

HIGH COURT OF GUJARAT (D.B.)

**MAHENDRA SHANTILAL SHAH
V/S
UNION OF INDIA, NEW JEHANGIR VAKIL MILLS LIMITED**

Date of Decision: 10 February 1982

Citation: 1982 LawSuit(Guj) 16

Hon'ble Judges: [M P Thakkar](#), [I C Bhatt](#)

Eq. Citations: 1982 (2) GLR 284, 1984 (56) CompCas 70

Case Type: Civil Application

Case No: 61 of 1981

Subject: Civil

Head Note:

Civil Procedure Code (V of 1908) Order R.15 Industries (Development & Regulation) Act (LXV of 1951) S.18(F)(A) Central Government under S.18(F)(A) approaching court for permission to take over management of industrial undertaking in liquidation Company Judge granting permission Stay of execution sought on the order of the company Judge granting permission for taking over management is stayed, about 400 workers will remain unemployed and production is essential article would suffer There would not be any prejudice if the other is not stayed On the other hand if the order is stayed there would be great prejudice to the society, to the economy and to the workers.

The Central Government under sec. 18-FA of the Industries (Development and Regulation) Act 1951 on being satisfied that it is possible to re-start the industrial undertaking took out Summons of the Company Judge in order to authorise the taking over of the management or control of the industrial undertaking which is

owned by the Company in liquidation for the purpose of augmenting supply of a commodity needed by the General public which is specified in the Schedule as also presumably to provide employment to the four thousand workmen. The Company Judge granted the permission for taking over the Management. In an application made in the Letters Patent to stay the order of taking over the management: Held: Granting stay will mean: 1 Continued unemployment starvation suffering and misery for about 4000 workers who are jobless since the Mill was closed down about 18 months back and was ordered to be wound up as its economic substratum had disappeared. 2 Non production of a commodity essential for the community 3 Continued locking up of a productive unit which is being re lapse of about 18 months. 4 Blocking the stepping up of or giving boost to economic activity in a town like Bhavnagar. Refusing stay subject to the result of the appeal will mean: 1 No prejudice to any one (in granting or refusing permission to take over that would possibly be the prime if not the sole consideration). 2 Prospects of a sponsor coming forward to offer a scheme to run the Mills will brighten . 3 The industrial unit may reasonably be expected to fetch a better price as a running unit as compared to what it would fetch on the machinery being sold at a public auction. 4 The Court will retain control and can at any time review the situation and sanction a scheme or a sale in favour of a purchaser of the running unit in case a reasonable offer is forthcoming. Taking into account the pros and cons and likely impact on the interests of all concerned balance sheet of balance of convenience leaves the answer in no doubt. Granting a stay in a matter like this demands anxious consideration for stay orders in such matters cause greater harm than good. The credibility of the judicial system itself is undermined and delay which is more often than not unavoidable adds insult to injury. (Para 1) Further Held: that in the order of the Company Judge granting permission for taking over the management is stayed two consequences will follow: (1) about four thousand workmen who are likely to get employment immediately will have to wait till the appeal is disposed of; and (2) the supply of an essential article speci- fied in the Schedule which is needed by the general public will not be augmented till the matter is disposed of The appellant will not suffer any prejudice at all if the operation of the order passed by the learned Company Judge is not stayed. As against this there will be great prejudice to the society to the economy and to workers as also to others. (Para 3)

Acts Referred:

CODE OF CIVIL PROCEDURE, 1908 [OR 41R 5](#)

Final Decision: Application dismissed

Advocates: K S Nanavati, [B M Mehta](#), [Vasavda](#)

Judgement Text:-

Thakkar, C J

[1] To stay or not to stay is the question. Granting stay will mean :

(1) Continued unemployment, starvation, suffering and misery for about 4000 workers who are jobless since the Mill was closed down about 18 months back and was ordered to be wound up as its economic substratum had disappeared.

(2) Non-production of a commodity essential for the community -cloth.

(3) Continued locking up of a productive unit which is being re-started after a lapse of about 18 months.

(4) Blocking the stepping up of or giving boost to economic activity in a town like Bhavnagar.

Refusing stay subject to the result of the appeal will mean : -

(1) No prejudice to any one (The Official Liquidator, the secured creditors and the workers all are ad idem that the Management of the industrial unit in question should be taken over by the Central Government). In fact no material was placed before the learned Judge to show that any prejudice would be caused to the appellant. It was not even argued that there would be any prejudice or detriment to the appellant or anyone else (in granting or refusing permission to take over that would possibly be the prime if not the sole consideration).

(2) Prospects of a sponsor coming forward to offer a scheme to run the Mills will brighten.

(3) The industrial unit may reasonably be expected to fetch a better price as a running unit as compared to what it would fetch on the machinery being sold at a public auction.

(4) The Court will retain control and can at any time review the situation and sanction a scheme or a sale in favour of a purchaser of the running unit in case a reasonable offer is forthcoming.

Taking into account the pros and cons, the likely impact on the interests of all concerned, the balance-sheet of balance of convenience leaves the answer in no doubt. In fact one and only one answer is possible unless one can subscribe to the proposition that stay of the operation of the impugned order must always be granted once an appeal is admitted regardless of the consequences and regardless of the factor relating to relative hardship and prejudice. Such litigations can last for years and whatever is the outcome, immense and irreversible damage can be caused merely because of the stay. And with all pious wishes to dispose of the appeal at the earliest (we have fixed it for final hearing in August 1982), we do not know when we will be able to dispose it of for we have innumerable urgent matters involving high stakes at hand and the future is imponderable. Granting a stay in a matter like this demands anxious consideration, for, stay orders in such matters cause greater harm than good. The credibility of the judicial system itself is undermined, and delay which is more often than not unavoidable adds insult to injury.

[2] We, therefore, consider it necessary and desirable to articulate at length the reasons for our decision to refuse interim stay of the operation of the order giving rise to the Letters Patent Appeal, even though we have admitted the same (inasmuch as it raises arguable issues) and fixed it for hearing in August 1982.

[3] The facts have been dealt with at length in the judgment under appeal rendered by

our learned Brother Ahmadi J. in Company Application No. 130 of 1981 in Company Petition No. 75 of 1978. On the Judge's Summons taken out by Union of India for permission to appoint any person or body of persons to take over management of The New Jehan-gir Vakil Mills Company Limited (in liquidation) under sec. 18-FA of the Industries (Development and Regulation) Act, 1951 (the Act), the learned Company Judge passed an order making the Summons absolute in terms of Prayers (a) and (b) with the modification that the authorised person will be Gujarat State Textile Corporation. Union of India was permitted to appoint the said Corporation as authorised person to take over management of the aforesaid Company which was under liquidation, as per the order passed on July 9, 1981, the reasons in respect of which were set out in the speaking order dated October 13, 1981. The aforesaid Company has been ordered to be wound up by an order passed by the learned Company Judge on February 4, 1981. Some five months thereafter the Summons praying for permission to take over the management of the Company in exercise of the power under sec. 18FA(1) was taken out on July 9, 1981. We are told that the Company which was engaged in the manufacture of cotton textiles was closed down on July 11, 1980. Since that date about four thousand workman employed by the Company (about 2500 permanent workmen and about 1500 Badli workmen) have become unemployed and are starving, as they are not in a position to obtain alternative employment in Bhavnagar where there are no opportunities for securing employment in any other textile unit. Under sec. 18-FA contained in Chapter III-AA of the Act relating to 'Management or Control of Industrial undertakings owned by companies in liquidation' the Central Government has the power to authorise with the permission of the High Court the taking over of management or control of industrial undertakings. The relevant provisions require to be quoted :

"Power of Central Government to authorise, with the permission of the High Court, persons to take over management or control of industrial undertakings.-

(1) If the Central Government is of opinion that there are possibilities of running or restarting an industrial undertaking, in relation to which an investigation has been made under sec. 15-A, and that such industrial undertaking should be run or re-started, as the case may be, for maintaining or increasing the production, supply or distribution of articles or class of articles relatable to the scheduled' industry, needed by the general public, that Government may make an application to the High Court praying for

permission to appoint any person or body of persons to take over the management of the industrial undertaking or to exercise in respect of the whole or any part of the industrial undertaking such functions of control as may be specified in the application.

(2) Where an application is made under sub-sec. (1), the High Court shall make an order empowering the Central Government to authorise any person or body of persons (hereinafter referred to as the 'authorised persons') to take over the management of the industrial undertaking or exercise functions of control in relation to the whole or any part of the industrial undertaking (hereinafter referred to as the 'concerned part') for a period not exceeding five years.

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(3) Where an order has been made by the High Court under sub-sec. (2) the High Court shall direct the Official Liquidator or any other person having, for the time being, charge of the management or control of the industrial undertaking whether by or under the orders of any court, or any contract of instrument or otherwise, to make over the management of such undertaking or the concerned part, as the case may be, to the authorised person and thereupon the authorised person shall be deemed to be the Official Liquidator in respect of the industrial undertaking or the concerned part, as the case may be.

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It will be seen that the power under sec. 18-FA(1) can be exercised if the Central Government is of the opinion that (1) there is a possibility of running or re-starting the industrial undertaking in question and (2) it is desirable that the industrial undertaking should be run or re-started for maintaining or increasing the production or supply or distribution of articles or class of articles relatable to the scheduled industry, needed by the general public. The Central Government has obviously been satisfied that it is possible to

restart the industrial undertaking. The very fact that an application to take over management has been made and permission is sought under sec. 18-FA, would go to show that in the opinion of the Central Government there are possibilities of re-starting (he industrial undertaking. The satisfaction is the subjective satisfaction of Central Government. Who else can determine whether the Mill can be re-started if the onerous responsibility for taking over and running rests on the shoulder of the Central Government? That is not a question which is possibly justiciable. The second condition which is required to be satisfied is whether it is desirable to restart the industrial undertaking for maintaining or increasing production, supply or distribution or articles relatable to the scheduled industry needed by the general public. Entry 23 of the schedule to the Act inter alia pertains to 'Textiles made wholly or in part of cotton, including cotton yarn, hosiery and rope', It is therefore clear that the articles in question are those which are relatable to the scheduled industry needed by the general public. It is obvious that if the Mill is re-started, supply of such articles would be augmented. It cannot be, and it has not been argued otherwise. The Central Government appears to have taken out this Summons in order to authorise the taking over of the management or control of this industrial undertaking which is owned by the Company in liquidation for the purpose of augmenting supply of a commodity needed by the general public which is specified in the Schedule, as also presumably to provide employment to the four thousand workmen who are starving since about more than one and a half years (from July 11, 1980). It is in this background that we are concerned with the question as to whether or not the order passed by the learned Company Judge granting permission for taking over should be stayed during the pendency of the appeal. We have to consider the consequences of granting the prayer for stay made by the appellant who is one of the shareholders and unsecured creditor of the Company under liquidation. It may be stated that the appellant himself had, in the course of the liquidation proceedings, declared before the Company Court that the assets of the Company were not sufficient to meet it, liabilities, as is mentioned in the judgment under appeal. If the order passed by the learned Company Judge granting permission for taking over the management is stayed, two consequences will follow: (1) about four thousand workmen who are likely to get employment immediately will have to wait till the appeal is disposed of (they have been jobless for more than one and a half years by now), and (2) the supply of an essential article

specified in the Schedule which is needed by the general public will not be augmented till the matter is disposed of. Even though we have fixed the matter for final hearing in August 1982, there is no guarantee that we will be able to dispose it of in that month. It will all depend upon the number of urgent matters awaiting decision and the position of the Board. On the other hand, and if the interim relief is refused, there will be no prejudice to the appellant. Once the Mill Company starts working, the assets of the Company under liquidation will become more valuable. The machinery of the Mill Company which has remained idle for about two years will not fetch a price which is comparable to the price which a running factory will fetch when it is already producing the goods. Admittedly today no party is coming forward to sponsor any scheme for the running of the factory. As discussed in the judgment under appeal, numerous adjournments were sought for the purpose of presenting a scheme for running of the factory by way of a scheme sanctioned under sec. 391 of the Indian Companies Act, but the efforts did not succeed. These efforts were made when the Summons was being heard by the learned Company Judge in October 1981. Some four months have passed thereafter and yet the appellant is not in a position to present any scheme. It does not appear that there is any sponsor who is prepared to offer any scheme for the running of the Mill in the near future. If the stay is not granted and the authorised person is permitted to take over the management in exercise of powers under sec. 18-FA subject to the result of the present appeal, the appellant will get sufficient time and opportunity to procure some sponsor who can present a scheme for the running of the Mill. The other alternative would be to sell the lands and the machinery by public auction and the price which it would fetch would understandably be very small. The extent of the secured debts itself is to the tune of about rupees three crores (it is so stated at the bar). The interest burden would go on mounting. The assets may very likely not fetch even sufficient funds to meet the claim of the secured creditors. It is therefore in the interest of the shareholders, the creditors, and all concerned, that the Mill starts functioning at the hands of the authorised person under sec. 18 FA subject to the result of the present appeal. The Company Court can perhaps examine the legality and propriety of sanctioning a scheme in case one is sponsored even during the pendency of the appeal. It is even possible that the Central Government can be persuaded to terminate the management

since the management is being taken over in order that the supply of cloth to the public is augmented and incidentally to provide employment to the thousands of suffering workers. If the Central Government were to withdraw its application for taking over and the Liquidator has to proceed with the sale of the properties and effects of the Company under liquidation, all concerned, including the appellant, very likely would suffer considerable loss. It may be stated that all the workmen and secured creditors as also the Official Liquidator have no objection to the prayer made by the Central Government for taking over the management under sec. 18-FA being granted. The objection is being raised only by the appellant who was the Managing Director of the Company before it was taken into liquidation. It may be stated that some other shareholders and creditors had appeared before the learned Company Judge in order to resist the Summons taken out by the Central Government but ultimately they have not challenged the impugned order by filing any appeal. It needs to be reiterated that none of them did even argue or contend (much less produce any material to support such plea) before the learned Company Judge that any prejudice or detriment would be occasioned to them. The appellant cannot possibly challenge the opinion formed by the Central Government (1) that it is possible for the Central Government to restart the Mill, and (2) that it necessary to augment the supply of an essential article of the class relatable to the scheduled industry. Under the circumstances, the appellant will not suffer any prejudice at all if the operation of the order passed by the learned Company Judge which has given rise to the present appeal, is not stayed. As against this, there will be great prejudice to the society, to the economy, and to workers as also to others. That there will be no prejudice to the Official Liquidator as also the secured creditors is obvious because they have unhesitatingly supported the request for taking over made by the Central Government before the learned Company Judge.

[4] Taking into consideration all these circumstances, we are of the opinion that the order under appeal does not need to be stayed. In fact prejudice will arise if it is stayed whereas it would be in the interest of all concerned if the authorised person is permitted to take over the management and control of the undertaking subject to the result of the appeal and subject to the control of the Company Court. 5. Application is therefore rejected.

Application rejected.

