

# SUPREME COURT OF INDIA

Meghal Homes Pvt. Ltd

Vs.

Shree Niwas Girni K.K.Samiti

C.A.Nos.3179-3181 of 2005

(G.P. Mathur and P.K. Balasubramanyan JJ.)

24.08.2007

## JUDGMENT

### **P.K. BALASUBRAMANYAN, J.**

1. These appeals arise out of proceedings in the Company Court in the matter of M/s Shreeniwas Cotton Mills Limited (SCML). The Company was incorporated on 5.2.1935. It established and ran a textile mill in a land measuring 70,490 square meters in Lower Parel in the then City of Bombay.

2. Just like various other textile mills located in that city, SCML also ran into difficulties. A creditor of the Company made an application C.P. No. 642 of 1983 under Section 433 of the Companies Act, for the winding up of the Company. By order dated 25.7.1984, SCML was ordered to be wound up by the Company Court. The Official Liquidator took charge of the affairs of the Company.

3. Nothing significant seems to have happened for a decade. Then, on a report of the Official Liquidator, the Company Court passed an order dated 1.9.1994 directing the Official Liquidator to issue a public notice inviting offers for the revival of the textile mills and absorption of the workmen and to purchase the assets of the Company. At that stage, Rangnath Somani, a contributory, filed Company Application No. 339 of 1994 seeking directions of the Company Court for holding a meeting of the creditors, contributories and other interested persons to consider a scheme proposed allegedly for the revival of the Company. The application was opposed. The Company Court directed the convening of the requisite meeting to consider the proposed scheme. Pending consideration thereof, the Company Court also withheld the proceedings pursuant to the public notice inviting offers. The order of the Company Court directing the convening of a meeting for the purpose of considering the scheme propounded was challenged in appeal by the workers' union and three of the parties who had submitted their offers in response to the advertisement issued by the Official Liquidator pursuant to the direction of the Company Court dated 1.9.1994. Notwithstanding the pendency of the appeals, a meeting as directed by the Company Court was held and a scheme was approved by the creditors, contributories and workers. An application for sanctioning the scheme was also filed. But, meanwhile, on 4.4.1995, the Division Bench of the High Court allowed the appeal against the order dated 1.9.1994 and set aside the direction for convening a meeting to consider the scheme proposed. The Company Application filed in that behalf was thus dismissed. In the view of the Division Bench, the scheme proposed was not a bona fide one since it was not on the basis of any viability report regarding the revival of the company and there was a failure to disclose the latest financial position of the Company. The court also found that even on the showing of Rangnath Somani, the value of the land belonging to SCML would be approximately

Rs. 200 crores if unencumbered and that itself was a very conservative valuation. The court was of the view that the intention behind presentation of the Scheme appeared to be to acquire the huge lands and other real estate belonging to SCML at a throw away price ostensibly in the guise of reviving the mills but with no real intention of reviving it. After the obtaining of a viability report, the Division Bench wanted the Company Judge to consider certain suggestions. They were:

"(1) Whether it is possible and viable to reopen the mills and/or any portion of it and run it profitably and without disposing of immovable assets of the Company;

(2) In case the mills cannot be re-started then whether any department or process of the mills could be started as viable;

(3) In case any party who comes forward with an offer to pay off all the creditors, take the company out of winding up and revive and restart the mills happens to be a shareholder of the Company, such party should surrender the shareholding in the capital of the Company at the value to be determined by the Court;

(4) In case above courses are not workable then whether the mills can be restarted by disposing of part of its assets to generate finance after payment to all the creditors;

(5) In case even the course under clause (4) above is not possible, then the Official Liquidator may sell the assets by public auction in which even the shareholders of the Company will be at liberty to bid."

4. Thereafter, the Division Bench emphasized what was the main object to be kept in mind by the Company Court. In that behalf, it was stated:

"It is open for the learned Company Judge to give any other suitable directions in the matter keeping in mind that the whole anxiety is to revive the Company and to restart the mills which is in the interest not only of the workers and creditors of the Company but also in the general interest of public. Needless to say that the revival of the Company and restarting of the mills will generate more employment and will be for healthy economy of the country."

(emphasis supplied)

5. A Petition for Special Leave to Appeal filed in this Court challenging the decision of the Division Bench as Special Leave Petition (Civil) No. 13305 of 1995 was dismissed on 10.7.1995.

6. The State Bank of India Capital Markets Limited was assigned the task of preparing a viability report. That Body made its recommendations after a due study of the situation. On the first aspect posed by the Division Bench, it answered:

"It is not possible to reopen the mills or any portion of it without disposing of the immovable assets of the Company. In our opinion, it would be unviable to revive the weaving and the processing sections of the above mill on account of the reasons summarized below."

For the moment, we are not concerned with those reasons and therefore we are not adverting to them at this stage. In answer to the second query posed, the answer was:

"It is not possible to restart the entire mill.

Only a section of the spinning division with 21420 spindles can be restarted and operated as viable, details of which are given below."

The details are not relevant for the moment. In answer to the third query regarding the surrender of shareholding if the offer comes from a shareholder, the report stated that the said matter rested with the court and its discretion. Regarding query No. 4, it was reported that since revival plan envisaged the functioning of the spinning section alone, the machinery in the weaving and processing sections and part of the machinery in the spinning section had to be sold or scrapped. A sale of such machinery was estimated to fetch a price of approximately Rs.550.99 lakhs. It was further reported that saleable extent of 44593 square meters of mill land, being a part of the total holding, if sold may fetch the required sum to settle all the past liabilities of the Company. But, it was suggested that it may be appropriate if the interested party brought in Rs.12367.41 lakhs in the form of loans initially and once the weaving and processing machinery and non-viable spinning machinery are sold, then, the question of sale of part of the land could be taken up. In answer to the fifth query, it was reported that since a partial revival of the mills was possible, sale by the Official Liquidator of the assets by public auction may not arise. It was also suggested that delay in implementing the revival package will escalate the liability and would lead to further deterioration in the condition of the spindleage proposed to be revived.

7. On 7.11.1998, a new Industrial Location Policy of the Government of Maharashtra became operative.

That applied to all industries in the Mumbai Metropolitan Region excluding the cotton textile industries. Since cotton textile industry was excluded from its purview, it appears that there was no restriction on restarting of the manufacturing activities of SCML.

8. We may notice at this stage that the main shareholders of SCML were Bangurs, Somanis, and the Life Insurance Corporation of India and the sundry shareholders held about 20&percent; of the shares. Two of the secured creditors were the State Bank of India and the Punjab and Sind Bank.

9. The matters lingered on. On 29.6.2003, it is seen that a Memorandum of Understanding was executed between the shareholders, the Somani Group, who meanwhile had acquired the shares of the Bangur Group (there is controversy whether the acquisition was by Rangnath Somani in his own right or it was an acquisition by the Somanis Group, a controversy that we are not called upon to decide here) and Lodha Builders Private Limited (LBPL). Under that Memorandum, LBPL agreed in consideration of getting the right to develop the properties of SCML, to pay a sum of Rs. 78 crores to SCML and 70,000 square feet of built up area or 19.50 crores in the alternative at the option of SCML. In other words, LBPL was to pay Rs. 97.50 crores to SCML or Rs.

78 crores and 70000 square ft. of built up area. It was also provided that if any additional funds were required for settling the affairs of the Company, the additional funds would have to be brought in by SCML. In other words, on payment of Rs. 78 crores and handing over a built up area of 70000 square feet or on paying Rs. 97.50 crores in all, LBPL was to get the right to develop and deal with the lands of SCML. Based on this Memorandum of Understanding, the three Somani cousins filed Company Application No. 4 of 2004 propounding a scheme and seeking directions from the Company Court for convening a meeting to consider the amended scheme. The amendment to the earlier scheme presented, included the replacement of paragraph 1.5 of the original scheme which had indicated that sale of the assets or properties of SCML was not envisaged and the scheme was for revival of the textile mill unit of SCML by a provision that the scheme envisaged development

and transfer of SCML's properties by LBPL for revival of SCML. Another amendment was to clause 5.1. This was by deleting the salient features for scheme for revival of the mills and providing in its place that the aim was that after discharging the liabilities of all creditors as per the scheme, if extra funds are available with SCML, then SCML will start a viable industry in any part of Maharashtra and employment would be generated. It was further stated in the proposed amendment that LBPL was to bring in funds of Rs. 78 crores for the payment of liabilities of SCML. In the event of any further finance being required than the amount agreed to be brought in by LBPL, the Company Applicants, the Somani cousins, would be permitted to dispose of a part of the assets of SCML and the proceeds of the sale will be utilized to pay off the workers and the creditors if required.

10. On 12.12.2003, the Company Court directed the meeting to be convened to consider the amended scheme. On 21.2.2004, the amended scheme was approved at the meeting. Company Petition No. 315 of 2004 was filed on 7.4.2004 seeking sanction of the amended scheme. The Regional Director on behalf of the Central Government pointed out that the propounders of the scheme were required to file an affidavit regarding the latest financial position of the Company but that they had not filed such an affidavit. On 23.7.2004, the Company Court rejected the amended scheme and dismissed the Company Petition No. 315 of 2004. The court held that the scheme presented was not a scheme for revival but it was in substance a disposal of the Company's assets which then vested in the Official Liquidator. The court found that it was only a mode of disposal of the Company's assets and hence it would be proper for the Company Court holding the assets to dispose of the assets after inviting offers. That would fetch a better price and such a course would be in the interest of the Company's minority shareholders, workmen and secured and unsecured creditors. The court was also of the view that the amount of Rs. 97.50 crores offered by LBPL was considerably less than the amount of Rs. 200 crores, which the Division Bench had noticed about ten years back, would be the minimum price that could be fetched if the properties were to be auctioned. The Company Court directed the issue of advertisements inviting offers for the assets of SCML showing a reserve price of Rs. 150 crores. The Official Liquidator issued advertisements inviting offers.

11. The order of the Company Court dated 23.7.2004 was challenged in appeal by LBPL, by the Somanis and by the workers' union. Though various offers had been received pursuant to the advertisement issued at the direction of the Company Court, they were not considered since in appeal, the auction process was stayed. The Division Bench, on 15.12.2004, passed an order directing the Somanis, LBPL and the various interveners who had made offers, to place their proposals for rehabilitation on record. It was also directed that those interested in purchase of the property should file affidavits placing on record whether they were prepared to make a down payment of a specified sum for release to the workers. The court also directed the Somanis holding the major shares (again we are not concerned with their inter se dispute here) to state whether they would be willing to accept any such better scheme. Some affidavits were filed and in its affidavit, LBPL stated that in addition to the payment of Rs. 45 crores to the workers, LBPL would set up a spinning unit and a garment unit at the cost of Rs. 40 crores on the 7,50,000 square feet coming to them under the Scheme, and would construct and transfer to a Workers Trust a 30,000 square feet unit, housing a school and other accommodation at a cost of Rs. 15-20 crores. Rangnath Somani, the eldest of the cousins filed an affidavit showing that the Somanis would be willing to consider and evaluate any better scheme in the interests of SCML.

But, on the same day, Ramesh Somani, who was one of the co-propounders of the scheme, filed an affidavit stating that he fully supported the scheme of LBPL and did not want any change in the

sponsors. He also filed another affidavit stating that the propounders of the scheme would set up a textile unit for rehabilitation of the workers of SCML at Sholapur at a cost of Rs. 35.02 crores. It is said on behalf of the appellants, that at the last moment just before the delivery of the judgment began, affidavits filed on behalf of the LBPL were received by the court, even while refusing to receive two affidavits, Rangnath Somani wanted to file. The Division Bench allowed the appeals, set aside the judgment of the Company Court and sanctioned the scheme as modified and as further modified by two affidavits of the Directors of LBPL, by its judgment dated 21.3.2005. It is this decision of the Division Bench that is in challenge before us in these appeals. Three of the appeals are by persons, who had made offers pursuant to the direction of the court and have been described for convenience, as the interveners and one of them by Rangnath Somani.

Even at this stage, we may mention that Civil Appeal Nos. 3569-3571 of 2005 filed by one of the interveners is sought to be withdrawn. We see no reason why the prayer for withdrawal of those appeals shall not be granted. So, Civil Appeal Nos. 3569-3571 of 2005 would stand dismissed as withdrawn. We are only considering the other appeals on merits.