(1985) 01 GUJ CK 0029

Gujarat High Court

Case No: None

New Swadeshi Mills of Ahmedabad Ltd.		APPELLANT
	Vs	
Dye-Chem Corporation		RESPONDENT

Date of Decision: Jan. 2, 1985

Acts Referred:

- Companies Act, 1956 - Section 433

Citation: (1986) 59 CompCas 183

Hon'ble Judges: P.S. Poti, C.J; I.C. Bhatt, J

Bench: Division Bench

Advocate: K.S. Nanavati, M.J. Mehta, P.M. Raval, Y.N. Oza, for the Appellant;

Judgement

Poti, C.J.

We have been postponing the disposal of this appeal from time to time, just as the learned single judge whose judgment is under appeal did when the petition for winding up was pending before him, in the hope that the appellant company may be able to place before us some feasible proposal for revival, but we notice that even vow the appellant is not in a position to present any scheme for the purpose of reviving the company either immediately or in the immediate future. The winding-up petition was moved against the appellant company by one of the creditors at a time when the company ceased to function. The company has two textile units employing about 8,000 workers. It is engaged in the manufacture of textiles. Both the textile units are situated in the city of Ahmedabad. The authorised capital of the company is Rs. 1,50,00,000 and the subscribed capital of Rs. 98,20,725. It is said that the appellant-company incurred a loss of Rs. 580 lakhs in the financial year 1983-84. It is admitted that the company''s operations resulted in exceeding the drawing limits with banks and financial institutions and, according to the appellant- company, it so exceeded such limit by Rs. 300 lakhs. Consequently upon this , the main financing bank, the Central Bank of India, restrained further

withdrawals from May 30, 1984. It is said for the company that due to this situation, it was unable to pay the electricity dues for the months of April and May, 1984, and, therefore, the working of the company came to a complete halt from June 18, 1984. Thereupon, the company put up a notice on June 18, 1984, intimating its workmen that due to serious financial crisis and non-availability of raw materials, the company decided to suspend its manufacturing activities and the workers need not attend the factory . They were told that they will nevertheless remain in service. It is, thereafter, that one of the creditors, to whom a sizeable amount is due, filed a petition for winding up of the company alleging that the company was highly indebted and commercially insolvent. The company has not replied to the statutory notice given u/s 434 of the Companies Act. The defence taken in the winding-up petition was that all efforts were being made by the company to arrange for further finances to continue the manufacturing activities , but they had not borne fruit till date, though the company had not given up hope. The petition for winding up was supported by the other creditors the some of whom had also moved, for such winding up. Before us , besides the respondents, the workmen''s union also appeared to oppose the appeal. It was the case of the workmen that they had not been paid wages from May, 1984, onwards, and the wages were continuously in arrears. According to the workmen, though they would certainly welcome the idea of the company reviving its activities and would be more anxious than the company itself about such revival, there is absolutely no possibility as matters stand now particularly in view of the attitude of the directors. Even since May, 1983, they had not been paid any wages at all, even a part of what was legitimately due to enable their families to survive. They plead that they may get some relief in the event winding-up proceedings are not further protracted. We had even suggested to the appellant''s counsel, when the matter came up before, us, that we would respond positively to a request for further adjournment of the appeal in the event they are willing at least to pay two months'' wages to the workmen by way of some interim relief to them, but counsel, after taking instructions, told us plainly that they cannot pay such wages now and that will have to wait some financial arrangement that they may reach in due course.

2. The learned single judge, after giving time to the company to attempt to set financial assistance from any available quarter, found it not feasible to wait any longer and, therefore, ordered winging up. We too feel the same way. The winding up order was passed by our learned brother Majmudar J. on October 8, 1984, assessing the situation of the company then and the situation today is in no way different. Before the learned judge also, it was contended that financing institutions have been approached. Before us we have an affidavit filed by the chief officer of the Central Bank of India wherein the Central Bank of India has specified its stand. It was intimated by the four banks which have financed the appellant-company that they propose to stand outside the winding up as secured creditors and, therefore, do no wish to appear in the appeal. Even so by the affidavit they are seeking to explain the financial situation of the appellant-company in view of the fact that the

company judge had directed that a copy of the affidavit on behalf of the erstwhile directors of the company be served on the central Bank of India. Evidently, the company judge so ordered because the directors had referred to certain proposals for revival of the company demanding funds form the Central Bank of India and other banks and the court wanted to know how far there was any prospect of such proposal materialising . In the affidavit of the chief officer of the Central Bank of India, it was averred that the four banks, the Central Bank of india, the UNited Commercial Bank, the Syndicate Bank and the Bank of Madura Ltd. propose to remain outside the winding up as secured creditors and their counsel had remained present in the winding-up proceedings only to give information that the court may require. They have not admitted to their considering any proposal by which they would render financial assistance to revive the company.

3. It is the case of the creditors that the company is unable to pay its debts and that it is just and equitable that the company should be wound up. THe circumstances call for no proof of inability on the part of the company to pay its debts as such inability is self-evident on the admitted facts. There are huge debts, secured as well as unsecured, which, as matters stand , are far beyond the means of the company to meet. Even so, a court will exercise a sound discretion in deciding whether to wind up a company or not and in doing so consider many relevant factors. It may be that despite the inability to pay its debts, a company has still prospects of coming back to life and if the court is told of any specific proposal, which in the opinion of the court is likely to materialise, the court will be inclined to give a chance to resurrect the company,. It should be the policy of the court to attempt to revive thought at the moment the company may not be solvent and may not be able to meet its obligations to its creditors. But this should be only if it is shown that there is reasonable prospect for resurrection and survival. It may be easy for a court when once it is shown that the company is unable to pay its debts to bury it deep and distribute whatever is available as distributable surplus. But it is the duty of the court to welcome revival rather than affirm the death of the company and for that purpose the court is called upon to make a discreet exercise.

4. On the facts of the case, we do not think that there is any reasonable prospect of the company reviving its normal operations. We say so because despite granting more than reasonable time, what the counsel has to say is only what was said at the beginning when the matter came up before us for the first time, namely, that the company, may be able to find out someone or other to finance it. According to the appellant-company, the State Government may come forward to extend its helping hand, but, according to the creditors , such request was turned down taking due note of the company''s situation. Anyhow , we have no material before us to assume that for all these months any proposal has progressed to an extend the court would be justified in taking serious notice of the prospect of the company normally functioning again. The workmen were simply told in June, 1984, that the company would not be functioning and they would remain in their service but they had not

been receiving any wages, full or part, for all these months and we attempted to see that even a small part of what is due to them is paid to them. There was no favourable response. Same is the case with the attitude of the creditors and the company''s response to it. We do not think that by prolonging these proceedings, the situation would, in any way, be improved and, therefore, though we are not very anxious to affirm the winding up of the company, we feel that putting off the final decision will only be putting off the evil day and in the process putting the creditors and the workmen to further loss and difficulty. That would only tend to reduce the distributable surplus of the company as necessarily passage of time would increase the liabilities of the company without there being any corresponding increase the liabilities of the company without there being any corresponding increase in the assets.

5. There is a plea that the learned single judge ought to have disposed of the petition by a speaking order. Perhaps the learned judge thought that the circumstances were so eloquent that no further exposition of the situation by the learned single judge was called for. Whatever that be, we have considered the circumstances and we see no reasons to cancel the order for winding up passed by the learned single judge. Hence, we dismiss the appeal with costs.