

v.

ALL INDIA SUBSCRIBER ASSOCIATION AND OTHERS ETC.

MAY 14, 1993

[R.M. SAHAI AND N. VENKATACHALA, JJ.]

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*Companies Act, 1956 : Ss. 391, 433, 434, 443—Subsidiary company conducting chits—Default in payment to subscribers—Winding up order by High Court—Revival effort and undertaking of liability to pay creditors by Holding Company—Compromise and arrangement approved by High Court—Winding up order held in abeyance—Permission for sale of land by Holding Company to pay Creditors—Offer by individual—Counter offer by Creditors association—High Court's order for sale in favour of creditors association—Appeals by Holding Company and other bidder—Directions by Supreme Court protecting creditor's interests.*

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A subsidiary company of the appellant-holding company (C.A. No. 2866 of 1993) diverted to the appellant rupees ten crores received by it by way of chit subscriptions. It failed to pay the subscribers the prize money. When some of the subscribers initiated winding up proceedings against the subsidiary company the appellant appeared before the High Court and undertook the liability of the subsidiary company to an extent of a sum of Rs 10.40 Crores to the subscribers. The High Court approved the scheme of compromise and arrangement under s. 391 of the Companies Act and directed the winding up order to be held in abeyance on the condition that the appellant-holding company would pay off the amount of Rs. 10.40 Crores to the subscribers, within five years. It also restricted alienation of any property by the holding company without obtaining prior permission of the Court. Even ten years after the order of the High Court, more than one third of the subscribers remained unpaid.

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Meanwhile the appellant company took steps to sell 20.79 acres of land to pay the Creditors. The appellant in C.A.No. 2863-65 of 1973 made an offer where as the respondent-creditors' association made a counter offer.

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The High Court accepted the offer of Creditors' association. Hence the appeals by special leave.

Disposing of the appeals, this Court gave the following

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A       **Directions : 1. The holding company shall deposit with the official Receiver or Assignee concerned a sum equivalent to the deposited sum on which the High Court had directed sale deed to be executed in favour of the creditors association together with 25% interest minus the interest, if any earned by the deposit, made, calculated on the deposited amount, from the date of deposit till 31st July, 1993, within a period of three months.**

B       **2. Out of the amount mentioned in condition (1) above, a sum equivalent to the amount deposited by creditors Association, together with interest at 25% thereon from the date of deposit upto 31st July, 1993 shall be refunded to the creditors association in lieu of their claim for the disputed land being given up. The balance amount shall remain for the benefit of general body of**  
C       **creditors of the subsidiary company.**

D       **3. The holding company shall pay through the receiver the entire outstanding debts payable to the subscribers who were members of the creditors association on the date when their claim applications were decided by the High Court, together with interest thereon at 12 per cent from the date of decision till 31st July, 1993.**

E       **4. In case the above terms and conditions are complied with, within the period allowed then the disputed land offered for sale by the holding company and purchased by creditors' associations shall stand released in holding company's favour. If such deposits are not made, the sale in favour of creditors company shall stand confirmed**

F       **5 In view of the offer made by the appellant in Appeals No. 2863-65 of 1993, the land on its release shall be sold, for a price not less than five lakhs per acre. The amount so realised shall also be deposited of the holding company with the receiver for distribution among general body of creditors of the subsidiary company.**

G       **6.1. The receiver shall further take steps to see that the holding company fulfils its obligations and pays the entire balance within a period of one year from 31st August, 1993.**

H       **6.2. In case of failure to clear the dues of all the subscribers it shall be open to any unpaid subscriber to approach the High Court for recalling the order passed by the High Court for in 1983 direction the winding up to be put in abeyance, as well as to take steps to get the amount realised from assets of**

the holding company. If such an application is made it shall be disposed of by the High Court expeditiously in accordance with law after hearing parties concerned. A

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2863-65 of 1993.

From the Judgment and Order dated 21.2.91 of the Kerala High Court in C.M.P. No. 2170/90, 596/91, 597/91 in M.F.A. No. 518 of 1981. B

WITH

Civil Appeal No. 2866 of 1993. C

K.K. Venugopal, G. Ramaswamy, M.N. Krishnamani, K.P. Dandapani, E.M.S. Anam, P.N. Puri, A.T.M. Sampath, Pravir Choudhary for the Petitioner/Appellant.

Shanti Bhushan, Josph Vellapally, R.K. Jain, A. Mariarputham, for M/s A. Mariarputham and Mrs. Aruna Mathur for Mrs. Aruna Mathur & Co. for the respondents. D

The Judgment of the Court was delivered by

**R.M. SAHAI, J.** How far could we protect the interests of subscribers who had subscribed to a chit run by a subsidiary company of the appellant ordered to be wound up when allegedly subscriptions were made good by them not merely out of their hard savings but also of sums got by even, pledging and selling the jewellery and ornaments of their wives, in the fond hope of getting a lumpsum amount on a future date, to meet the expenses of marriages in the family or health hazards of family members and the like, is the issue that really bothered us at the hearing of the appeals. E F

About 15 years ago the subsidiary company under winding up, diverted the amount of rupees ten crores received by it by way of chit subscriptions to its holding company (the appellant) resulting in its inability to pay the subscribers, when they became entitled to get the prize amounts. When some of the subscribers approached the High Court and succeeded in getting the subsidiary company wound up, the appellant holding company appeared in Court and prayed for an opportunity to be given to it to revive its subsidiary company. That prayer was accepted by a Division Bench of The Kerala High Court in the case of *Sudarshan Chits (India) Ltd., v. G.S. Pilai* ILR 1983 vol. 1 Kerala p. 700. The Division G H

- A** Bench approved the scheme of compromise and arrangement under Sec. 391 of the Companies Act. Consequently, it ordered the winding up order to be held in abeyance on condition that the holding company shall execute a security bond to cover subsidiary company's liability to the extent of a sum of Rs.10.40 crores owed to its subscribers. It also directed the holding company to pay off that amount within a period of five years. Restriction was also placed on alienation of any
- B** property by the holding company without obtaining prior permission of the Court. Arrangement was made for managing affairs of the appellant-company as well. Apart from the Board of Directors an Additional Director was nominated to supervise and keep a watch on the affairs of the company. Since the appellant-company is run as directed by the High Court but neither the subscribers are paid, as a body of creditors, not the entire amount of rupees ten crores and odd is paid
- C** by the appellant to the subsidiary company. True, that out of nearly one lakh subscribers, twenty nine thousand and odd subscribers only remain unpaid. But, that is hardly satisfactory. Regret is that more than one third of the subscribers remain unpaid even after ten years from the date the High Court ordered the winding up to be in abeyance. Payment of rupees two crores and odd by the holding company which had the benefit of ten crores and odd rupees for the last 15 years,
- D** which amount by any standard is equivalent to fifty crores of rupees of today, we must state, is a poor consolation, for the holding company to claim that all steps to discharge its obligations is taken.

- Having noticed in brief, how matters have proceeded, we shall advert to the
- E** dispute which has arisen in respect of an offer now made by the holding company to sell 20.79 acres of land for paying the creditors. Whatever that be, one situation which has been brought about is, its successful attempt in involving many subscribers who had formed themselves into a creditors association and an owner of a factory adjoining the disputed land, in litigation which has reached this Court more than once. It is unfortunate that a company which had volunteered to pay ten
- F** crores of rupees within a period of five years has successfully evaded the payment by offering a pittance. From the date of offer in 1987 six years have elapsed but no amount worth consideration, appears to have been paid to the subscribers. We consider it unnecessary to recount in detail the offer made by Ramaswamy Udayar, the appellant in the other appeal, counter offer made by the creditors association, delay in payment by the association, extension of time by this Court for payment
- G** by the association, withdrawal of offer by the holding company in the meantime as the High Court had after detailed examination accepted the offer of creditors association for purchase of disputed land and rejection of the claim of Udayar. Nor do we consider it necessary to deal with rival submission made by learned senior counsel appearing for respective parties, although we heard them at length, as in
- H** our opinion that rupees fifty two lakhs and odd the total amount for which the land

has to be sold could hardly be sufficient to relieve the agony of the body of subscribers for whose benefit the entire exercise was undertaken by the High Court.

As we have understood the matter, there may be a grain of truth in the allegation that it is Estate Dealers with vested interests who are interfering and in fact the amount paid by the creditors association is of estate dealers. It may also be true that the total membership of the association is not even 5% of the unpaid subscribers.

In the said circumstances and taking into consideration the board consensus reached among learned counsel as to what needs to be done, we decide the two appeals, one filed by the holding company for release of the land and other by Udayar for accepting his bid on the following terms and conditions :

(1) The holding company shall deposit with the official Receiver or Assignee concerned a sum equivalent to the deposited sum on which the High Court was pleased to direct sale deed to be executed in favour of the creditors association together with 25% interest minus the interest, if any earned by the deposit made, calculated on the deposited amount, from the date of deposit till 31st July, 1993, within a period of three months from today.

(2) Out of the amount of sale price of the land already deposited by the creditors Association and the interest if any earned thereon plus the sums of money to be deposited by the holding company under the above term and condition (1), a sum equivalent to the amount deposited by creditors Association, together with interest at 25% thereon from the date of deposit upto 31st July, 1993 shall be refunded to the creditors association in lieu of their claim for disputed land being given up. The balance amount shall remain the benefit of general body of creditors of the subsidiary compa

(3) The holding company shall pay the entire outstanding de (amounts) payable to the subscribers who were members of creditors association on the date when their claim applications w decided by the Kerala High Court, together with interest thereo 12 per cent from the date of decision till 31st July, 1993, within same period, namely, three months. This amount too shall deposited with the receiver for immediate payment to those cre

A tors-subscribers for giving discharge of their claims against the subsidiary company.

B (4) In case the above terms and conditions as to deposits to be made by the holding company are complied with, within the period allowed, for which no extension of time shall be granted, then the disputed land offered for sale by the holding company and purchased by creditor's associations shall stand released in its (holding company's) favour. If such deposits are not made, the sale in favour of creditors company shall stand confirmed.

C (5) An offer was made by the appellant in Appeal No. 6614 of 1991 that the land being adjacent to its factory he was willing to pay even rupees five lakhs per acre. Therefore, on release if the land is sold, it shall be sold, as and when such occasion arises, for a price not less than five lakhs per acre. The amount so realised shall also be deposited by the holding company with the receiver for distribution among general body of creditors of the subsidiary company in discharge of its obligations to pay of the creditors of the subsidiary company.

D (6) (a) The receiver shall **further take steps** to see that the holding company fulfils its obligations **and pays the entire balance** within a period of one year from **31st August, 1993**.

E (b) In case of failure to clear the **dues** of all the subscribers it shall be open to any unpaid subscriber to approach the High Court for recalling the order passed by the High Court in 1983 directing the winding up to be put in abeyance.

F (c) It shall also be open to the unpaid subscribers to approach the High Court for the aforesaid reasons mentioned in clause (b) to take steps to get the amount realised from assets of the holding company. If such an application is made it shall be disposed of by the High Court expeditiously in accordance with law after hearing parties concerned.

G Both the appeals are decided accordingly. The parties shall bear their own costs.

R.P.

Appeals disposed of.