. This Court has considered the grievances raised on behalf of the applicants / workers. It is found that the workers dues payable are clearly covered under the above-quoted clause 4.4 of the scheme. Respondent No.6 Trade Union - Mazdoor Congress, of which the applicants are admittedly members, was party to the Scheme Petition and agreed for approval of the said scheme when the order dated 17.10.2019 was passed by this Court. The affidavits and material placed on record by the respondents demonstrate that the dues of workers were indeed paid as per the scheme. In fact, the figures placed on record on behalf of the respondent No.5 - Official Liquidator show that huge amounts were paid towards workers' dues, provident fund claims etc. in terms of the scheme. Therefore, the applicants cannot be permitted to now turn around and raise grievances to seek reliefs in terms of prayer clauses (b) to (h). The applicants have also failed to make out any ground to seek any modification of the scheme for working of the scheme in a better manner.

26. It is significant that when 250 workers, who claimed that their

interest was not represented by the respondent No.6 Trade Union - Mazdoor Congress, approached this Court, although the said Union denied such claims of the workers, by order dated 30.01.2020, the counsel representing such 250 workers was granted inspection of documents and the Official Liquidator was also directed to co-operate. After such inspection was undertaken and the petition came up for further consideration, on 12.03.2020, in the presence of the learned counsel representing the said 250 workers, as well as in the presence of the learned counsel representing the respondent No.6 Trade Union - Mazdoor Congress, the Court recorded that according to the learned counsel for the parties, nothing survived in the petition. On this basis, the petition was disposed of.

27. The aforesaid sequence of the events and admitted position on facts, clearly demonstrates that the applicants / workers, who in their own application at paragraph 1, have stated that they were members of the respondent No.6 Trade Union - Mazdoor Congress, cannot be permitted to raise grievances as stated in prayer clauses (b) to (h). The grievance sought to be raised on behalf of the applicants / workers to the effect that the respondent Nos.1 and 2 have failed to continue them in employment, is answered by clause 4.4(viii), which states that the company / sponsor shall make an endeavour to redeploy the workers on fresh terms and conditions. Therefore, the company / sponsor was expected only to make an endeavor and the applicants / workers cannot claim a binding obligation in the facts and circumstance of the present case. As regards failure of respondent Nos.1 and 2 to continue the business of the company and changing the entire business, clause 8(i) of the scheme, quoted hereinabove, clearly provides that if the original business of the respondent No.1 company is not found to be viable, the company shall diversify into such other business activities, which may be found suitable, viable and permissible in accordance with the laws of

the land. Thus, there is no substance in the contention raised on behalf of the applicants / workers that the respondent No.1 company could not have changed its business. The challenge sought to be raised on behalf of the applicants / workers in the present application to the conversion of land at Shahad, District Kalyan is also unsustainable for the very same reason. In the course of changing business, if the respondent No.1 company is required to take certain steps, the applicants / workers cannot create an impediment. Therefore, the prayers made in the present application seeking directions to restrain the respondent No.1 company from creating third party rights in immovable properties cannot be entertained.

28. In view of the above, this Court finds that there is no substance in the contentions raised on behalf of the applicants / workers in the present application and that the application deserves to be dismissed.

29. Accordingly Interim Application No.3783 of 2022 is dismissed.

(MANISH PITALE, J.)

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