

IN THE HIGH COURT AT CALCUTTA
ORIGINAL JURISDICTION
ORIGINAL SIDE

IA NO. CA/5/2023
In
CP/22/1989
IN THE MATTER OF
KHEMKA PLASTIC UDYOG LTD. (IN LIQN.)
And
ASHOKE RANJAN DAS
VS
O/L

IA NO. CA/6/2023
In
CP/22/1989
IN THE MATTER OF
KHEMKA PLASTIC UDYOG LTD. (IN LIQN.)
And
ASHOK KHEMKA
..APPLICANT
-VS-
THE O/L, HIGH COURT, CALCUTTA
... RESPONDENT

IA NO. CA/7/2024
In
CP/22/1989
IN THE MATTER OF
KHEMKA PLASTIC UDYOG LTD. (IN LIQN.)
And
ASHOK KHEMKA
-VS-
OFFICIAL LIQUIDATOR.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 18th September, 2024.

Appearance:

Mr. Soumabho Ghose, Adv.

Ms. Tiana Bhattacharyya, Adv.

Mr. Dilip Kumar Ghosh, Adv.

...for applicant in CA/6/2024 & CA/7/2024

*Mr. Suddhasatva Banerjee, Adv.
Mr. Sashwata Nayak, Adv.
Mr. Gaurab Kumar Das, Adv.
Mr. Mahesh Kumar Joshi, Adv.
Mr. Sreyash Kumar Singh, Adv.
...for applicant in CA/5/2023*

*Ms. Tanushree Dasgupta, Adv.
...for O/L*

*Mr. Debrup Bhattacharjee, Adv.
...for Active Security Service*

The Court: Mr. Altamash Alim, learned counsel appearing for the proposed intervenor, makes a verbal submission seeking intervention of his client, namely, one Mr. Gobinda Biswas on the ground that said Mr. Biswas had put in a bid in an auction sale conducted by the Official Liquidator in respect of the assets of the company (in liquidation).

It is submitted by Mr. Alim that the auction purchaser had deposited his earnest money but thereafter on account of some delay on his part, the sale was never finalized in his favour. An application was made before the Court for directing sale of the property in favour of this client, which was dismissed by a co-ordinate Bench of this Court. Subsequently, the said order was affirmed in appeal.

Learned counsel appearing for the petitioner herein, who seeks to revive the company (in liquidation), submits that there was a forfeiture clause in the sale notice, pursuant to which there are no dues in favour of the proposed intervenor.

Upon hearing learned counsel, it is evident that the claims of purchase of the proposed intervenor met with dismissal, which was affirmed up to the appellate Court. As such, the said proposed intervenor does not have any *locus standi* and/or right to intervene in the present proceeding at this stage and/or stake any claim to the assets of the company (in liquidation).

Accordingly, the oral prayer for intervention of Mr. Gobinda Biswas is hereby turned down.

Heard learned counsel for the parties.

Upon a scrutiny of the scheme of revival annexed with the revival application bearing CA/6/2023 offered by the applicant, the Court is prima facie satisfied as to the veracity of the same.

Keeping in view the stand taken by the Official Liquidator as well as the applicant that all previous claims of ex-workers of the company (in liquidation) have been cleared off by the Official Liquidator, there cannot be any further impediment to the revival application being allowed.

However, it may also be recorded that the undertaking given in affidavit form by the applicant to the effect that the applicant shall invest the sum of Rs.5 lakh in a short-term interest bearing account and make over a photocopy of the deposit to the learned Registrar, Original Side of this Court in order to meet any exigency, which shall be maintained for a period of twelve months, is also made a part of the revival scheme.

Learned counsel for the Official Liquidator rightly submits that a prior publication of the scheme is required to be made in order to give a public notice to anybody who may be interested.

Accordingly, the applicant in CA/6/2023 is directed to publish a notice in respect of the proposed revival in at least three daily newspapers having moderately good circulation in the area where the factory-in-question is located, one of which shall be in English, the others in Bengali and Hindi vernaculars. Such publication shall be made within a month from date and an affidavit of service to that effect shall be filed in Court on the next returnable date.

It may be recorded that the revival scheme submitted by the applicant is otherwise tenable and maintainable in the eye of law and further orders for final approval of the same shall be passed subject to the paper publication as directed above being made by the applicant.

At this juncture, it is required to be recorded that gross discrepancies in the several reports and supplementary affidavits filed by the Official Liquidator have been pointed out by learned Counsel for the applicant.

For example, in the supplementary affidavit affirmed by the Official Liquidator on August 21, 2024, a chart was given in paragraph no. 12 where the opening balance was shown as on February 6, 2023 to be Rs. 81, 458.89/- which, upon adding income, was depicted to be Rs. 85,763.89/-. The closing date therein was shown as April 23, 2024. Security expenses for the said period that is between February 6, 2023 and April 23, 2024 was shown as Rupees 58,643/-.

However, in the subsequent “Statement of Claim” filed by the Official Liquidator on September 13, 2024, another statement of expenses was shown, which is almost identical to the chart given in paragraph 12 of the earlier affidavit, but with a curious alteration to the effect that the security expenses in the September 13, 2024 statement have been shown to be for only two months, that is January 2023 and February 2023.

The same is apparently to justify the overlap of security expenses between the period from March 2023 to April 2024. Whereas the entire security expenses in paragraph 12 of the August 21, 2024 affidavit was shown to be Rupees 58,643/- for the period between February 6, 2023 and April 23, 2024, for the period from March 2023 to August 2024, which includes the period covered by the paragraph 12 chart, a further claim has been made for security expenses to the tune of Rupees 9,37,415/-.

It is evident that there is an overlap for the period between February 2023 and April 2024 in the two different charts of statements of claim.

That apart, a part security bill till September 17, 2024 to the tune of Rupees 25,566/- has been clubbed with legal fees for September 17, 2024 in the statement of expenses shown in the affidavit dated September 13, 2024. Such overlap has been sought to be explained by learned Counsel for the Official Liquidator. However, *prima facie* the Court is not satisfied with such explanation.

The next discrepancy which catches the eye is that the applicant in CA 6 of 2024, in its affidavit affirmed on September 17, 2024, have annexed certain

photographs which clearly indicate that the factory-in-question, which was supposedly guarded by the security agency appointed by the Official Liquidator, is surrounded by jungle. There is a proliferation of vegetation immediately in front of the gate of the said property, as evident from the photographs annexed to the said affidavit which belies the statement of the Official Liquidator that the property has been guarded by a security agency throughout the relevant period, which expenses are shown to be continuing till date.

The next gross discrepancy which appears from the materials before the Court is that several tax invoices, allegedly raised by the Active Security Agency, which was purportedly engaged by the Official Liquidator to guard the property, have been annexed to the affidavit of September 13, 2024. Interestingly, the said statement dated September 13, 2024 was prepared pursuant to a direction of this Court dated September 12, 2024, that is a day before. The bills/tax invoices themselves indicate that all of them were received by the Official Liquidator on September 13, 2024, although the said bills are supposed to be spread over a period between March 2023 and August 2024, that is, over a year.

More interestingly, the invoice numbers in the said bills/ tax invoices are consecutive. The first invoice for the purported period of March 2023 is numbered ASS/35/2024-2025 and the last, that is, for August 2024 is numbered ASS/52/2024-2025. All the invoices in between are roughly consecutive numbers.

That apart, the invoice dates shown in each of the invoices are identical, i.e. September 1, 2024. It defies logic as to how the Official Liquidator could charge security expenses and reflect the same in the affidavit dated August 21, 2024 for tax invoices which were received by the Official Liquidator subsequently, only on September 13, 2024, that too, the invoices showing consecutive numbers and being of the self-same date, despite covering a period of more than one year.

This creates sufficient doubt in the mind of the Court as to the veracity of the claim regarding security expenses as well as the purported tax invoices themselves.

Learned Counsel for the applicant in CA 6 of 24 further alleges that upon inquiry, it was ascertained that the Active Security Services does not operate from 260/8, Parnasree Extension, Kolkata-700060, which has been shown to be the address of the said purported security services agency in all the tax invoices raised by it.

As such, there is sufficient apprehension in the mind of the Court from the above facts to justify referring the matter to the Central Government for undertaking an inquiry within the contemplation of the Companies Act, 2013 with regard to the activities of the Official Liquidator during the relevant period, if not the entire tenure during which he has been attached to this Court.

At this juncture, learned Counsel having instruction to appear for the Active Security Services, which is the purported security agency engaged by the Official Liquidator, submits before the Court that no notice or copy of the

documents placed before the Court were handed over to the said security agency. As such, an opportunity is sought by learned Counsel representing the the said security services to present its defense/ case before the Court. Accordingly, let copies of the affidavits referred to above be served by the learned Advocates on record respectively for the applicant in CA 6 of 2024 and the Official Liquidator on the learned Advocate having instruction to appear for Active Security Services by the end of this week.

A composite rejoinder affidavit by way of explanation shall be filed by the Active Security Services to deal with the allegations made in the applicant's affidavits/applications and as narrated in this order on the next returnable date. Advance copies of the said rejoinder affidavit shall be circulated among the learned advocates for the other parties well in advance. The matter shall next be listed on November 11, 2024 under the heading 'To Be Mentioned'.

In view of substantial hearing having taken place and on the prayer of the parties, let the matter be marked as part-heard.

(SABYASACHI BHATTACHARYYA, J.)