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Court : Punjab and Haryana

Decided On : Aug-16-2001

Reported in : [2003]115CompCas565(P& H); [2004]49SCL616(Punj& Har)

Judge : R.L. Anand, J.

Acts : [Companies Act, 1956](#) - Sections 466

Appeal No. : C.P. Nos. 47 of 2000 and 119 of 2001

Appellant : Employees of Punwire Mobile Communication Ltd.

Respondent : Punwire Mobile Communication Ltd. (In Liquidation) and ors.

Advocate for Def. : Sumeet Malhotra, Adv.

Advocate for Pet/Ap. : Anand Chhibber, Adv.

Disposition : Petition dismissed

Judgement :

R.L. Anand, J.

1. This order will dispose of a petition under Section 466 of the [Companies Act, 1956](#), read with Rule 9 of the Companies (Court) Rules, 1959, vide which the

following prayers have been made by the petitioner:

(i) That the winding up order which has been passed ex parte qua the employees be stayed in view of the facts and circumstances mentioned in the petition.

(ii) That the agent appointed by the official liquidator who was running the company prior to the passing of the winding up order dated July 6, 2001, be allowed and directed to continue functioning of the company as a going concern.

(iii) That the official liquidator be directed to sell the company as a going concern with its complete infrastructure by issuing advertisements in all leading newspapers across the country along with the secured creditors--respondents Nos. 3 and 4.

2. Notice of the petition was given to the official liquidator, who does not want to file a reply and is ready to argue the matter on the basis of the petition.

3. I have heard Mr. Anand Chhibber, advocate on behalf of the petitioner, Mr. Sumeet Malhotra, advocate on behalf of the official liquidator and with their assistance have gone through the records of this case.

4. Vide order dated July 6, 2001, the company petition filed by Titan Industries Ltd., respondent No. 2, was allowed by relying upon the report of the provisional liquidator and an order for winding up of the company was passed and it was directed that the provisional liquidator will be the liquidator of the entire assets of the company and he will proceed in accordance with law.

5. During the course of submissions Mr, Chhibber has not pressed prayer No. 1, quoted above. However, he submits that Punwire Mobile Communications Ltd. the company under liquidation, is a running company and it is providing paging services in several States. Hundreds of employees are getting livelihood for providing this facility of paging and in these circumstances directions may be given to the official liquidator to maintain status quo ante as it existed on July 6, 2001. He submitted that further directions may be given to the official liquidator to sell the company as a going concern with its complete infrastructure by issuing various advertisements. The prayer of the petitioner has been opposed by the official

liquidator through his lawyer, who submitted at the Bar that the company under liquidation has to pay a sum of Rs. 58.62 crores to the DoT and it is a liability upon the company. There is no sufficient fund with the company to clear the arrears of the Government and in these circumstances the prayer made in the petition should not be granted. After applying my mind to the rival contentions of the parties. I am of the opinion that this petition must be rejected. During the course of submissions it was admitted that the company has to pay a sum of Rs. 58.62 crores to the DoT. The provisional liquidator has already been provided with the powers of liquidator with the direction to take control of the entire assets of the company and to proceed in accordance with law. It is for the official liquidator now to see the interest of the creditors and to utilise the assets of the company for the best interest of creditors, secured or unsecured, and to see how the interests of the workers can be best watched. The salaries of the workers are like a secured debt. After taking control of the assets of the company the official liquidator has again to revert back to the company to see how the assets of the company can be disposed of. At this juncture I have no hesitation in dismissing this petition and the same is hereby dismissed.