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Hy-line International Vs. C and M Hy-line Farms P. Ltd.

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Court : Mumbai

Decided On : Jan-09-2004

Reported in : IV(2004)BC424; [2004]120CompCas337(Bom); (2004)2CompLJ503(Bom); 2004(3)MhLj922; [2004]52SCL416(Bom)

Judge : A.M. Khanwilkar, J.

Acts : [Companies Act, 1956](#) - Sections 433; Companies Rules

Appeal No. : Company Application No. 931 of 2003 in Company Petition No. 158 of 2003

Appellant : Hy-line International;In Re: C and M Farming Ltd.

Respondent : C and M Hy-line Farms P. Ltd.;

Advocate for Def. : Virag V. Tulzapurkar and ;S.H. Parikh, Advs., i/b., ;Crawford Bayley and Co.

Advocate for Pet/Ap. : F. Palkhivala, Adv. i/b., ;Prem Ranga, Adv. for Intervener, ;M.R. Sathe, ;Virendra V. Tulzapurkar and ;M.S. Doctor, Advs. i/b., Kanga and Co.;

Judgement :

A.M. Khanwilkar, J.

1. By this application, the applicant-company prays that it be permitted to intervene and to file affidavits and be heard at the admission and at every stage of the petition and in all proceedings concerning thereto. The basis on which intervention is sought is that the applicant-company has vital interest in the affairs of the C and M Hy-Line Farms Pvt. Ltd., which is proposed to be wound up by Company Petition No. 158 of 2003 on the ground purported to be under Section 433(e) and 433(f) of the Companies Act. According to the applicant, the applicant-company is a shareholder of the said company and is also a joint venture partner along with the petitioner. Besides, the applicant-company is a creditor as well as a guarantor of the company proposed to be wound up. It is, therefore, asserted that the applicant-company has vital interest in the proceedings and any order passed in these proceedings may prejudice the applicant. Besides, it is asserted that the present company petition is not a bona fide petition for the reasons set out in the affidavit. On the above contentions, it is prayed that the applicant be permitted to intervene in Company Petition No. 158 of 2003 and file pleadings and make oral arguments at the time of hearing at every stage of the petition.

2. No reply has been filed opposing this application. In that sense, the averments regarding the facts so as to justify the intervention of the applicant, have gone uncontroverted. However, Mr. Sathe, learned counsel for the petitioner has opposed this application. According to him, the applicant has no locus to pray that the applicant-company be permitted to intervene in the company petition. He submits that if at all the applicant-company is to be heard, that would be only at the stage of final hearing of the company petition and not at this stage ; because, at this stage the court is only concerned with the issue as to whether the claim set up by the petitioner regarding the liability or debt of the company is established and whether the defence taken by the company for non-payment of its liability is bona fide or whether the company is in a position to say the liability. Learned counsel for the petitioner submits that on these aspects, the applicant-company cannot be heard so as to oppose the petition as filed. Reliance is placed on the decision of the apex court in National Textile Workers' Union v. P.R. Ramakrishnan : (1983)ILLJ45SC to buttress the above argument.

3. On the other hand, counsel for the applicant-company submits that the objection taken on behalf of the petitioner is entirely misplaced. In support of his submission, reliance is placed on the decision of the Punjab and Haryana High Court in the case of Smt. Keerat Kaur v. Patiala Exhibition Pvt. Ltd. [1991] 70 Comp Cas 728 and another unreported decision of this court in Company Application No. 352 of 2003 and companion matters decided on November 28, 2003, in the case of Bharat Petroleum Corporation Ltd. v. National Organic Chemical Industries Ltd. (since reported in [2004] 120 Comp Cas 333.

4. Having considered the rival submissions, to my mind, there is no substance in the objection raised on behalf of the petitioner regarding the locus of the applicant-company to intervene in the company petition. The decision pressed into service on behalf of the petitioner in the case of National Textile Workers' : (1983)ILLJ45SC is of no avail. In that case, the issue considered by the court was relating to the right of workmen employed in a company to appear and oppose a petition for winding up of the company. That authority cannot be pressed into service to support the statement of law as is canvassed on behalf of the petitioner that the workers or any other interested person such as the applicant cannot be heard or allowed to intervene at the stage of admission of the petition. On the other hand, the question that arises for my consideration is squarely answered by the decision of the Punjab and Haryana High Court in the case of Smt. Keerat Kaur v. Patiala Exhibition Pvt. Ltd. [1991] 70 Comp Cas 728. The Punjab and Haryana High Court on considering all the relevant decisions, including the decision which is relied upon on behalf of the petitioner in the case of National Textile Workers' Union : (1983)ILLJ45SC has held that in view of the expansive provisions contained in the Act and the Rules, the court has discretion to allow interested persons to participate in the proceedings so as to oppose the admission of the petition. I have no hesitation in adopting the exposition as made in this decision. On the same lines, is the dictum in the case of Bharat Petroleum Corporation Ltd. v. National Organic Chemical Industries Ltd. (unreported decision of this court) (since reported in [2004] 120 Comp Cas 333 where the question was whether the secured creditors could be heard at the stage of admission of the company petition and it has been held that even at the admission stage of the company petition, the secured creditors can be permitted to intervene and be

heard. Understood thus, I find no substance in the objection taken on behalf of the petitioner-company regarding the maintainability of this application.

5. Accordingly, this application succeeds. The applicant-company is allowed to intervene in the company petition for filing pleadings and to make oral submissions at the time of admission of the petition. It is made clear that the question whether the company petition, as filed, is bona fide or not will be considered at the stage of hearing on admission of the company petition and that aspect is left open.

No order as to costs.

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