

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(104)

CAPP-13-2022 (O&M)
Date of Decision:-30.08.2022.

Shri M.M. Sehgal

.....Petitioner

Versus

M/s Sehgal Papers Limited (In Liquidation) and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Anand Chhibber, Senior Advocate with
Mr. Deepak Dhingra, Mr. Deepak Saini,
Mr. Shikhar Sarin, Mr. Ateev Raj Sandhu,
Advocates for the appellant.

Mr. I.P.S. Mangat, Advocate for caveator IARC.

Mr. Sumeet Goel, Senior Advocate with
Mr. Abhinav Gupta, Mr. Manav Bajaj, Advocates for
the intervener.

ALOK JAIN, J.

CMA-27-2022

1. Prayer in this application is for placing on record short affidavit of Jaspreet Kaur along with Annexure P/25 and exemption from filing certified copy of the same.

2. For the reasons stated in the application, same is allowed and Annexure P/25 is taken on record subject to just exceptions and exemption is granted as prayed for.

CAPP-13-2022 (O&M)

1. The present company appeal has been preferred by the Ex-

Director of the Company (in liquidation), against the order dated 07.05.2022 whereby, the application for revival of the company (in liquidation) has been dismissed by the learned Company Judge.

2. Brief facts of the case as narrated by the counsel for the appellant and which are necessary for deciding the present appeal are that the company namely M/s Sehgal Papers Limited was incorporated in 1978, however, the same went into a rough weather when CP No.64 of 1981 was filed against the company, wherein vide order dated 16.03.1983 a provisional liquidator was appointed (in CP No.23 of 1983) and subsequently, vide order dated 08.04.1983, winding up order was passed and a receiver came to be appointed.

3. During the pendency of the company petition, the company filed a scheme of revival but one group of secured creditors led by IFCI rejected the scheme and, consequently, the said application for revival was dismissed. Cutting the long story short, the company knocked the doors of the High Court by filing writ petitions which were dismissed *in limine* and the matter went up to the Supreme Court, which vide order dated 04.08.1986 dismissed the SLP but granted a conditional order that the appellant-petitioner could apply for revival of the re-construction after at least Rs.7 crores are paid to the secured creditors. However, in the meantime, the Company Court passed the final winding up order on 08.04.1983 and the appellant chose to remain silent for twelve long years. The liberty granted by the Supreme Court was not exercised by the appellant till 1998 when CP No.272 of 1998 was filed *inter alia* praying for:-

“A) Order/sanction/approve the compromise/arrangement proposed by the Applicant and referred to in detail in ANNEXURE "A" to the present application with modifications/amendments if any which may be proposed by this Hon'ble Court in the interest of the Members, creditors and shareholders.

B) Order that during the period of sanctioning/approval of the compromise/arrangement as proposed by the Petitioner all suits and proceedings against the Company, namely Sehgal Papers Limited shall be not be commenced and further that the continuation of all suits/litigations including winding up orders pending against the company shall remain suspended/stayed till such time as also order suspension/stay of execution of orders/decrees against the Company and guarantors Shri M.M. Sehgal & Mrs. Anjali Sehgal, if any.

C). Pass appropriate orders directing the Official Liquidator and Receiver to de-seal the premises being called Sehgal Nagar, P.O. Dharuhera,. Dist. Mohinder-garh, Haryana of Sehgal Papers Limited and to hand over the same to the Petitioner who be permitted to commence activity in terms of the scheme proposed and annexed to the Petition being Annexure "A".

D). Grant sanction/approval and pass appropriate orders thereby declaring and approving that the decisions/ approvals of the scheme taken by the Unsecured creditors, preferred

creditors and shareholder of the Company in the meetings held on 21.11.1983, 22.11.1983 and 23.11.1983 of declares such members are binding on all such members and creditors and shall be deemed to be approval of such members and shareholders to the scheme herein proposed and marked as "AnnexureA" and that the decision taken by the Secured Creditors in the meeting of such Creditors held on 24.11.1983 was biased, unjust, arbitrary, malafide and liable to be struck aside and this Hon'ble Court may direct the secured creditors to file their affidavits in this Hon'ble Court may decide whether rejection of scheme by any secured creditors is justified or not in overall interest of all concerned.

and as consequence

E) Order Exemption/waiver of the conditions imposed under Section 391 (2) of the Companies Act 1956 and under Section 393 of the said Act.

F) Pass orders appointing appropriate officer attached to this Hon'ble Court and or any other person which this Hon'ble Court deem fit and proper to be the Observer/supervisor to the working and functioning of the scheme proposed by the Petitioner and incorporated in "Annexure A" to the present Petition and order, such officer to perform such functions as this Hon'ble Court may deem fit and proper in the facts of the case.

G) Pass such other and further orders as this Hon'ble Court

may deem fit and proper in the facts and circumstances of the case.”

4. During the pendency of the said petition, much water had flown under the bridge in the interregnum and to name a few, the secured creditors had assigned their debts to a third party and HSVPN had initiated proceedings for resumption of the land etc., etc. In fact, few secured creditors, namely, IFCI, IDBI, LIC, UPI, SBOP and PNB have assigned their debts to one M/s Kent Properties which is a firm floated by the appellant's wife and daughter only. In fact, certain properties were put to sale also and amounts were recovered and multifarious litigations were filed but somehow, the company petition seeking revival of the company remained pending. The learned Company Judge by a detailed order dismissed the said company petition and hence, the present appeal.

5. Mr. Chibber, learned Senior counsel, has vehemently argued that the said order is vitiated and bad in the eyes of law as the same has not dealt with the issue involved. The first argument raised by the learned Senior counsel is on the strength of the order dated 04.08.1986 passed by the Hon'ble Supreme Court which had granted liberty to seek the revival and reconstruction of the company after at least Rs.7 crores are realized by the sale of properties and paid to secured creditors. To further strengthen the argument, the learned Senior Advocate has tried to reopen the first company petition to demonstrate that only a meager sum of Rs.12.5 lakhs was outstanding when the entire loan of Rs.3.99 crores had been recalled which led to the sudden financial crunch and consequences followed. He has further argued that the appellant has established right in the company to

seek the revival at any stage, as and when, it is feasible to reconstruct and revive the company.

6. The learned counsel has also argued that during the pendency of the petition, various receivers and commissioners have depleted, ill-maintained the plant and machinery and did not bother to curb the widespread thefts, although he admits that the possession of the properties was taken over by the Official Liquidator/Receivers/Commissioners in the year 1982 and the machines have junked. The learned Senior counsel has tried to build up the argument that the receivers and Commissioners did not preserve the property of the company but at the same time, admitted that there is nothing surviving at the site except the plots of land.

7. The next argument raised by the learned Senior counsel is with regard to the claim raised by HUDA now HSVPN and has submitted that bogus and inflated claims have been made by HUDA without any basis and just to derail the entire revival scheme. The learned counsel submits that vide Annexures annexed with the status report of HUDA (A-12), the outstanding amount as on 31.01.2010, was only Rs.1.32 crores but to the utter surprise, HSVPN is now claiming more than Rs.367 crores without any cogent basis.

8. To sum up the learned Senior counsel has stated that since only the claim of ICICI and HSVPN was pending which could also be satisfied as the price of the property has increased manifold and further in case they both take a lenient and holistic view, the outstanding amount of these two can also be settled and, therefore, the company petition deserves to be allowed resulting in the revival and reconstruction of the company.

9. Having heard the learned Senior counsel for the appellant, we do not find any force in the contentions raised by the appellant for the reasons that once a winding up order is passed, the Board of Directors of the Company ceases to exist and all the assets of the Company vest with the Company Court and the Official Liquidator is the custodian of the assets of the Company. In fact by a co-joint reading of Section 445 (3) and Section 447, the Board of Directors ceases to operate and it puts an end to the powers of the Directors of the Company. Section 445 (3) and Section 447 of the Company's Act reads as under:-

“445 (3) Such order shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued.

447. EFFECT OF WINDING UP ORDER An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of a contributory.”

10. The only exemption is whereby the Company is still running and continuing its business. However, the present case, admittedly, the Company is not operative nor any business activity is being conducted. Reliance can be placed on the judgment rendered in **69 Company Cases 791, National Transports and General Company.**

11. The next argument raised qua the liberty granted by the Supreme Court, also does not find force, for the reason that admittedly, the amount of Rs.7 crores was never realized by the sale of properties and paid

to the secured creditors as the first part of the order of the Apex Court, clearly directed that the appellant shall make an application suggesting the manner in which the property should be sold but the appellant chose to remain silent for 12 long years and procrastinated the proceedings which shows the intent of the appellant.

12. The learned Company Judge has rightly held that merely because a vacant plot being a huge asset of the Company was available could not be a ground to revive a company particularly when it is an admitted position that there is no plant machinery and/or building which exists and, therefore, the entire intent is only to earn profit out of the escalation of the price of the land. Further, there is no explanation coming forth for the unexplained delay of 12 long years i.e. 1986 when the Supreme Court granted the liberty, up to 1998, when the petition was filed which also goes against the appellant. The entire exercise of the appellant seems to be mala fide only with an oblique motive to keep the litigation pending on one pretext or the other and delay the repayment of the dues of the secured creditors and statutory authorities, which is none other than the ones holding the public money. The appellant cannot be permitted to take advantage of his own wrongs and just because value of the land has increased the appellant seems to have become greedy. Therefore, the said argument is negated.

13. The next argument raised is with regard to the depletion of the plant and machinery coupled with widespread thefts and non-preservation of the assets of the company by various receivers and Commissioners is vague and evasive as it is admitted position that as on date, there is no plant

and machinery or any fixed asset or even a brick or building at the site. Therefore, the basic objective of revival and reconstruction of a company has eroded.

14. That as regards the argument that HSVPN has raised an exorbitant claim, the same cannot be a ground for revival or reconstruction of the company. The Official Liquidator is the custodian of the property at the behest of the Company Court and, therefore, it has been rightly directed by the learned Company Court to proceed with the dissolution of the company which includes the sale of the assets of the Company. Needless to state that the Official Liquidator will subsequently (if not yet) call for the claims against the company and disburse the same in accordance with law.

15. Therefore, in light of the above, once a winding up order is passed, the Board of Directors of the Company ceases to exist and the Company Court becomes the custodian of the assets, and the Official Liquidator attached with the High Court is empowered to sell the assets; call for the claims and after seeking the report of the Chartered Accountant *qua pari passu* charge of the secured creditors with the employees and in terms of the provisions of Sections 529 and 530 of the Companies Act, 1956, discharge the liability of the Company (in liquidation)

16. The learned Company Judge has rightly recorded the parameters for considering the scheme of revival and one of the conditions is that the creditors should support the request for revival which in this case is clearly objected to. The appellant has failed to satisfy the Court that the request is genuine, bona fide and in the interest of public, *per se* on the contrary, the entire act and conduct of the appellant smells *mala fide* and

the only purpose is to procrastinate the proceedings/litigation on one pretext or the other and now when the value of the property has enhanced because of the various factors including the development of the infrastructure and commercial viability, the appellant has woken up to assert a stale claim. Such action is not permissible under law and, therefore, the present company appeal, being devoid of any merit, is dismissed.

CMA-25-2022

In view of the dismissal of the Company Petition, the present application stands disposed of, as the main petition has been dismissed *in limine*.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ALOK JAIN)
JUDGE

August 30, 2022.

sandeep

Whether speaking/reasoned:-

Yes

Whether Reportable:-

Yes