

IN THE HIGH COURT AT CALCUTTA
Original Jurisdiction
ORIGINAL SIDE

CA No.479 of 2014
CP No.233 of 2008

M/S. DUNLOP INDIA LTD.
Versus
M/S. E.V. MATHAI & SONS

CA No.737 of 2014
CA No.495 of 2014
CP No.233 of 2008

M/S. DUNLOP INDIA LTD.
Versus
M/S. E.V. MATHAI & SONS

CA No.738 of 2014
CA No.496 of 2014
CP No.233 of 2008

M/S. DUNLOP INDIA LTD.
Versus
M/S. E.V. MATHAI & SONS

CP No.1140 of 2014

M/S. DUNLOP INDIA LTD.
Versus
ASHOK KUMAR AGARWAL

Appearance:

Mr. Chayan Gupta, Adv.
Mr. Aniruddha Agarwala, Adv.

Mr. Rohit Das, Adv.
Ms. A. Roy, Adv.

A. Poddar, Adv.

Mr. Madhusudan Sarkar, Adv.
Mr. D. Dutta, Adv.

Mr. Ravi Kapur, Adv.

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE
Date : December 17, 2015.

The Court : The company has been wound up. The company contends that the order of winding-up has been stayed by the

Supreme Court, but the company cannot present any order clearly staying its liquidation.

CA No. 495 of 2014 is a ridiculous scheme propounded by the company for payment to its unsecured creditors. The quantum of the debt due to the unsecured creditors as a class is shown to be about Rs.122 crore, which is seriously disputed by several of the creditors represented.

The scheme does not indicate - and the company cannot immediately respond to a query from the Court - the extent of its exposure to its secured creditors. The company is unable to show its source of funds to go through with the scheme. Indeed, the scheme, according to the company, proposes to pay 35% of the amounts due to the favoured unsecured creditors as have been conveniently shown in the company's books as final settlement of their claims with an initial payment of about 17% of the final amount.

The scheme is liable to be rejected out of hand, particularly, since the company's books appear to have been doctored to show the major unsecured creditors to be controlled by the principal person who formerly controlled the management of the company and who single-handedly ran the company aground.

It is also of significance that the single largest unsecured creditor shown in the books of the company is one Falcon Tyres Limited with an alleged exposure of Rs.24 crore. Falcon Tyres had previously attempted to propound a scheme, failed to

deposit the amount directed by the Court and later withdrew the scheme after having wasted considerable time and, thereby, stalled the appellate or other proceedings after the company was wound up. The previous scheme of Falcon and the present scheme appear to be only for the purpose of prolonging the proceedings arising out of the order of winding-up pending in the Supreme Court. The order of winding-up has already been affirmed in appeal in this Court.

The scheme is not worthy of consideration, yet a chance is afforded to the company, which failed to deposit paltry amounts of Rs.10 crore or the like that it was called upon to pay before the order of winding-up was made, for it to show its bona fides by depositing a sum of Rs.50 crore by carrying a demand draft or banker's cheque or like instrument for such amount by the time the matter appears next on December 22, 2015. The instrument should be made out in favour of the official liquidator. In default of such amount being produced in Court as deposit, the application pertaining to the scheme is likely to be dismissed without any further consideration.

Let the connected matters appear on December 22, 2015.

Since the company asserts that the order of winding-up is stayed but has not filed its affidavit-in-opposition to CP No. 1140 of 2014 despite previous directions, the company is afforded time till December 19, 2015 to file such opposition; reply thereto, if any, should be filed by the close of working hours on

December 21, 2015 for the petition to be taken up for consideration on December 22, 2015.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SANJIB BANERJEE, J.)

sg.