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Kulbir Singh Vs. Official Liquidator Attached to the High Court of Delhi (Observer)

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Court : Delhi

Decided On : Apr-28-2008

Reported in : [2008]146CompCas21(Delhi)

Judge : Sanjay Kishan Kaul and; Mool Chand Garg, JJ.

Acts : [Companies Act, 1956](#) - Sections 391

Appeal No. : Company Appeal No. 35 of 2006 and C.M. Nos. 10481 of 2006 and 3243 of 2008

Appellant : Kulbir Singh

Respondent : Official Liquidator Attached to the High Court of Delhi (Observer)

Advocate for Def. : S.K. Luthra, Adv.

Advocate for Pet/Ap. : Party-in-Perso

Judgement :

Sanjay Kishan Kaul, J.

C.M. No. 10481 of 2006:

1. Allowed, subject to just exceptions.

Company Appeal No. 35 of 2006:

2. A petition for winding up of M/s. National Chemical Industries P. Ltd. (hereinafter referred to as 'the said company') was filed before this court and a winding up order was passed on February 19, 1981. The scheme propounded under Section 391 of the [Companies Act, 1956](#) (hereinafter referred to as 'the said Act') was sanctioned by the company judge on March 1, 1983, to facilitate revival of the said company. It is stated that the order sanctioning the scheme provided for no alienation of immovable properties and the official liquidator was made as the observer to supervise and report on the progress of revival and implementation of the scheme. The consequence of this order was stated to be the stay of the winding up order.

3. It is the case of the appellant that the company was actually never revived in pursuance to the scheme and the official liquidator failed to report the non-revival.

4. The appellant and his mother were the shareholders of the said company and in terms of an arrangement arrived at the shares were sought to be transferred. The appellant and his mother were objecting to the scheme and it is in those circumstances that the orders are stated to have been passed on September 24, 1984.

5. The appellant filed C.A. No. 827 of 1998 for action to protect the properties at Najafgarh and Faridabad. This was stated to be required as the official liquidator was not reporting on the matter. On enquiry, the official liquidator reported to have stated that there was no such company in existence at the given address. Notices were, therefore, issued to the directors. Thus, there is stated to have a failure of the revival scheme.

6. C.A. 827 of 1998 filed by the appellant was dismissed by the impugned order dated March 10, 2006 and the present appeal is directed against the said order.

7. A perusal of the impugned order shows that the learned company judge has taken note of the statement made in court on November 28, 1983, by the appellant and his mother whereby they agreed to sell their shares in the said company to

one Mr. R.C. Goenka for rupees eight lakhs along with interest at 16 per cent, per annum from the date of the statement till the date of payment. They also further stated that in view of the settlement, the scheme would remain in operation and that the said company was entitled to sell two plots of total area of two acres at Najafgarh Road. The amount of rupees eight lakhs was deposited in the court and was paid to the appellant and his mother. However, out of the said amount, a sum of rupees one lakh was retained for some time in view of the estate duty liability.

8. In so far as the appellant is concerned, the order dated July 26, 1996, passed by the learned company judge is stated to have recorded that the only dispute qua him which survived was whether he was entitled to a multiplier/interest on Rs. 50,000 for a period of 11 years or 6 years. On this aspect a decision was rendered against the appellant vide orders dated November 12, 2002, whereby it was held that the appellant was entitled to interest of Rs. 54,666 only as calculated by the Registry of this court.

9. The impugned order takes note of the allegations made by the appellant against the official liquidator who was appointed as an observer. It is, thus, alleged that the official liquidator failed to perform his duties and act in accordance with the provisions of law in respect of the scheme propounded including for sale of the properties. The learned company judge found that the allegations were vague in respect of sale of immovable properties without permission. It has also been taken note that though vide the order dated March 1, 1983, the propounders as well as the collaborators of the scheme were injuncted from alienating any of the properties of the said company, the said order was subsequently modified on November 24, 1983, whereby plot Nos. 25 and 26, Najafgarh Road, Delhi were permitted to be sold. Not only that, the order dated April 30, 1984, vacated all interim stays.

10. On hearing the appellant in person, we find no merit in the appeal. The appellant and his mother objected to the scheme. The scheme was permitted to be proceeded with only on the claim of the appellant being satisfied. Such satisfaction arose on account of receipt of consideration agreed to be paid for the sale of shares for rupees eight lakhs. Thus, the right and interest of the appellant

and his mother arising from the holding of shares stood extinguished in terms of the arrangement arrived at on November 28, 1983 and the consideration deposited in pursuance thereto and paid thereafter except the amount detained towards the estate duty liability. The appellant and his mother had specifically agreed that the scheme would remain in operation.

11. As to whether the scheme has been properly implemented or not and what is the consequence thereof would be for the learned company judge to consider. However, the appellant has no role to play in the same and the only entitlement of the appellant left was about the claim of some interest on an unpaid amount of Rs. 50,000 detained for estate duty clearance in respect of shares inherited by the said two persons. The appellant is now claiming to raise stale issues to put impediments possibly arising from the appreciation of the real estate value of the plots which were agreed to be sold.

There is no infirmity in the impugned order. Dismissed.

C.M. No. 3243 of 2008:

12. Application has become infructuous and is disposed of.

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