Mr Raj Deep JaIn Vs.

Mr Raj Deep JaIn Vs.

SooperKanoon Citation : sooperkanoon.com/920733

Court : Rajasthan

Decided On : Aug-04-2011

Judge : Ajay Rastogi, J.

Acts : Companies (Court) Rules,1959 - Rule 9; Companies Act,1985 - Section 16, 20(1) (2)

Appeal No. : S.B. Company Application No.10 of 2011; In S.B. Company Petition No.32 of 2000

Appellant : Mr Raj Deep Jain

Advocate for Pet/Ap. : Mr. J.K. Singhi; Mr. Sandeep Taneja, Adv

Judgement :

1. Instant company application has been filed by applicant Rajdeep Jain, Ex-Director/Promoter of M/s. Deeps Special Steels Ltd. u/R.9 of the Companies (Court) Rules,1959 seeking permission of this Court for recalling the order dt.30.01.2004 passed by the Company Court in Company Petition-32/2000 and possession including entire records and assets be handed over to the applicant company obviously after fulfillment of the requirement provided under law.

2. As alleged in the application that M/s. Deeps Special Steels Ltd was incorporated in 1983 as public limited company by shares with the Registrar of Companies and continued to run its commercial production till December,1992. However, in the first phase of 1993 because of some labour problems there was a

prolonged closure accumulating losses which exceeded the net-worth (reserves and capital) of the company and in view of erosion of the net-worth of the company, matter was referred to BIFR. However, after examining the matter at length u/S.16 of the Act,1985 the BIFR in its first meeting held on 13.03.1996 declared the applicant company a sick industrial unit and one of the secured creditor IFCI was appointed as operating agency. It has been recorded by the BIFR in its recommendations that the company had two secured creditors namely IFCI and State Bank of Patiala and after taking into account report of the operating agency the BIFR in its order dt.02.06.2000 observed that there is no rehabilitation proposal coming forward which may fully tie up its dues and confirmed its prima facie opinion that the company was not likely to come out with its net-worth which exceeds its accumulated losses within reasonable time while meeting out all its financial obligation and the company was not likely to be viable in future and recommended for winding up of the company vide order (BIFR) dt.02.06.2000 and matter was sent to this Court u/S.20(1) of the Act and S.B. Company Petition No.32/2000 was registered and after the notice was served and opportunity of hearing being afforded this Court vide order dt.30.01.2004 appointed Official Liquidator attached to this Court as Provisional Liquidator of M/s. Deep Special Steels Ltd and proceedings thereafter commenced. After passing of the order appointing Official Liquidator attached to this Court as Provisional Liquidator, it has been alleged that efforts were made by the Ex-Directors and promoters of the company to find out sufficient funds for revival of the net-worth of company and during the intervening period dues of the secured creditors namely IFCI and State Bank of Patiala and statutory dues of the Commercial Taxes Department which were raised and outstanding, communicated vide letter dt.21.07.2011 were also paid vide cheque dt.22.07.2011 and it has been informed to this Court it was encashed, at the same time the dues of the RIICO and JVVNL have also been finally settled/cleared by the Ex-promoters of the company. It has been alleged that for revival of production and repayment of the creditors, the promoters were successfully arranging sufficient funds through one M/s. Riddhi Packages Pvt. Ltd and the Board resolution passed by the company M/s. Riddhi Packages Pvt. Ltd. has also been placed on record, and the outstanding of IFCI of Rs.1.95 crores for repayment of Rs.65 lacs for full and final settlement was made on 25.01.2002

(Annx.4) and as regards State Bank of Patiala, its outstanding dues including interest was of Rs.1239 lakhs, subsequently entered into an assignment agreement on 31.03.2008 with ARCIL assigning the complete debt to ARCIL and that has been settled with ARCIL on payment of Rs.230 lakhs in full and final settlement evident from letter dt.13.03.2009 and no dues certificate dt.29.10.2009 (Annx.6) has been placed on record.

3. It has been further averred that as on the date when both the secured creditors suggested the BIFR for winding up, the company stood paid off and there is no outstanding dues on the part of the applicant company, counsel appearing on its behalf submits that it will not be in the public interest to proceed further in the present matter more so when all outstanding dues have been paid to the secured creditors of which reference has been made by the BIFR in its report while making recommendation for winding up of the company and after their final settlement what was recommended by the BIFR on account of these change in circumstances has lost its significance.

4. Counsel further submits that on account of these change in circumstances the order passed by the Court dt.30.01.2004 may be recalled and possession may be handed over to the Ex-Directors/Promoters of the company to start and operate for fulfillment of all due requirement provided under the law.

5. Mr. R.B. Mathur appearing for Commercial Taxes Department on the other hand submits that demand which was raised by the department of commercial taxes vide their communication dt.21.07.2011 has been paid in full but a note has been appended in the demand notice itself that in addition to year 1991-92 matter is pending before the Deputy Commissioner (Appeals). Counsel submits that there may be possibilities that some interest may still remain payable. However, neither demand nor notice has been sent by the department regarding interest as alleged so far and to meet out their objection counsel for applicant submits that what was due and raised by the department has been paid and if any future demand is received subject to their rights available under law they undertake to make the payment and in view thereof so far as statutory payments of department of Commercial Taxes is concerned, the applicant undertakes to settle obviously what

is legally permissible under law.

6. Mr. V.L. Mathur appearing for State Bank of Patiala submits that their outstanding dues have been finally settled by the applicant company and on instructions he submits that he has no objection if possession of the company is handed over to the Ex-Directors/Promoters of the company.

7. Mr. B.K. Sharma appearing for Official Liquidator submits that there was outstanding dues regarding security and other charges for the period during which the company remained in their possession that has been paid in full. However, he further submits that once the recommendations are accepted by this Court and Provisional Liquidator was appointed by the Company Court vide order dt.30.01.2004 and if there is any change in circumstances at a later stage and this Court comes to the conclusion that the order passed by the Company Court at one stage dt.30.01.2004 deserves to be reconsidered for a fresh look, the matter may be remitted back to the BIFR for examining the development which have taken place after the recommendations are accepted by this Court.

8. This Court does not find substance in the submission made by Mr. B.K. Sharma for the reason that the BIFR expressed its prima facie opinion and made its recommendations u/S.20(1) of the Act to the High Court and the matter is to be examined under u/S.20(2) of the Act while taking a final decision as to whether company petition deserves to be admitted based on the recommendations made by the BIFR but during the pendency if the Ex-Directors/ promoters of the company have been able to settle the dues of secured creditors and sovereign dues of the State Government and other statutory and outstanding dues of the company there appears to be no justification in remitting the matter back to the BIFR and that can always be looked into by this Court while taking final decision. It will be relevant to record that what was recommended by the BIFR is not binding upon this Court and the BIFR being a recommendatory body this Court has to take final decision as to whether recommendations made by the BIFR has to be carried out or not, for taking further necessary action permissible under the provisions of Companies Act.

9. In the instant case, when the Ex-Directors/Promoters of the company have been able to settle the dues of secured creditors and sovereign, statutory and other outstanding dues of the company it will not be in the interest of creditors/workman or in public interest to continue the proceedings in company petition-32/2000 any further.

10. So far as the outstanding dues which the Official Liquidator has incurred for the period during which the possession of the company remained with the Provisional Liquidator, the same, as informed, has also been paid and if at all there is any outstanding dues the applicant further undertakes to pay within seven days time from being raised.

11. Taking note of the submissions made and the material on record this Court is of the considered opinion that it is neither in the interest of creditors nor in the public interest to proceed further in the pending company petition on account of the change in circumstances which has come on record and noticed by this Court and considers it appropriate to recall the order dt.30.01.2004.

12. Consequently, the instant company application stands allowed and the order passed by the Court dt.30.01.2004 stands recalled and the Official Liquidator is directed to handover possession of the company to its authorized representative after due compliance of the formalities required under law.