

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CAPP No. 10 of 2015 (O&M)
DATE OF DECISION: 26.02.2015

M/s Pasupati Spinning & Weaving Mills Ltd.

.... Appellant

versus

Pasupati Haryana Woolens Limited and others

..... Respondents

CORAM: - HON'BLE MR. JUSTICE S. J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASHI

Present: Mr. Sudhir Mittal, Advocate for the appellant

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S. J. VAZIFDAR, ACTING CHIEF JUSTICE (Oral):

This is an appeal against the order of the Learned single Judge allowing the application of respondent No.2 herein-U.V. Assets Reconstruction Co. Ltd. to be substituted in the place of original respondent No.2, namely, IFCI. U.V. Assets Reconstruction Co. Ltd. had obtained an assignment of IFCI's debts. IFCI is entitled to an amount of about Rs.165 crores from respondent No.1, the company in liquidation. Respondent No.1 was ordered to be wound up by an order dated 13.08.2004 on the recommendation of the BIFR. The winding up order has attained finality. The application for revival under Sections 391 and 394 of the Companies Act, 1956 has been dismissed.

2. By the impugned order, the Learned single Judge has also directed the sale of the assets of the company.

Respondent No.2 is an asset reconstruction company. The contention that the consideration for the assignment between IFCI and respondent No.2 is inadequate was rightly not considered to be a ground for the dismissal of the application filed by respondent No.2. The petitioner is not concerned with the consideration for the assignment. That is a matter between IFCI and respondent No.2 even assuming that it was inadequate. We do not see the relevance of the same for the purposes of the applications which were disposed of by the impugned order. The company having been ordered to be wound up, its assets must be sold.

3. It is not necessary, at this stage, to consider how the sale proceeds are to be distributed. The learned single Judge has provided precautions including that the sale would be subject to the orders of the Company Court. The respondents, however, are aggrieved by the order to the extent that the learned Judge has observed that the sale would be subject to the orders of the Company Court. The respondents, we are informed, intend filing an appeal, inter alia, against that part of the order. We, therefore, express no opinion on the correctness of that observation in this appeal.

4. Even assuming that the sale is not subject to the orders of the Company Court, it would make no difference. The company in winding up through the Liquidator, always has a remedy and safeguard. The sale, even if conducted under the provisions of the SARFAESI Act, has inbuilt safeguards. The

Liquidator can always ensure that the best bids are obtained. Further, in the event of there being any infirmity, the Liquidator, after obtaining the permission of the Company Court, can always adopt appropriate proceedings to safeguard the assets of the Company in liquidation.

5. Even assuming that the deed of assignment is bad, it would really be academic. In that event, the IFCI would be entitled to claim the amount. In other words, either IFCI or its assignee would be entitled to claim the amount from the company.

6. Allegations were made to the effect that respondent No.3, the former Managing Director of the company was responsible for having driven this company into liquidation due to his misdeeds. There is nothing that prevents the Liquidator from adopting the proceedings including formal feaſance and miſfeaſance.

7. The appeal is diſmiſſed.

**(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE**

26.02.2015
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**(AUGUSTINE GEORGE MASH)
JUDGE**