

Batliboi Vs. Mideast Integrated Steels Ltd.

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Court : Delhi

Decided On : Aug-01-2012

Judge : The Honourable Ms. Justice Indermeet Kaur

Appeal No. : C.O. PET. No. 146 of 2005

Appellant : Batliboi

Respondent : Mideast Integrated Steels Ltd.

Judgement :

IndermeetKaur, J.

Oral:

1. This is a petition under Section 391 read with Section 394 of the Companies Act, 1956.
2. The company M/s Mideast Integrated Steel Limited (MISL) had various winding up petitions filed against it. In Company Petition No. 337/1996 filed by the petitioning creditor Batliboi Limited, the company was provisionally wound up on 19.02.2002.
3. During the pendency of the winding up petition, on 21.09.2004 a scheme of arrangement was propounded by the promoters/Ex-directors of the company; the proposal and scheme was for a settlement between the company and all its

creditors. In terms thereof, on the same date a meeting of the unsecured creditors was ordered for 15.01.2005 which was finally held on 02.03.2005. The scheme was approved by the requisite majority of the creditors. The report of the Chairperson had noted that 33 unsecured creditors participated and voted in the scheme. The representative of IPICOL (secured creditor) was present; he did not want to be covered by the scheme. Today it has been noted by the Court that the claim of IPICOL is listed for adjudication before the Orissa High Court; he is admittedly not a part of the scheme. The report of the Chairperson dated 09.03.2005 evidencing the approval by 88.80% of the unsecured creditors in favour of the scheme is on record.

4. The dues of the secured creditors were also settled. On 02.12.2004, a sum of Rs.4,80,00,000/- was paid to ICICI Bank Limited, a sum of Rs.1,61,60,000/- was paid to First Leasing Company of India Ltd. and a sum of Rs.45 lacs was paid to Orissa Mining Corporation Ltd. Earlier in the year 2000, claim of Asea Brown Boveri Ltd. was also settled by payment of Rs.2,13,80,000/-.

5. On 02.12.2004, permission to commission the plant was also granted to the ex-directors of the Company and a committee of experts (Mr. Arvind Pandey, former Chairman (SAIL) and Mr. J.D. Aggarwal) had been appointed; while retaining possession of the plant with the Official Liquidator, the ex-directors were permitted to commission and operate the plant. The commissioning of the plant started in two stages.

6. The scheme disclosed that the company was incorporated on 07.09.1992. The main object of the company was to carry on the business of manufacturing of pig iron/steel. At the time of its incorporation, the company had an authorized capital of Rs.70.00 crores; the paid-up capital was Rs. 700.00 consisting of 70 shares of Rs. 10/- each. On 11.05.1994, the company had been granted a license by the Government of India for setting up its Pig iron and steel manufacturing plant in the state of Orissa. The company had acquired 530.68 acres of land in Jajpur, Orissa and had entered into a collaboration with M/s CMIEC (now known as Sinosteel Corporation Limited) for a technical know-how and assistance in setting up the said steel plant. The company had invested its entire paid-up capital in setting up

this aforementioned plaintiff. The company started its project implementation in 1992 which however slowed down in 1996; because of non-availability of funds, the project got stalled in July, 2000.

7. As on the date of the first motion (21.09.2004), 100% of the plant and machinery and equipments required for commissioning of the Blast Furnace-II (Satya) were available at site and 99% of the equipments had been erected. The promoters for this purpose had entered into an agreement with STEMCOR (SEA) PTE LTD. (STEMCOR, Singapore). STEMCOR has been appointed as the selling and marketing agent of MISL for the sale and marketing of its products manufactured/produced by the MISL in the plant. STEMCOR had agreed to provide financial assistance and had agreed to establish letters of credit in favour of the suppliers of coke and iron Ore to enable MISL to import metallurgical Coke and iron ore for a total value of US \$ 50 million per annum (but not exceeding US \$ 10 million at any point of time). Pursuant to this aforementioned agreement with STEMCOR, arrangements had been made for meeting all capital costs of commissioning of the 1st Blast Furnace-II (Satya), Blast Furnace-I (Sankhya) and the Sinter plant in three phases. In consideration of all the obligations assumed by STEMCOR, MISL has agreed to pay to it 5% of the FOB value of export sales or ex-plant value of domestic sales of the products in the territory; submission being that after the support and financial assistance provided by STEMCOR and the promoters, the company is now in its regular commercial production.

(i) The dues of the other secured creditors i.e. IDBI, IFCI and State Bank of India have been settled and terms of repayment to the secured creditors over a period of 9 years with interest @ 6% have been detailed in the orders of the DRT, Cuttack dated 05.05.2004, 30.06.2004, 14.07.2004 and 05.08.2004. The DRT, Cuttack had also directed the provisional liquidator to seek permission of the Court to permit the operation of the plant to enable compliance with the DRT scheme.

(ii) The unsecured creditors apart from the scheme creditors are less than Rs.3,00,000/- and collectively aggregate to Rs.3,00,00,000/-.

(iii) The scheme for payment to the scheme creditors has been detailed; the aggregate of the claims of the scheme creditors is Rs.44,95,36.403/- plus

US\$9,55,000 payable to China Metallurgical Import and Export HEBEI Company, China and Rs.17,00,00,000/- to Mideast India Ltd. subject to the adjustment that may become necessary in the event of claims/counter claims.

8. The second motion petition had been filed on 21.04.2005. Notice of this petition had been ordered to the Central Government through Regional Director as also to the Official Liquidator; citations were directed to be published in the 'Statesman; (English edition) and 'Jansatta' (Hindi edition). Notice was also ordered to M/s STEMCOR as also to the other creditors.

9. On 05.09.2005, the Regional Director also gave a no objection to the scheme.

10. On 02.12.2005, a no objection was given by the Official Liquidator to the proposed scheme.

11. On 21.11.2006, notice was ordered to the secured creditors i.e. State Bank of India, LIC, IFCI, IDBI and UTI; this was a consortium headed by the IDBI. Notice was also ordered to all the un-secured creditors. The members of the Committee (appointed under the orders of this Court) had also been directed to give their comments on the scheme which had been recorded on 11.05.2011.

12. The Committee had noted that in terms of the scheme, a sum of Rs.91 crores was to be paid to the scheme creditors. During the pendency of the scheme, a further sum of Rs.75.65 crores has been paid to them in addition to Rs.354.57 being paid to the other secured and unsecured creditors pursuant to the settlement reached in terms of the revival scheme, leaving only a sum of Rs.9.64 crores to be paid to the scheme creditors. This amount was to be paid from the funds generated by the operation of the plant over a period of one year. On the same date, a statement on behalf of the propounders/applicants had been recorded that this sum of Rs. 9.64 crores will be paid to creditors within a period of 90 days. A sum of Rs.2 crores was paid to M/s Babcock Baring Engineering Company (unsecured creditor) in full and final settlement of its dues.

13. On 20.05.2011, settlement was arrived at with the Central Bank of India and a sum of Rs.45.14 crores has been paid to them in full and final settlement of their

claim.

14. On the same date i.e. 20.05.2011 an application had been filed by the propounders/applicants seeking recall of the order for appointment of provisional liquidator.

15. On 27.09.2011, in terms of the status report filed by the Official Liquidator, the list of unsecured creditors and the debenture holders had been taken on record. It had been recorded that the claim of IIPCOL is the subject matter of adjudication before the Orissa High Court and he is being paid in accordance with the orders of the said Court. M/s Babcock Baring Engineering Company (now known as M/s Deutsche Babcock Power System Ltd.) had also been paid its dues of Rs.2,00,00,000/- in full and final settlement of its claim. The balance dues of the remaining unsecured creditors i.e. a sum of Rs.98,66,311/- (after deducting the amount of IIPCOL of M/s Deutsche Babcock Power System Ltd) was directed to be deposited with the Official Liquidator. Subject to deposit of the aforementioned amount, the order of the appointment of the provisional liquidator was recalled.

16. The affidavit of Rita Singh, Ex-director of the propounder/applicant dated 30.07.2012 is on record. It has reiterated that in terms of the settlement arrived at with the unsecured creditor (details of which find mention in schedule 'A') totalling 52 persons and have been paid a sum of Rs. 57,42,12,206/-. A fresh status report has been filed by the Official Liquidator (dated 30.07.2012). It has noted that a sum of Rs.6,54,599/- due to Oriental Hydraulics Pvt. Ltd. has since been paid. The amount of Rs.23,35,842/- due to M/s Dew Concrete Tiles Ltd. has also been paid. The Official Liquidator has reported that a sum of Rs.68,75,870/- is now lying with him. The claims of M/s NGEF Limited (Rs.20,25,870/-), M/s Spriex Marshall Limited (Rs.2,50,000/-), M/s Vimal Cement Limited (Rs.3,00,000/-) and M/s Vickers Systems International Limited (Rs.43,00,000) are the amounts now left to be paid. Details of these unsecured creditors and the debenture holder (not paid) have been detailed in schedule 'C'. Thus, this amount is the balance due from Rs. 98,66,311/- after making payment to Oriental Hydraulics Pvt. Ltd. and M/s Dew Concrete Tiles Ltd.

17. The affidavit of Rita Singh further states that the secured creditors have also been paid details and proof of payments of which finds mention in schedule 'D'. M/s IPICOL (secured creditor) had elected to remain outside the Company Court; the respondent company has already deposited the principal sum of Rs.17 crores as per the directions of the High Court of Orissa and details of which find mention in schedule 'E'; the respondent company undertakes in terms of this affidavit to pay the interest as and when determined by the High Court of Orissa.

18. The Official Liquidator in this fresh status report (dated 30.07.2012) has reported that apart from this sum of Rs.68,75,870/-, another sum of Rs.11,39,510/- is also lying with him.

19. The Regional Director had also furnished his affidavit dated 29.02.2012 wherein he had made an observation that there is nothing on record to suggest that the workers/employees have been paid and no contingency has been made in the scheme for payment of liabilities of Income Tax Department, Sales Tax, custom tax and central excise duties. Reply affidavit of Rita Singh dated 30.07.2012 has stated that these amounts are being paid to the parties as and when their dues arise; submission being that since the company is running (in terms of the orders of this Court), the dues of the workers and the statutory bodies (as aforementioned) are being paid as and when they arise. This objection of the Regional Director is thus taken care of.

20. The claims of all the secured creditors stand satisfied. The claim of unsecured creditors (apart from aforementioned four persons) also satisfied which included the scheme creditors. No other claim has been received pursuant to the publications inviting claims. The report of the Regional Director and the report of the Official Liquidator have also noted all these facts.

21. In this factual background, which has now emanated there appears to be no impediment for the grant of sanction of the scheme.

22. The amount of Rs.68,75,870/- lying deposited with the Official Liquidator (in the account of five aforementioned creditors) is directed to be remitted back to the company; the company is directed to keep this amount in a fixed deposit and as

and when any claim arises qua these five persons, the same shall be paid along with interest at 6% per annum (which has been ordered in terms of the orders of this Court dated 27.09.2011). Another sum of Rs.11,39,510/- is stated to be lying with the Official Liquidator which vide order dated 05.12.2011 had been directed to be refunded back to the company after deducting Government commission. It is pointed out that the Government commission of Rs.4,698/- has been deducted and the balance sum of Rs.11,34,812/- shall be paid back to the company.

23. This proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. The Company Court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising of the same class whom they purport to represent. That the scheme as a whole must also be found to be just, fair and reasonable from the point of view of a prudent man of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant.

24. It has been repeatedly held that whenever an option is available between the revival of the company and its winding up, courts must as far as possible lean in favour of the company. The same facilitates creation of the prospect of generating jobs and putting the assets of the company in productive use as against their disposal and distribution. [Ref : (1998) 94 Com.Cases 723 Delhi in Wearwell Cycle Company (I) Ltd.; 120 (2005) DLT 58 Ferro Alloys Corporation vs. National Steel and General Mills (P) Ltd.]. In (1922) 2 Ch. D. 723 Re. Anglo-Continental Supply Co. Ltd. the Court held that before giving a sanction to the scheme of arrangement, it would see "Firstly, that the provisions of the statute have been complied with. Secondly, that the class was fairly represented by those who attended the meeting and that the statutory majority are acting bona fide and are not coercing the minority in order to promote interests adverse to those of the class whom they purport to represent; and thirdly, that the arrangement is such as a man of business would reasonably approve". These requirements appear to have been satisfied in the present case.

25. These principles were reiterated by this court in the judgment MANU/DE/0864/2005: 123 (2005) DLT 45 in Re: Soldier United Motor Tpt. Co. Ltd. AND Sh. S.N. Bhalla Vs. Soldier United Motor Tpt. Co. Ltd.

26. It has also been held by a catena of judgments that so long as a scheme is bonafide and is not intended to shift the misdeeds of the exdirectors or is otherwise equitable, the court would put its seal of approval on any proposal which is fair and reasonable and propounded in good faith. [Ref: (1996) 22 Corporate LA 200 Re: Saroj G Poddar]. The Bombay High Court in the judgment reported at MANU/MH/0509/2005: [2005] 127 Comp Cas 752(Bom) Shree Niwas Girni Kamgar Kruti Samiti Vs. Rangnath Basudev Somani in para 29 observed as follows :-

“29. Sections 391 and 393 of the Companies Act permits any reasonable form of arrangement between the company and shareholders and its creditors and leave the nature of the arrangement to the realm of the commercial wisdom of the concerned parties. The scheme for revival of the Company, therefore, need not necessarily be for functioning of the same activities that were carried on prior to the starting of liquidation proceedings and it is always open for the shareholders to revive the company and carry on business in accordance with law.”

27. From the above narration, it is evident that the promoters have provided that the interest of unsecured creditors is fully protected and shall not be impacted adversely in any way if the proposed Scheme of revival is sanctioned by this court. The majority of the creditors have consented to this scheme of revival and their interest stands protected.

28. In view of the above discussion, the applications are allowed. The Scheme of Revival of M/s. Mideast Integrated Steel Ltd. is approved and sanctioned subject to the following condition:

29. The promoters shall be bound by the terms of the Scheme and shall be liable for payment of all amounts held due and payable to the creditors.

30. Petition disposed of in the above terms.

