

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WINDING UP

CrI. O(Co.). No. 11/2005

Date of decision: 23rd October, 2008

In the matter of M/s Sri Padma Paper Mills Ltd. (In prov. Liquidation) through
the Official Liquidator

Through: Mr. S.K. Luthra, Adv. for the
Official Liquidator

Versus

Sh. Kanhiya Lal Rajgarhia and Ors. ...

Through: Mr. Dinesh Agnani, Adv. for the ex-
Directors Ms. S. Janani and Mr.
Deepak Goel, Adv. for Mr. J.S.
Mathur ex-director

GITA MITTAL, J(Oral)

1. It has been submitted by the official liquidator that the record of the company under liquidation was housed in the factory premises of the company at Plot No. 221, 222, 223, 228 and 229, MIA, Alwar, Rajasthan. These premises were taken over by RIICO and RFC in exercise of powers under Section 29 of the State Financial Corporation Act and sold prior to the initiation of the winding up proceedings. For this reason no record of the company could be traced out by the official liquidator so far. My attention is drawn to a status report dated 20th April, 2007 wherein the official liquidator has informed that it had taken symbolic possession of the factory after the factory had already been locked by RIICO. In terms of the order dated 25th May, 2005, possession of this factory was handed over to the RIICO on 7th July, 2005. The minutes recorded on that date noted that goods or accounts were not available in the factory premises.

2. Alongwith this report, the official liquidator has enclosed a copy of the letter dated 13th April, 2006 received from the ex-directors Sh. A.K. Datta, Sh. K.K. Madhok and Sh. A.K. Dasgupta wherein they have stated that possession of all assets of the company including office record, furniture etc was forcibly taken by RIICO on 26th November, 1993, which took no steps to prepare any inventory thereof. The ex-directors also informed the official liquidator that on two or three occasions, a fire had also taken place in the premises.

3. Alongwith the status report, the official liquidator has also filed a letter dated 4th October, 2006 obtained from RIICO enclosing the minutes recorded at the time of taking over of the possession and a copy of the report of the fire. Perusal of the letter written by RIICO shows that inventory of only the fixed assets of the land, building, plant and machinery was prepared when the possession was taken over by RIICO on 26th November, 1993. There is also a copy of a FIR dated 27th May, 1994 registered by the police station Alwar where it is reported that a fire has occurred in the factory premises of the company under liquidation. An estimate of the loss filed alongwith the status report of the official liquidator shows that in this fire, extensive damage including damage to the brick, masonry work, steel trusses and ACC sheets have also occurred. Certainly, if there were any inflammable goods in the nature of paper records, the same would not have survived from fire. There is nothing on record to show that any documents or papers were recovered. It appears that, this was the only place of business of the company under liquidation. The statutory and other records would thus have been stored in this factory premises.

4. The registered office of the company was admittedly in tenanted premises and according to the official records, no records have been recovered therefrom. In this view of the matter, there would be substance in the contentions made by the ex-directors that the records were housed in the factory premises of which forcible possession was taken over by the financial institutions. Learned counsel further submits that accused no. 1 Sh. Khaniya Lal Rajgarhia is now 77 year of age, suffering from multiple ailments. He was the managing director of the company in liquidation till 5th November, 1993 and was one non-executive director till 30th January, 1999. Form 32 filed with the Registrar of Companies in this regard has been placed on record. Accused no. 3 is stated to be around 85 years of age and had resigned from the directorship of the company more than 13 years back. The other accused person are also stated to be very old and have already filed their statement of affairs with the official liquidator.

5. In this background, no fruitful purpose would be served in keeping this prosecution pending other than harassment to ex-directors who have been deprived of the factory premises. Notice issued in these proceedings shall stand discharged. CA No. 1713/2005 In view of the orders recorded in CrI.O(Co.).No. 11/2005, this application is rendered infructuous and is disposed of as such.

Sd./-
GITA MITTAL, J

October 23, 2008