(2004) 07 CAL CK 0005

Calcutta High Court

Case No: C.A. No. 488 of 2002

Shalimar Rope Works Ltd. (in Liquidation) and Others		APPELLANT
	Vs	
Official Liquidator and Others		RESPONDENT

Date of Decision: July 13, 2004

Acts Referred:

- Industrial Disputes Act, 1947 - Section 25FF

Citation: (2005) 105 FLR 752 : (2005) 1 LLJ 1165

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Sibaji Sen, S.N. Dutta and Utpal Moitra, for the Appellant; Anindya Kumar Mitra, Soumen Sen, D. Basak, A. Guharay, Tapa Banerjee and Kaushik Banerjee, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Amitava Lala, J.
Two company applications being C.A. No. 136 of 1996 and C.A. No. 488 of 2002 arising out of a company petition being C.P. No. 229 of 1987 are the subject matter of consideration in an analogous hearing.

2. The earlier company application was made by 37 alleged workmen individually making the Official Liquidator, one Champdany Industries Limited, and two trade unions being Shalimar Rope Works Staff and Workers Association and Shalimar Rope Workers Majdoor Union as party respondents therein. They have applied to get an appropriate order of setting aside and/or modification of certain clauses of Memorandum of Settlement and/or agreement dated May 7, 1993 alternatively setting aside and/or modification of the entire Memorandum of Settlement with further alternative to enter into a Memorandum of Settlement and/or agreement afresh. They have further applied for

variation or modification of the orders dated September 4, 1992 and May 15, 1993 to make it in consonance with Section 25FF of the Industrial Disputes Act, 1947 and other social legislations particularly the Industrial Employment (Standing Orders) Act, 1946, Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, Payment of Bonus Act, 1965, Payment of Gratuity Act, 1972 and/or Rules framed thereunder along with further incidental prayers.

3. The subsequent application is arising out of the earlier company application virtually for the purpose of recalling and/or setting aside the order passed by this Court on June 18, 2002, for dismissal of the earlier company application and for other incidental prayers.

4. In both the applications prayer for condonation of delay has been made but neither of the parties took any plea in respect thereto but argued at length on merit. Therefore, it is to be construed that they have waived their right of taking the plea of delay. Hence, as a matter of formality, delay in making both the applications are hereby condoned. The genesis of making these applications is an order passed by a Bench of this Court sitting in the company jurisdiction as far back as on September 4, 1992. A sale of the company of Shalimar Rope Works Limited (in liquidation) was confirmed by Justice Ms. RUMA PAL (as Her Lordship then was) in favour of one Champdany Industries Limited at a price of Rs. 5.90 crores. A condition of such confirmation of sale under the order was as follows:

"..... In default of entering into an agreement with an employee, the able bodies ex-employees of the company in liquidation, the sale in favour of purchaser will stand set aside and the earnest money and any other money deposited by the purchaser subsequent hereto will stand forfeited".

5. On May 7, 1993 an agreement was entered into by or between the company i.e. Champdany Industries Limited and two unions i.e. Shalimar Rope Works Staff and Workers Association and Shalimar Rope Workers Majdoor Union.

6. Such Memorandum was signed by the pen of the appropriate authority or the purchaser company and the representatives of the two unions. During the course of hearing, Learned counsel appearing in support of the petitioners/workmen in the earlier application, made a submission that there was no authority of the President and Secretary of the union known as Shalimar Rope Workers Majdoor Union to enter into an agreement. Therefore, entering into Memorandum of Settlement or agreement by them is invalid. They were examined before the Court. They surrendered by pleading guilty. Mr. Sibaji Sen, learned counsel, appearing on behalf of the petitioners contended before this Court that in view of the above fact, if at this stage, order of confirmation of sale dated September 4, 1992 becomes non est it will reverse the position and as a result whereof the entire sale will be set aside. Therefore, the learned counsel proposed that their names will be excluded on acceptance of pleading guilty. But the company will be entitled to negotiate and proceed afresh for the purpose of due compliance of the order.

7. The main purpose of making the second application by the purchaser company is virtually in the nature of disposal of such application on the plea that mere withdrawal of the names of alleged President and Secretary of one union being Shalimar Rope Workers Majdoor Union cannot take away right of sale of the company due to existence of other union, Shalimar Rope Works Staff and Workers Association in the Memorandum of Settlement/agreement entered upon by the parties following the direction given under the order dated September 4, 1992.

8. In addition to the above quoted portion of the order dated September 4, 19921 want to quote hereunder Clause (1) of the conditions of the order for confirmation of sale:

"Champdany Industries Limited will enter into an agreement with the workers and staff of the erstwhile company in liquidation for the purpose of re-employing them in the undertaking subject to their being medically fit and within the age limit. The workers and staff must be re-employed by four weeks from the date of entering into possession of the factory."

9. It is clearly reflected from the earlier part of the order that an agreement is required to be made for the purpose of re-employing the workers and staff of the erstwhile company. Nowhere it is stated that the agreement has to be made with the union or unions. However, it is practically impossible to find out the workmen individually of the erstwhile company for the purpose of re-employing them in the purchaser company. Normally it is to be done by the trade unions and following such practice in the instant case all such unions entered into an agreement. They have enjoyed the fruit of service by way of re-employment and now one of such unions turned around to frustrate the earlier agreement taking the plea of authority of President and Secretary. But it is to be remembered that the existence of the other union cannot be ignored. On the other hand, for such withdrawal the order cannot be given a complete go-bye even on the basis of the submission of the Learned counsel appearing in the erstwhile application. If it is not so, it is to be understood what is the dispute in between the parties contesting against each other. The dispute is either to frustrate the sale in favour of the company without refunding any sum already received by virtue of the agreement or to put a pressure upon the company to accept their strength by someone so that the company accepts the representative authority of one of the unions, Shalimar Rope Workers Majdoor Union as representative of majority workmen.

10. According to me, the Company Court is not made for it. Company Court''s duty is to confine itself in the subject matter which it was rested with in the earlier occasion. Which union has a better strength or is holding the majority support will have to be determined by the appropriate authority - Labour Commissioner, Conciliation Officer and ultimately by the Industrial Court or Tribunal. This Court cannot enter into it unless and until it will be a prima facie acceptable position that there is no dispute with regard to the majority representative capacity of the union. Having mere strength in the Court of law, by the presence of the workmen without the identification, I cannot convert a Company Court to

an Industrial Court or Tribunal to adjudge such a dispute. Moreover, the earlier application was taken up by a section of workmen but not by the union viz. Shalimar Rope Workers Majdoor Union. But presently it appears to this Court that real dispute is a question of showing strength by the Shalimar Rope Workers Majdoor Union before the company. Therefore, such claim, if any, cannot be sustained. Mr. Mitra, learned counsel, appearing on behalf of the petitioners of the second application, contended before this Court that the initial agreement for which the earlier application was made expired in February, 1996. Even thereafter new agreement/s was/were made. Out of the 37 workmen, 14 have already retired from the service. All of them enjoyed the benefit of service. I find neither there is any submission on the part of Mr. Sen to frustrate the sale confirmed earlier order nor by Mr. Banerjee, learned counsel, appearing for Shalimar Rope Workers Majdoor Union, Mr. Canguly, learned counsel, appearing for Shalimar Rope Works Staff and Workers Association, has no much of say because the submission of Mr. Mitra on behalf of purchaser company supports his cause. Therefore, the real picture is not to find out a new buyer by passing an order of status quo anti. There is neither any question of recalling and/or setting aside the order also on the basis of the application of Mr. Mitra. Everyone understood the fate of the applications if this Court strictly goes by the same. Therefore, the only purpose comes out to accept the respondent No. 4, Shalimar Rope Workers Majdoor Union as the union supported by the majority members. But unless such majority is proved how the company will voluntarily accept them is unknown to this Court. Therefore, the Court cannot accept the submission of Mr. Banerjee on that score. It is further significant to note that following the order passed by this Court as on June 18, 2002 the purchaser company called upon the General Secretary of such union by a letter dated August 6, 2002 to know the numbers of the workmen for whom they are representing. But all are in vain.

11. According to me, as I said before, I am not concerned, sitting in a Court of company jurisdiction, as to whether the union named as Shalimar Rope Works Staff and Workers Association or Shalimar Rope Workers Majdoor Union is more powerful or supported by majority members to get a right of representation of such Union on behalf of the workmen union. I cannot be called upon to do so unless and until prima facie case is available. I am also not invited by either of the unions to discharge such functions as the application was made by a section of individual workmen.

12. Under such circumstances, neither of the reliefs as prayed for by the parties in their applications can be granted. This Court is restricted only to verify whether by following the conditions of confirmation of sale the purchaser company has discharged its duty or not. I have nothing to say against such purchaser company since it is very much apparent that agreement was entered into by or between the employer and employees'' unions which consecutively continued. A section of workmen who made this application is not interested to get an order of forfeiture of sale but to negotiate with others. Such order might have been passed. There had been no existence of any of the Unions but when existence of one of the Unions is available in the Memorandum of Settlement/agreement,

the same cannot be said to be non est in the eye of law. Moreover, workmen arising out of all the Unions received benefit of the Memorandum of Settlement/ agreement and no objection had been raised to that extent by any of them. As such I cannot enter into the remaining dispute of adjudging the strength of one of the Unions sitting in a Company Court without intervention of the appropriate authority and/or Labour Commissioner and/or the Conciliation Officer and/or Industrial Court or Tribunal.

13. Therefore, no such order can be passed by this Court on that score. Such question is kept open for the purpose of due consideration of the aforesaid authorities and/or Court and/or Tribunal. It is entirely open for the adjudicating authorities and/or Court or Tribunal to finalize the strength and majority of the union and/or adopt a via-media process of allowing both the unions to represent their case etc.

14. Therefore, in disposing of both the applications I am only held that such authorities, and/or Court, and/or Tribunal will be entitled to proceed on the basis of the observations of the Court taking into account that the confirmation of sale in favour of Champdany Industries Limited is confirmed and reiterated hereunder.

15. However, no order is passed as to costs.

16. Xeroxed certified copies of this judgment will be supplied to the parties within seven days from the date of putting requisites for drawing up and completion of the order and certified copy of this judgment.

17. All parties are to act on a signed copy minute of the operative part of this judgment on the usual undertaking and subject to satisfaction of the Officer of the Court in respect as above.