

**Al Vadivelu Vs. -**

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**SooperKanoon Citation :** [sooperkanoon.com/953718](http://sooperkanoon.com/953718)

**Court :** Chennai

**Decided On :** Oct-18-2012

**Judge :** The Honourable Ms. Justice K.B.K. Vasuki

**Appeal No. :** C.P.No.188 of 2012 and Comp.A.No.990 of 2011

**Appellant :** Al Vadivelu

**Respondent :** -

**Advocate for Pet/Ap. :** For the Petitioner: M/s. Shivakumar & Suresh, Advocate. For Regional Director: N. Ramesh, CGSC. For the Official Liquidator: M. Jeyakumar, Dy. OL.

**Judgement :**

(Petition filed under sections 391 and 394 of the Companies Act, 1956 for sanctioning the scheme of arrangement and Revival.)

The petition is filed under sections 391 and 394 of the Companies Act for approval of the Scheme of arrangement and revival of MCC Finance Ltd (in liquidation). The petitioner is none else than one of the directors of the company prior to the order of liquidation.

2. The facts made available herein would reveal that the company originally carried on business of non banking finance activities and also other businesses mentioned in its Memorandum of Association such as, merchant banking services,

lease of properties, financial and investment advisory services, share registry work etc. The company, during 1998 to 2000 faced serious financial liquidity problem, due to various reasons set out in para 5 at page 3 of the petition, resulting in its inability to make repayment to fixed deposit, bond and hundi holders and to various banking, financial institution and individual creditors, even after approval of scheme of repayment of deposits by Company Law Board, Chennai. As a result, C.P.Nos.319/99, 496/2000 and 504 to 506 of 2000 were filed by Reserve Bank of India and individual creditors for ordering winding up of the company. This Court, by order dated 3.8.2001 made in CP.496/2000, directed the company to be wound up. In pursuance of the same, the affairs of the company is taken over by the official liquidator attached to this court. The order of winding up was passed, after rejecting various schemes offered by the company to settle the creditors both secured and unsecured. But while doing so, this court was pleased to give liberty to the company to file fresh scheme.

3. Thereafter, due to continuous efforts made by the promoters and the administrator of the company, the petitioner herein brought in funds to the tune of Rs.112.39 crores for the purpose of settlement of fixed deposit, bond and hundi holders. In pursuance of the order of the Division Bench made in OSA.Nos.293 and 318 of 2002 dated 28.1.2004 the liabilities of various depositors were fully settled. In addition to the same, the claims of various banks against the company in liquidation and different class of creditors including the petitioners in winding up petitions, were also amicably settled and the proceedings initiated by various banks pending before other recovery forums were duly withdrawn. After settlement of creditors, Rs.97.40 crores alone remains payable to 14 creditors. The scheme of arrangement, which is sought to be approved in this Company Petition, is proposed only with regard to other creditors, whose claim remains to be settled.

4. The Chairman of the company, after drafting fresh scheme, filed CA.No.991/2011 seeking permission of this court to move necessary petition for approval of the Scheme by the creditors/shareholders and all consequential actions in pursuance of the order that has to be made in the company petition filed under section 391 and 394 of Companies Act. This court by order dated 22.12.2011 granted necessary permission to move a petition. Pursuant to the

same, CA.Nos.255 and 256 of 2012 came to be filed seeking permission to convene the meeting of the shareholders and creditors of the company. As the creditors of the company were only 14 in numbers, CA.257 of 2012 came to be filed for dispensing with newspaper publication, in respect of the meeting of the creditors of the company. This court, having satisfied with the reason set out in the application, duly ordered all the three applications on 13.3.2012, thereby dispensed with newspaper publication in respect of meeting of the creditors and permitted convening of meeting of the creditors and shareholders. In pursuance of order dated 13.3.2012, this Court appointed Mr.N.R.Chandran, Senior Advocate as Chairman of the meeting and Mr.R.Muthukumaraswamy, Senior Advocate as alternative Chairman of the meeting.

5. The Chairman of the meeting, after complying with all the formalities in the matter of issuing notice to individuals by R.P.A.D and through publication in newspaper and advertisement as required under Rules 74 and 76 of Companies (Court) Rules, filed compliance report in the form of an affidavit. Thereafter, the meeting of the shareholders and creditors was convened on 18.4.2012 and 1331 shareholders attended the meeting and 1293 members representing 99.94% voted in favour of the resolution and 38 members representing 0.06% voted against the proposed resolution. Out of 14 creditors, 7 creditors attended the meeting and all the 7 voted in favour of the resolution and due report was filed by the Chairman of the meeting on 21.4.2012 along with proof affidavit on 23.4.2012 as required under Rules 77 and 78 of Companies (Court) Rules. In pursuance of the same, CP.No.188 of 2012 came to be filed for sanctioning the scheme.

6. This Court, after duly considering various terms of the Scheme, ordered notice of hearing through all modes as contemplated under law and also directed issuance of publication in all editions of New Indian Express and in Dinamalar Tamil Nadu edition. This court also ordered notice to the Regional Director, southern Region and the Official Liquidator, Chennai. In response to the order of this Court, the Regional Director, Ministry of Company Affairs, Southern Region, Chennai and the Official Liquidator filed their report and no third party objector appeared and raised any objection. There is also no objection from any individual of different classes of creditors in this regard.

7. The Regional Director has, in his report dated 11.9.2012, not placed any adverse remarks against approval of the Scheme except stating that the company, upon sanction of the scheme be directed to list its shares in the stock exchange as stated in the explanatory statement attached to the notice dated 19.3.2012 and be directed to file an affidavit to that effect,. As a matter of fact, the Regional Director has, in his report, referred to all the salient features and advantages in the proposed scheme, which are beneficial to the company and various classes of shareholders and creditors attached to the company and certain advantages, which are general in nature, such as employment opportunity to all and revenue benefit to the government, etc.

8. The Official Liquidator in his report appealed to this court to issue direction to the propounder of the Scheme of arrangement, to submit certain clarifications by way of affidavit and further information as to the feasibility of revival of the company, the commercial viability, arrangement of funds required for revival, technical feasibility report and project report from the expert, Undertaking to change the name of the company as non banking finance company and to furnish details of the creditors, notice of the meeting to be sent to the creditors and shareholders for considering the proposed scheme of arrangement and for their approval. The petitioner, who is the propounder of the scheme, has duly furnished all clarifications and informations by way of affidavit of Undertaking. The perusal of further report of the official liquidator dated 6.9.2012 would disclose acceptance of clarifications so made by the petitioner. The official liquidator has also referred to the approval of the scheme by majority of the shareholders and creditors and the Official Liquidator has in para 16 categorically mentioned that there is no other legal impediment to approve the scheme by this court.

9. This Court perused the averments raised in the petition and all the records filed along with the petition and also duly gone into the scheme of arrangement and also the reports of authorities as above referred to. This court also heard the oral submissions made by the learned senior counsel appearing for the petitioner in support of sanction of the scheme.

10. As already referred to, the petitioner herein is the Ex-director of the company. It may be true that the company was directed to be wound up by order of this Court made in C.P.No.496 of 2000. But thereafter in the course of winding up process, due to the efforts taken by the promoters and administrator of the company, interest free sum of Rs.112.39 crores was brought in, which was used for settling the claims fully and finally of various classes of the creditors without touching the cash of the company and the total outstanding now remains to be payable is Rs.97.40 crores. The report of the official liquidator reveals that Rs.30,15,64,338.39 is available to the credit of the company in liquidation by way of cash at bank and by investment in interest bearing fixed deposits as on 6.9.2012. One M/s.South India Travel Private Limited, who is one of the shareholders of the company, has agreed to contribute Rs.10 crores towards capital of the company upon approval of the scheme by the High court for allotment of 0% 5 years preference shares.

11. The reading of the scheme would reveal that the main objects of the Scheme are for settlement of all the creditors, enhancement of positive net worth share value and paid up share capital of the company, besides distribution of dividends in future and taking the company out of winding up. As per the scheme, the company proposed to restrict its activities to do only non fund based activities as part of its business plan without seeking any deposit from public. The main business activities of the company will be lease of properties, merchant banking services, such as, services to corporate bodies for promotion of equity shares through initial public offer and/or by way of private placement, financial and investment consultancy/advisory services as permitted in the objects of the company. In the event of the Scheme being approved by this Court, the company would register with SEBI as Merchant Banker to act as a Merchant Banker.

12. The Scheme proposes to offer two options, with regard to 14 creditors, who remain to be settled which reads as follows:

*"Upon approval of the scheme by the High court:*

*(a) 3 year Zero interest bonds for 40% of the amount outstanding at the time of winding up including interest upto June 2000 will be allotted to the creditors or their*

*authorized nominees, in full settlement of their dues. Such bonds shall be redeemable at the end of the third year or in lieu of such redemption, at the option of the creditor, be convertible into equity shares of Rs.10 each at Par;*

*(or)*

*(b)The equity shares of Rs.10/- each at a premium of Rs.15/- per share will be allotted to the creditors or their authorised nominees for the amount outstanding at the time of winding up including interest upto June 2000 in full settlement of the dues."*

After the scheme is sanctioned and given effect to the creditors shall be issued due notice by the Company about the sanction of the scheme by this Court and the creditors shall exercise either of the above option within thirty days of service of notice of sanction of the scheme. Upon such exercise of option by the creditors, the Board of Directors of the company shall, act accordingly to give effect to the same. The propounder has also filed an affidavit of declaration and undertaking as required by the report of the official liquidator to the effect that end use of the assets of the company in liquidation which does not in any way, would result in the disposal of the assets of the company, until the dues of the unsecured creditors of the company in liquidation are settled and paid, as per the scheme or as may be decided by this court and the applicant has also given an Undertaking to pay and settle any claim, which may be received in the office of the Official Liquidator and forwarded to the company, as per law.

13. Further, the averments raised in para 8 at page 4 of the affidavit dated 2.7.2012 filed by the promoter/petitioner herein regarding proposed utility plan of the assets of the company would disclose that the company is having two vacant plots, one at Chennai and another at Coimbatore and one flat each at Delhi, Baroda, Trichy, Chennai and Bangalore and two flats at Mumbai and the movable properties comprising of shares of SPIC and SICAL/SICAGEN and First Leasing Company of India Limited and few other Companies and the company would generate necessary funds for the company to implement its objects as envisaged in the proposed Scheme.

14. This Court, upon perusal of the Scheme of Arrangement filed by the petitioner, finds no objectionable feature, which is detrimental or disadvantageous either to the employees, members or creditors of the company. On the other hand, the overall appreciation of facts and circumstances involved in the case in hand and various factors discussed above would satisfy the Scheme is not violative of any statutory provisions. The scheme is also fair, just, sound and is not against any public policy or public interest. The proposed scheme by the company is advantageous to remaining creditors as well as the members/shareholders of the company. This court is fully satisfied that in the event of the company being revived, it will be beneficial to all, including public in general as it is likely to result in employment opportunity, real estate development and revenue benefit to the State by way of income tax and other tax etc. Further, as rightly argued by the learned counsel for the petitioner, in the event of the scheme being sanctioned and implemented and the company being revived, the shareholders and creditors of both classes and others are going to be benefited and the company will be able to achieve economic growth resulting in positive net worth and enhancement of value of the shares. As the company is directed to be wound up, for non payment of amounts due to various classes of deposit holders and creditors and as of now the claims of all deposit holders and creditors except 14 creditors are settled in full and as the scheme is mainly for settlement of remaining creditors and necessary funds being generated for the said purposes and for carrying on business activities of the company in restricted manner which will enhance positive net worth of the company, the grounds based on which the winding up order is passed, will be no longer in force. The objects of the Scheme would reveal that the promoters and the company are careful enough to choose the nature of the business to be carried on, which are likely to contribute only to general economic growth of the company. That being the salient features and advantages of the Scheme, in the event of the order of winding up being allowed to be in force, the same is likely to serve as a fetter for proper and effective implementation of the Scheme, as such, this Court deems it fit to permanently stay the winding up order already granted by this Court on 3.8.2001 in C.P.No.496 of 2000 and to discharge the official Liquidator and the Administrator from the administration and management of the affairs and assets of the company and to allow the company to administer its affairs and assets in

accordance with law by the proposed reconstituted Board of the company. All the statutory provisions are complied with. As the proposed scheme is now approved by majority of shareholders and creditors, the same shall be binding on all the members shareholders and creditors of the company. The parties to the scheme of arrangement or other persons interested shall be at liberty to approach this Court for any direction that may be necessary in regard to the working of the arrangement.

15. In the result, the company petition is ordered, thereby approving the Scheme of arrangement and revival of MCC Finance Limited (in liquidation). The certified copy of this order shall be filed with the Registrar of Companies within 14 days from the date of receipt of copy of this order. The other necessary statutory and other formalities, if any are to be complied with, within 30 days from the date receipt of copy of this order. The winding up order dated 3.8.2001 made in C.P.No.496 of 2000 passed by this court is permanently stayed and the official Liquidator and the Administrator shall stand discharged from the administration and management of affairs and assets of the company. The proposed reconstituted Board of the company is permitted to take charge of the administration and management of affairs and assets of the company, in accordance with law. The fee for the learned Senior counsel Thiru N.R.Chandran, who headed the meetings of shareholders and creditors as Chairman, is fixed at Rs.1,50,000/- (Rs.75,000/- for each meeting). The fee for the counsel for the Ministry of Corporate Affairs is fixed at Rs.2,500/-. Consequently connected Miscellaneous Petition is closed.

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