

PUNJAB STATE INDUSTRIAL DEV. CORPN. LTD.

v.

P.N.F.C. KARAMCHARI SANGH AND ANR.

APRIL 4, 2006

[ARUN KUMAR AND R.V. RAVEENDRAN, JJ.]

Companies Act, 1956—Section 446—Companies (Court) Rules, 1959—Rule 9—Company Court—Powers of, qua a company-in-liquidation—Held: Company Court not empowered to fasten liability of the company-in-liquidation towards its workers on Appellant, a distinct and separate corporation and a third party—Sick Industrial Companies (Special Provisions) Act, 1985.

Government Order—Note made by State Chief Minister—Held: Is not an order of the State Government—Hence, not binding—Order of State Government is issued in a prescribed manner and the note cannot be treated as one.

PNFC, a company promoted by Appellant-State Industrial Corporation was wound up under the Sick Industrial Companies (Special Provisions) Act, 1985 on recommendation of the Board for Industrial and Financial Reconstruction (BIFR). In view of its financial difficulties, PNFC had not paid wages to its workers for several months. The workers approached the Chief Minister of the State who made a note for Appellant to raise resources in order to meet the liability of PNFC towards the worker's wages.

Relying upon the said note, the workers' association i.e. Respondent No.1 filed application before the Company Judge in High Court. The Company Judge directed Appellant to release funds in terms of the said note of the Chief Minister to the Official Liquidator for paying dues of the workers. The order was confirmed by the Division Bench of High Court.

In appeal to this Court, the question which arose for consideration is whether the liability with respect to money due from PNFC towards its workers could be fastened on Appellant, a distinct and separate legal entity.

Allowing the appeal, the Court

A HELD: 1.1. The Appellant could not be made liable for the dues owed by the PNFC to its workers. [756-H]

B 1.2. Under Section 446 of the Companies Act, 1956 the powers of the Company Judge qua a Company under liquidation may be wide, but that does not empower the Company Judge to pass an order making a distinct and separate corporation, a third party, liable for the liabilities of the Company in liquidation. This aspect unfortunately has not been adverted to either by the Company Judge or by the Division Bench of the High Court. [755-G]

C *Sudarsan Chits (I) Ltd. v. O. Sukumaran Pillai and Ors.*, [1984] 4 SCC 657 and *Calcutta Chromotype Ltd. v. Collector of Central Excise, Calcutta* AIR (1988) SC 1631, distinguished.

D 2.1. The note of the Chief Minister cannot be said to be an order of the State Government and therefore is not binding on the Appellant. The orders of the State Government are issued in a prescribed manner and the note cannot be treated as one. [756-B]

E 2.2. Reliance on Article 135 of the Memorandum and Articles of Association of the Appellant under which the State Government can issue directives to the Appellant is misplaced in the present case because the note of the Chief Minister cannot be said to be a directive of the State Government nor it is in relation to broad policy of the Company. [756-C-E]

F 3. Though as a matter of law the Appellant could not be made liable for the dues owed by PNFC to its workers, it is noticed that the then Chief Minister had taken a sympathetic view in the matter while appending his note. In view of the fact that the case relates to the dues of the workers, the State Government may sympathetically consider whether it can provide some relief to the workers. [757-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1392/2003.

G From the Judgment and Order dated 4.7.2002 of the High Court of Punjab and Haryana in C.A.No. 14/2002.

Ravindra Shrivastava, N.S. Boparai, Rishi Malhotra and Prem Malhotra for the Appellant.

H R.K. Rathore Addl. Adv. Gen of Punjab, Amit Singh. Sanjeev Anand, Yakesh Anand, Vikas Vashishth, K.S. Rana, M.K. Verma and Arun K. Sinha

for the Respondents. A

The Judgment of the Court was delivered by

ARUN KUMAR, J. M/s. Punjab National Fertiliser and Chemical Limited (hereinafter referred to as 'PNFC') is a Company limited by shares and is registered as a company under the Companies Act, 1956. This company was promoted by the Punjab State Industrial Development Corporation Limited (hereinafter referred to as 'PSIDC') and the PSIDC held 46.13% shares in it. On recommendation of the BIFR (Board for Industrial & Financial Reconstruction) under the Sick Industrial Companies (Special Provisions) Act, 1985, the winding up order was passed qua the PNFC on 27th July, 2001. B C

In view of its financial difficulties the PNFC stopped paying the wages to its workers from September, 1999. The workers were therefore agitating for payment of their wages. It appears that they approached the Chief Minister of the State of Punjab in this behalf. On a proposal put forth by the concerned department, the Chief Minister on 25th August, 2001 made the following note: D

"It is not a question of legality or statutory obligation. It is an issue involving of a large number of employees who has going without salary. Even legally they are entitled for their pay and emoluments till the actual date of winding up.

Considering that there is resource constraint within the PSIDC, the offer of Finance Department to permit PSIDC to raise resources by market borrowing with State guarantee should be pursued. E

Exercise may be done in a time bound manner so that disbursement of 6 months salary as requested by the Food & Supplies Minister, is not delayed. After the disbursement the matter be reported." F

The workers' association, that is respondent No.1 filed an application before the Company Judge in the High Court of Punjab and Haryana under Rule 9 of the Companies (Court) Rules, 1959 seeking a direction to PNFC (represented by Official Liquidator) and PSIDC to pay six months salaries to the employees. G

In their application, the workers sought relief mainly on the basis of the said note of the Chief Minister terming it as an order of the Chief Minister. On the said application of the workers, the learned Company Judge passed an order on 16th May, 2002 directing PSIDC to release funds in terms of the H

A order of Chief Minister dated 25th August, 2001 to the Official Liquidator within a period who was directed to disburse it to the workmen after examining the claim of each workman.

B The PSIDC applied for review of the said order of the Company Judge on the ground that it was not in a sound financial position to make the payment. Secondly, the PSIDC denied its liability to pay on the ground that the workers who were to be paid were not the workers of the PSIDC. Lastly, it was represented that the interest of the workers was protected because the workers dues were the first charge on the sale proceeds of assets of the Company in view of Section 529 A of the Companies Act. The review application was dismissed vide order dated 7th June, 2002. Thereafter, the C appellant filed an appeal against the order of the Company Judge dated 16th May, 2002 before a Division Bench of the High Court. The said appeal was dismissed vide order dated 4th July, 2002 which is subject-matter of the present appeal.

D While disposing of the appeal, the High Court rightly observed that the question for consideration in the appeal was whether the Company Court had jurisdiction to direct the PSIDC to release funds in terms of the order passed by the Chief Minister on 25th August, 2001. However, the appeal was dismissed on the ground that the Company Court had jurisdiction to issue such a direction having regard to Section 446 (2) (d) of the Companies Act without E adverting to the question of liability of the PSIDC in law, for making such payment.

F There is no dispute that under Section 446 the Company Court can pass orders in relation to the Company in liquidation. The real question in issue in the case was whether the liability with respect to money due from the Company in liquidation towards its workers could be fastened on an independent corporation. The Company Court has chosen to fasten liability on a third party, i.e., the PSIDC while seized of proceedings with respect to the Company in liquidation (the PNFC). Was it legally permissible?

G The learned counsel for the appellant submitted that the PSIDC was formed in the year 1966 as one of the State Financial Institutions for promoting and developing industries in the State of Punjab. In its role of promotion and development of the industries in the State, the PSIDC promoted more than 100 companies. The object was to ensure industrial development in the State. The PNFC was one of the several companies promoted by the PSIDC. As already H notified, the PNFC is a separate legal entity being a Company limited by

shares under the Companies Act. The PNFC is not a Government company while the PSIDC is a wholly owned undertaking of the Government of Punjab. Even according to respondents, PSIDC held only 46.23% of equity, other public financial institutions held 14.59% and public held the remaining 39.18%. A

After drawing our attention to the legal status of the two companies involved, the learned counsel for the appellant drew our attention to the note of the Chief Minister of Punjab. It is submitted with reference to the said Note that it can neither be said to be an order of the State Government nor can it has any binding force so far as the PSIDC is concerned. The submission of the learned counsel for the appellant is that the note is in the nature of a suggestion/request by the Chief Minister and the PSIDC has no legal liability so far as the dues of the PNFC to its workers are concerned. Both the companies were separate legal entities. Though PSIDC might have been involved in promotion and thereafter in guiding the affairs of the PNFC, that is not enough to fasten the liabilities of the PNFC to the PSIDC. B C

In reply, the learned counsel appearing for the respondent - workers association, submitted that as the affairs of PNFC are entirely managed and controlled by the PSIDC, the corporate veil has to be lifted to show that PSIDC was responsible for the acts of PNFC and liabilities of PNFC and it was therefore liable for the dues of the workers. In their application under Rule 9 of the Companies (Court) Rules the workers have pleaded that the PSIDC exercised control over financial and administrative affairs of the PNFC. It is also submitted that the fact that the PSIDC holds 46.13% shares in the PNFC shows the financial interest of the PSIDC in the PNFC. The officers of the PSIDC are also said to have been posted from time to time in the PNFC to manage its affairs. The learned counsel relied on Section 446 of the Companies Act to suggest that a Company Judge has wide powers with respect to a company in liquidation. He invited reference to *Sudarsan Chits (I) Ltd. v. O. Sukumaran Pillai and Ors.*, [1984] 4 SCC 657 in support of this contention. In our view this judgment does not help the respondent. Under Section 446 the powers of the Company Judge qua a Company under liquidation may be wide, but that does not empower the Company Judge to pass an order making a distinct and separate corporation, a third party, liable for the liabilities of the Company in liquidation. This aspect unfortunately has not been adverted to either by the learned Company Judge or by the Division Bench of the High Court. D E F G

Reliance was placed on the so called order of the Chief Minister H

A permitting the PSIDC to raise funds in order to meet the liability of the PNFC towards salary of its workers for at least six months. We have carefully perused the note of the Chief Minister dated 25th August, 2001. The said note cannot be said to be an order of the State Government and therefore is not binding on the PSIDC. The orders of the State Government are issued in a prescribed manner and the note dated 25th August, 2001 cannot be treated as one.

B
C The learned counsel for the respondent also brought to our notice Article 135 of the Memorandum and Articles of Association of the PSIDC under which the State Government can issue directives to the PSIDC. Article 135 is reproduced as under:

D “Notwithstanding anything contained in any of the Articles, the Government may from time to time; issue such directives as they may consider necessary in matters of broad policy and in like manner may vary and annul any such directive. The company shall give immediate effect to directives so issued.

E Reliance on Article 135 is misplaced in the present case because the note of the Chief Minister cannot be said to be a directive of the State Government nor it is in relation to broad policy of the Company. Article 135 does not help the respondent.

F While contending that the veil has to be lifted, the learned counsel relied on *Calcutta Chromotype Ltd. v. Collector of Central Excise, Calcutta*, AIR (1988) SC 1631. This was a case of alleged evasion of excise duty by a manufacturer selling its manufactured products through a sole selling distributor, who sold the goods in market at a higher price. The idea was to show a lesser price of manufacture in order to save central excise duty. The manufacturing company as well as the business of the sole selling agent though shown as independent, were owned by the members of the same family. In such a case the focus is from a different angle and the issue is different. In the present case there is no evasion of any tax. Here the issue is when there are two independently legal entities can an order be passed that one company will be liable for the dues of the other to a third party. Can a Company Court pass such a direction without consideration of the question of legal liability of the company sought to be made liable?

H As a result of the above discussion we hold that the PSIDC could not be made liable for the dues owed by the PNFC to its workers. The appeal is

accordingly allowed. The orders of the Company Court as well as of the Division Bench of the High Court which are under challenge in this appeal are set aside. No costs. **A**

Though we have found as a matter of law that the PSIDC could not be made liable for the dues owed by the PNFC to its workers, we notice that the then Chief Minister had taken a sympathetic view in the matter while appending his note dated 25th August, 2001. In view of the fact that the case relates to the dues of the workers the State Government may sympathetically consider whether it can provide some relief to the workers. **B**

B.B.B.

Appeal allowed.