

Ambala Bus Syndicate Pvt. Ltd. and Others

Vs

Bala Financiers Pvt. Ltd.

Special Leave Petitions (Civil) Nos. 14116, 14118 and 14120 of 1982

(D.A. Desai, R.S. Pathak JJ)

04.02.1983

ORDER

1. We are not inclined to grant leave in these matters. But we dispose of the petitions with certain observations and directions :
2. Both the matters arise out of a company petition filed by different creditors - respondents here for winding up the Company - petitioner herein. On a notice being issued by the learned Company Judge, the petitioner - Company entered appearance and filed an affidavit contending that the debt claimed as recoverable by the creditor is bonafied disputed.
3. The learned Company Judge after framing the issues gave a direction that the petition for winding up be advertised. The petitioner - Company against whom the petition for winding up is made, preferred an appeal in each case under Section 483 of the Companies Act, 1956.
4. When appeal came up for admission, a Division Bench of the High Court admitted the appeal but declined to grant stay of order directing the advertisement of winding up the petition. Present petitions are directed against the order of the Division Bench of the High Court refusing stay of the order directing advertisement of winding up petition. The High Court is seized of the matter as the appeal preferred by the petitioner-Company is pending in the High Court and the matter would be heard on the merits by the High Court. The only thing required to be done at this stage is that further proceedings in winding up petition should not proceed so that the issues may not be pre-judged and pre-determined. In the present petitions, the petitioner-Company was praying for a direction that the order directing advertisement of winding up petition stayed. That prayer has become infructuous because we are informed that winding up petitions has already been advertised. But Mr. A. K. Sen learned Counsel for the petitioner-Company pointed out that a petition for appointment of a provisional liquidator has already been moved by the creditor and it is pending before the learned Company Judge. After hearing learned Counsel on both sides, we are satisfied that till the appeals filed by the present petitioner-Company are finally disposed off by the High Court on merits, further proceedings in Company petition for winding up the petitioner-Company including the hearing of the petition for appointment of a provisional liquidator should not be proceeded with till the disposal of the appeals preferred by the petitioner-Company. This order shall ensure till the disposal of the appeals by the High Court.
5. Learned counsel for the Respondents pointed out that it is absolutely necessary that the appeals preferred by the petitioner-Company should be heard and disposed of as early as possible more so because this Court is granting a stay with regard to the further proceedings in the winding up petition. We are also told that the High Court having refused the stay, the appeal should ordinarily

be heard as early as possible. The High Court subject to its priorities may expedite the hearing of the appeals. Both the parties shall move the High Court after 3 weeks from today requesting the High Court to hear the appeals as expeditiously as possible and for a fixed date. Mr. Goel learned counsel for the creditor urged that the order directing furnishing security or security already furnished will remain unaffected. Liberty to move the High Court for relief in this behalf.

SLP No. 14118 of 1982 :

6. The order made by us in the above two petitions shall govern the present petition also. In the present case, it was further pointed out by learned counsel for the petitioner-Company that there are old and worn out vehicles belonging to the petitioner which are required to be sold as early as possible because the capital is blocked up and to provide liquid capital for replacement of vehicles. If the vehicles are not disposed off and replaced by new or better vehicles, the permits in respect of such vehicles are likely to be cancelled, and that would inflict irreparable harm on the petitioner-Company. The petitioner is going concern. It has some worn out vehicles. It is necessary that they must be disposed of and that would be in the best of the interest of the creditors too. But the vehicles should be disposed of in such a manner as not to harm the interest of the creditors and the interest of all concerned must be fully protected.

7. Approaching the matter from this angle, we direct that the petitioner-Company shall supply the list of vehicles setting out the number of each vehicle which it seeks to dispose of to the respondents within one month and the vehicles shall be disposed of either by private treaty or public auction or by the joint operation of both so as to fetch the maximum price. To put the matter beyond the pale of controversy, the learned Company Judge shall appoint some officer to carry out direction herein given. The officer so appointed shall invite tenders or take best possible methods including public advertisements for securing highest price. He must fix the date on which he will consider the offers. He must give advance notice of inspection if the parties desire, of the vehicles and creditors will equally be entitled to bring offers and/or to make there own offers and ultimately, the offer should be submitted to the learned Company Judge for confirmation.

8. It was pointed out that there is an amount to the credit of the petitioner-Company in a Bank but it can not be withdrawn. It was urged that the amount is necessary to buy new vehicles. A direction should be sought from the learned Judge. The Company Judge may consider the request of the petitioner-Company to withdraw the amount from the Bank for the purpose of purchasing new chassis for having new buses.

9. All the petitions are disposed of subject to directions and observations herein made.

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