

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

Company Petition No.35/2013

In the matter of Companies Act, 1956;

and

In the matter of Sections 433(e), (f) read with Sections 434 and 439 of the Companies Act, 1956;

and

in the matter of winding up of M/s. Plethico Pharmaceuticals Limited.

Citibank N.A. London Branch,

.... Petitioner

Vs.

M/s. Plethico Pharmaceuticals Ltd.

.... Respondent

Shri B.L. Pavecha, learned senior counsel with Shri Nitin Phadke, learned counsel for the petitioner.

Shri H.Y. Mehta, learned counsel for the OL along with the OL.

Shri A.K. Sethi, learned senior counsel with Shri Pourush Ranka, learned counsel for the respondent.

Shri R.C. Sinhal and Shri D.S. Panwar, learned counsel for the Allahabad Bank.

Whether approved for reporting :

ORDER

(Passed on 15/9/2015)

1/ I.A. No.4759/2015 has been filed by the respondent M/s. Plethico Pharmaceuticals Ltd. under Section 5 of Madhya Pradesh Sahayata Upkram (Vishesh Upbandh) Adhinyam, 1978 (for short Act of 1978) seeking suspension/stay of the

further proceedings in the present company petition till 15.6.2016.

2/ OLR 17/2015 has been filed by the OL with a grievance that the management of the respondent-Company is not providing the details of the assets in terms of the order dated 7.4.2015.

3/ In brief, this Company Petition has been filed for winding up of the respondent-Company under Section 433(e) & (f) read with Section 434 and 439 of the Companies Act, 1956. This Court vide order dated 1.10.2014 had admitted the company petition and vide order dated 7.4.2015 had appointed the Provisional Liquidator on certain terms and had permitted the petitioner publication of the Company Petition in terms of Rule 24 and 96 of the Company (Court) Rules. Since the direction issued by this Court on 7.4.2015 were not complied with, therefore, OLR 17/2015 was filed by the OL and at this stage respondent Company had filed the application under Section 5 of the Act of 1978 seeking stay of the proceedings.

4/ Shri A.K. Sethi, learned senior counsel for the respondent-Company pressing I.A. No.4759/2015 submits that since the respondent Company has been declared as relief undertaking under Section 3 of the Act of 1978 vide Notification dated 16.6.2015, therefore, the proceedings in the present company petition are to be stayed under Section 5 of the Act. He has further submitted that the notification under Section 5 has the overriding effect and is applicable to the winding up proceedings also. He has further submitted that validity of the notification under Section 5 cannot be examined in these winding up proceedings and for the same, the proper remedy available to the other parties is to approach the writ court. He

has further submitted that the subject for which the notification has been issued, falls in the concurrent list Entry 19, 23, 33 & 36 of the Constitution, therefore, question of repugnancy does not arise and Article 254(2) is attracted and consent of the President is relevant which has been taken. He has further submitted that Section 466 of the Companies Act is attracted after passing of the winding up order and that since issuance of notification is administrative act, therefore, Section 446(2)(d) of the Companies Act is not attracted.

5/ Shri B.L. Pavecha, learned senior counsel appearing for the petitioner has submitted that the notification dated 16.6.2015 is void and without jurisdiction, therefore, it is a nullity and this aspect can be examined in collateral proceedings. He has further submitted that requisite recital about recording the satisfaction and that respondent is a state industrial undertaking is missing in the notification and no notification under Section 4 has been issued therefore Section 6 of Act will not be attracted. He further submits that applying the principle of *ejusdem generis*, the words "other legal proceedings" will take their colour from the previous word "suit", therefore, they are required to be narrowly construed and notification will not be applicable to the winding up proceedings. He has further submitted that the subject matter of the notification is covered by Entry 43, 44 and 45 of the Union List, therefore, Article 254(2) is not attracted and assent of the President is not relevant. He has also submitted that the narrow interpretation will save the statute from the vice of repugnancy. Alternatively he has submitted that even if the notification dated 16.6.2015 is valid, then also it will not wipe off the order passed by this Court prior to the issuance of

notification and those orders are to be given the full effect.

6/ Shri H.Y. Mehta, learned counsel for the OL has submitted that Section 466 of the Companies Act provides for stay of the proceedings and the conditions of this section is not satisfied, therefore, the proceedings need not be stayed. He has further submitted that no leave has been taken in terms of Section 446(2)(d) of the Companies Act before issuance of notification.

7/ I have heard the learned counsel for the parties and perused the record.

8/ The respondent-Company is seeking stay of the winding up proceedings under Section 5 of the Act of 1978 which has been enacted to enable the State Government to make special provisions for a limited period in respect of industrial relations, financial obligations and other like matters in relation to industrial undertaking the running of which is considered essential as a measure of preventing, or of providing relief against unemployment. Section 2(3), 2(4), 3, 4, 5 and 6 of the Act which are relevant for present controversy are quoted below as under :-

“Section 2-Definitions-

(1) *****

(2) *****

(3) “relief undertaking” means a State Industrial Undertaking in respect of which a declaration under Section 3 is in force;

(4) “State industrial undertaking” means an industrial undertaking--

(a) which is started or which, or the management of which is under any law or agreement acquired or otherwise taken over by the State Government or by a Government Company and is run or proposed to be run by or under the authority of, the State Government or a Government Company; or

(b) to which any loan, advance, or grant has been given, or in respect of any loan whereof, a guarantee

has been given, by the State Government or Government company; or

(c) in respect of which a notified order under the Industries (Development and Regulation) Act, 1951 (No. 65 of 1951) is in operation.

Section 3. Declaration of relief undertaking

The State Government may, if it is satisfied that it is necessary or expedient so to do in the public interest, with a view to enabling the continued running or re-starting of a State Industrial undertaking as a measure of preventing, or of providing relief against, unemployment, declare, by notification, that the State industrial undertaking shall, on and from such date and for such period as may be specified in the notification, be a relief undertaking:

Provided that the period so specified shall not, in the first instance, exceed one year but may, by a like notification, be extended, from time to time, by any period not exceeding one year at any one time so however, that such periods in the aggregate shall not exceed [ten years]

Section 4- Application of certain enactments and contracts, agreements, etc., to relief undertaking-

That State Government may, if it is satisfied that it is necessary or expedient so to do for the purposes specified in Section 3, direct, by notification,--

(a) that in relation to any relief undertaking all or any of the enactments specified in the Schedule to this Act shall not apply or shall apply with such adaptations whether by way of modification, addition or omission (which does not, however affect the policy of the said enactments), as may be specified in such notifications, or

(b) that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force (to which any relief undertaking is a party or which may be applicable to any relief undertaking) immediately before the date on which the State Industrial undertaking is declared to be a relief undertaking, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such modifications and in such manner as may be specified in such notification.

Section 5- Suspension of suits or other legal proceedings against relief undertakings

As from the date specified in the notification under [xxx] Section 3, no suit or other legal proceeding shall be instituted or commenced or, if pending, shall be proceeded with against the industrial undertaking during the period in which it remains a relief undertaking any law, usage, custom, contract, instrument, decree, order, award, settlement or other provisions whatsoever notwithstanding.

Section 6 – Over-riding effect of notification under Section 4-

A notification issued under Section 4 shall have effect notwithstanding anything to the contrary contained in any other law, agreement or instrument or any decree or order of Court, Tribunal, Officer or other authority.”

9/ In the present case the notification dated 16.6.2015 has been issued by the State Government under Section 3 of the Act of 1978 declaring the respondent-Company a relief undertaking for a period of one year from the date of the notification. Under Section 5 of the Act, from the date of issuance of notification under Section 3, the suit or other legal proceedings against the relief undertaking remain suspended.

10/ The Supreme Court in the matter of **Binod Mills Co.Ltd. Ujjain (MP) Vs. Suresh Chandra Mahaveer Prasad Mantri, Bombay**, reported in **(1987) 3 SCC 99** considering the object of Section 5 of Act of 1978 has held that the section seeks to confer benefit to the relief undertaking from the ravages of litigation and consequent action during the period it remains a relief undertaking and the said bar operates only till the notifications remains in operation. The Supreme Court considering the object of the Act has held as under :-

“9. It is evident from the above discussion

that the High Court completely overlooked the purpose of the Act and the limited period of operation of [Section 5](#). It has to be borne in mind that the Act in question was enacted with a specific purpose. The preamble to the Act states that the Act has been enacted "to enable the State Government to make special provisions for a limited period in respect of industrial relations, financial obligations and other like matters in relation to industrial undertakings the running of which is considered essential as a measure of preventing, or of providing relief against, unemployment." It is necessary to note that the State Government and other financial institutions invest large sums of money to revive sick units or relief undertakings. The Government and such institutions are interested in seeing that the amount so invested are utilised for the purpose of running the relief undertaking so that it can be gradually revived and what is more important, to provide continuous employment to a large number of workers. The Government is interested in making sure that the relief undertakings do not incur burdensome debts, engage in costly litigations and consequent attachment of their machineries and moveables thus gradually destroying the units completely. [The Act](#) has been enacted to safeguard the interest of the general public, the workers and the amounts invested. It is for this purpose that relief was given to the unit against execution of decrees for a maximum period of seven years. If creditors of the relief undertakings ingeniously manage to obtain decrees against them from Courts situated in areas where the Act is not in operation and thus try to circumvent the operation of the Act by getting such decrees transferred to the area where the Act is in operation and plead that their decrees are saved from the mischief of the Act, such actions would be to defeat the very purpose of the Act. When we say this, we do not want to encourage such relief undertakings not to pay current liabilities. We are only concerned here with the interpretation of the sections of the Act. We will presently refer to some of the relevant sections and consider their operation both for pre-notification and post-notification debts.

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26. If the relief undertakings are not protected by a provision like [Section 5](#), the position will be

distressing. The creditors will proceed against them. Their properties and goods will be attached. The workers will be rendered jobless. In this case, this unit is said to employ nearly 2,000 workers. The creditors will not be in a more advantageous position either. If liquidation proceedings are initiated, the creditors will get only pro-rate from the sale proceeding of the assets, if creditors are permitted to proceed against the assets and the products of the undertaking, that would be detrimental to the heavy investment made by the State and other financial institutions. The concert of the Government in enacting this law is thus in the interest of the large number of workmen employed in these undertakings and in the revival, if possible, of sick unit. It is to protect them and not to render them unemployed that such relief undertakings are financed by the State.”

11/ The matter needs to be examined in the light of the various provisions of the Act and the object thereof.

12/ The first issue which arises for consideration before this Court from the contentions of counsel for the parties is whether the notification dated 16.6.2015 is without jurisdiction and is nullity, therefore, it will have no effect on the present proceedings?

13/ It is the settled position in law that since the defect of jurisdiction strikes at the very root of the matter, therefore, a notification, order or even a judgment or decree issued or passed without jurisdiction is a nullity, which can be established to be invalid even in collateral proceedings. Even the general rule that the executing court cannot go behind the decree, has the exception that a decree suffering from the defect of lack of inherent jurisdiction of the Court passing it, can be set up as invalid in the execution proceedings. However there is a distinction between the inherent lack of jurisdiction and erroneous decision within jurisdiction. For an order passed by

an authority or the court without jurisdiction, the defence of nullity can be set up by the party aggrieved even in collateral proceedings but if the order is erroneous or illegal though within jurisdiction, then that is required to be challenged in accordance with law before the appropriate forum. [See: **Kiran Singh and others Vs. Chaman Paswan and others (AIR 1954 SC 340), STATE OF KERELA VS. M.K. KUNHIKANNAN NAMBIAR MANJERI MANIKOTH NADUVIL (DEAD) AND OTHERS (1996) 1 SCC 435, Balvant N. Viswamitra and others Vs. Yadav Sadashiv Mule (Dead) through LRS and others (2004) 8 SCC 706, Apple Finance Ltd. Vs. Mantri Housing and Constructions Ltd. [2002(2) Maharashtra Law Journal 911].**

14/ In the present case the notification issued under Section 3 of the Act of 1978 reads as under :-

“No.F-10-04/2014/B-XI: Whereas the State Govt. is satisfied that it is necessary as well as expedient in the public interest of workers to declare the industrial company namely M/s. PLETHICO PHARMACEUTICALS LIMITED, INDORE (M.P.) a relief undertaking with a view to enabling the continued running of the industrial company as a measure of preventing and of providing relief against unemployment and also to safeguard the interest of the labour working in the said industrial company.

2. Now, THEREFORE, in exercise of the power conferred by Section 3 of the Madhya Pradesh Shayata Upkaram (Vishesh Upabandh) ADHINIYAM 1978 (No.32 of 1978) the State Government hereby declares the industrial company namely: Ms. PLETHICO PHARMACEUTICALS LIMITED, INDORE (M.P.) a relief undertaking for period of one year with effect from the date of this notification”

15/ Section 3 of the Act empowers the State to declare

any State industrial undertaking as Relief Undertaking. The State undertaking has been defined under sub-section 4 of Section 2 of the Act. Section 2(4)(b) of the Act includes within the ambit of State industrial undertaking any industrial undertaking to which any loan, advance or grant has been given or in respect of any loan whereof, a guarantee has been given by the State Government or Government Company. It is the case of the respondent Company that the respondent-Company has been given loan by the Government companies. The record reflects that the notification has been issued by accepting the said plea of the respondent. In such a situation it cannot be held that the State Government had no jurisdiction to issue the notification dated 16.6.2015 under Section 3 of the Act. Hence I am of the opinion that the notification does not suffer from the defect of inherent lack of jurisdiction of the State. The issue if the notification is erroneous or illegal, cannot be examined in these collateral proceedings and for establishing the same, proper remedy available to the aggrieved parties is to approach the writ court under Article 226 of the Constitution of India. The contention of counsel for the petitioner that the notification has been issued by the State without recording the satisfaction in terms of Section 3, also cannot be accepted since a bare reading of the notification reveals that in the opening part of the notification itself the State has recorded its satisfaction. Whether the satisfaction is rightly recorded or wrongly recorded, cannot be gone into in these collateral proceedings, therefore, the petitioner is not entitled to the benefit of the judgment of the Supreme Court in the matter of **Radhy Shyam (Dead) through LRS and others Vs. State of Uttar Pradesh and others**, reported in (2011) 5 SCC 553.

16/ The next issue raised by counsel for the petitioner is that on issuance of the notification under Section 3, the proceedings in a suit are suspended under Section 5 and since Section 5 is attracted to "suits or other legal proceedings" therefore, applying the principle of *ejusdem generis* word "other legal proceedings" will take their colour from the word "suit" and will apply to the proceedings relating to the suit and not to the present proceedings which are the winding up proceedings under the Companies Act.

17/ Such a proposition cannot be accepted. The Supreme Court in the matter of **Binod Mills** (supra) considering the scope of Section 5 has already held that Section 5 has a free field of operation unfettered by any limitation. The Supreme Court while considering the question if the execution proceedings are included within the meaning "other legal proceedings" under Section 5, has held as under :-

14. So read, the object of the section becomes clear. The section seeks to confer benefit to the relief undertakings from the ravages of litigation during the period it remains a relief undertaking. The expression 'decree' is very material for our purpose. Inclusion of 'decrees' in the section shows that the fact that decrees were validly obtained against a relief undertaking will not pose any danger to it during the period the declaration is in force. In other words, the section prevents execution of a decree validly obtained against the undertaking during the period mentioned above. That takes us to the question as to whether the words "other legal proceedings" in the section would take in execution proceedings. It is not disputed that the Section bars institution of suits and starting of other proceedings. What is disputed is that expression "other legal proceedings" will not take in execution proceedings. The contention is grounded on the general principle that the execution court cannot go behind a valid decree and that the execution court cannot, therefore,

refuse to execute it. It is admitted that the decree obtained from the Bombay High Court is a valid decree. That being so, law should take its course and execution should proceed. It is by virtue of the enabling provisions contained in Sections 40 & 42 of the Civil Procedure Code that this validly obtained decree got transferred to the Court in Madhya Pradesh. It is contended that by the mere transfer of this decree in accordance with the procedural law, its validity does not disappear nor its binding force cease to exist. We find difficulty in accepting this contention. If we are to accept this submission, it would be rendering section 5 of the Act nugatory and to 258 destroy the benefits sought to be conferred by that section. Nobody questions the validity of the decree. All that is sought to be done is to suspend its animation for the period mentioned in the notification. No Court in Madhya Pradesh can question its validity, nor can refuse to execute it after the period is over. To direct execution of the decree in the teeth of Section 5 would be to encourage filing of suits in Courts outside Madhya Pradesh, secure decrees and defeat the purpose of the Act. We do not think that such an abuse is permissible in the face of Section 5 of the Act. We have, therefore, to answer this question in favour of the appellant.

15. For the disposal of this case, we do not think it necessary to refer to the lengthy discussion made by the High Court on substantive and procedural law. We have to construe and interpret the section as it stands. The section is unambiguous and full import has to be given to its words and its intent. The non obstante clause in this section takes within its ambit, all the decrees passed against the relief undertaking. The bar of 'institution or commencement' takes within its ambit suits or 'other legal proceedings' which include execution petitions also."

18/ It has been held by the Supreme Court that the Section 5 is unambiguous and full import has to be given to its words and its intent. Similar argument advanced in the matter of **Binod Mills** (supra) that the wide construction cannot be given

to the expression "other legal proceedings", has been rejected by holding as under :-

"16. An attempt was made by the learned counsel for the respondent to contend that the expression "other legal proceedings" cannot take in proceedings to execute validly obtained decrees. It was further contended that if we give such a wide construction to the expression "other legal proceedings" institution of even claims of workers under the Industrial Disputes Act and other similar beneficial legislations, arising after the issue of notification, will be barred. On the wording of the section we feel such a conclusion is inescapable. "

19/ It has been held by the Supreme Court in **Binod Mills** (supra) that the Section 5 has been enacted with definite object of protecting the relief undertakings from litigations and consequent actions and the bar contained therein is absolute, by holding as under :-

"22. If we look into the scheme of the Act and the various sections, it will be evident that Section 5 is an independent section uncontrolled by Sections 4, 6 & 7. Sections 4, 6 & 7, deal with suspension or modification of certain remedies, rights etc., stay of proceedings, their revival and continuance. Section 5 does not make any reference to Section 4. It had been enacted with a definite object and that is to protect the relief undertakings from litigations and consequent actions. The object is clear. The Government wants to relieve such undertakings from litigative pressure for a period of time. It is not a permanent relief. The Government are interested to see that the investments made by it and other financial institutions do not get frittered away by avoidable litigation and other legal proceedings. The bar contained in Section 5 by way of suspension of suits or other legal proceedings is thus an absolute bar but only for the period contemplated by the Act."

20/ The Bombay High Court in the matter of **Baroda**

Rayon Corporation Ltd. Vs. ICICI Ltd. (Debenture Trustees) and others, reported in **(2003) 113 Comp.Cases Page 466** relying upon the judgment of Binod Mills (supra) and considering the provisions of Bombay Relief Undertakings (Special Provisions) Act, 1958, wherein the court receiver was already appointed in respect of the properties of the company and receiver had already taken possession and thereafter the notification under Section 3 of the Act was issued, has held that the order of the receiver cannot be enforced against the properties of the undertaking in Gujarat State so long as the notification is in force. The Rajasthan High Court also in the matter of **M/s Jaysynth Dyechem Vs. Mewas Textile Mills Ltd.**, reported in **AIR 1988 Rajasthan 16** considering the provisions of the Rajasthan Relief Undertakings (Special Provisions) Act, 1961 has held that “any proceedings” does not exclude winding up proceedings and the provisions of the Act is to be given widest amplitude by observing as under :-

“9. So far as the second contention is concerned, I may at once state that the expression used by the State legislature in S.4(b) is of widest amplitude. Legal proceeding has been explained and the explanation makes it abundantly clear that the expression would mean, any proceeding before any Court. It cannot be conceived that the words “any proceeding” excludes the proceedings of winding up and the word court exclude the proceeding before the High Court. It should be presumed that the State legislature knows that the proceeding in the nature of winding up exclusively fall within the jurisdiction of the High Court under the Companies Act. That being so, if the legislature had intended to exclude the proceeding before the High Court, the State legislature would have made such a provision. The very object of the Act, in that situation, would have been defeated. Normally industries are incorporated companies and if the companies winding up proceeding would have been outside the purview of the Act, then the whole object of the Act would be defeated. Thus the submission made

on behalf of the creditor petitioners in my opinion, has no substance that the word legal proceedings explained in S.4(1)(b) excludes from its scope the proceedings of winding up before the High Court.”

21/ Hon'ble Justice G.P. Singh in his principles of statutory interpretation, 11th Edition while discussing rule of *ejusdem generis* has observed as under :-

“The rule of *ejusdem generis* has to be applied with care and caution. It is not an inviolable rule of law, but it is only permissible inference in the absence of an indication to the contrary, and where context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. As stated by LORD SCARMAN: “If the legislative purpose of a statute is such that a statutory series should be read *ejusdem generis*, so be it, the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule like many other rules of statutory interpretation, is a useful servant but a bad master.” So a narrow construction on the basis of *ejusdem generis* rule may have to give way to a broader construction to give effect to the intention of Parliament by adopting a purposive construction.”

22/ Considering the aforesaid position in law, judgments as also the object of the provision and its scope as already been examined by the Supreme Court in the matter of Binod Mills (supra), I am of the opinion that the application of the notification under Section 3 cannot be restricted to the proceedings in a suit but in my considered opinion, the words “other legal proceedings” under Section 3 will include winding up proceedings also.

23/ The next argument of counsel for the petitioner is

that the subject is covered by Entry 43, 44 and 45 of the Union List and Section 3 is repugnant to the Central Act i.e. Industrial (Development and Regulation) Act, 1951, therefore, even the assent of the President will not save it and to avoid the repugnancy, the principle of reading down should be applied by holding that the Section 3 is attracted only in the proceedings of a suit. Such a submission is found to be devoid of any merit in view of the fact that the Act of 1978 has been enacted to provide relief to certain categories of industrial undertakings against unemployment and the Act in pith and substance falls in Entry 23 and 33 of the Concurrent List. The Full Bench of the Calcutta High Court in the matter of ***Pushraj Puranmull and another Vs. N. Roy and others***, reported in ***AIR 1978 Calcutta 215*** considering the similar provisions contained in West Bengal Relief Undertaking (Special Provisions) Act (13 of 1972) which is a similar legislation has held that the legislation directly falls under Entry 23 of List 3. The Rajasthan High Court has also examined this issue in the matter of ***M/s Jaysynth Dyechem*** (supra) while considering the provisions of Rajasthan Relief Undertaking (Special Provisions) Act, 1961 has held that the true character of the legislation made by the State Legislature is to make law in relation to the subjects falling under entries 23 and 33 and although incidentally, it just impinges upon the proceeding of winding up, which are regulated by the Companies Act, enacted by the Parliament under entry 43 of List 1 but this is only the incidental effect and it is not the true nature of the law.

24/ Hence the view taken by this Court above is supported by the Full Bench judgment of the Calcutta High Court as also the judgment of the Rajasthan High Court noted

above. Since the subject matter of the Act in pith and substance falls in the Concurrent List, therefore, Article 254(2) will be attracted and on account of the fact that the Act of 1978 has been enacted with the consent of the President, it will prevail in the State even if there exists some repugnancy with the provisions of the earlier law made by the parliament.

25/ Counsel for the OL has also raised an issue that without satisfaction of the conditions in Section 466 of the Companies Act, the stay cannot be granted and the leave of this court was not obtained in terms of Section 446(2)(d) of the Companies Act before issuance of notification, but such a submission cannot be accepted because stay has been sought under Section 5 of the Act of 1978. That apart Section 466 relates to the power of tribunal to stay winding up proceedings after the order of winding up is passed and even otherwise it empowers the Court to stay the winding up proceedings on being satisfied in this regard. So far as the objection relating to not taking leave under Section 446(2)(d) is concerned, Section 446 is not attracted in the facts of the present case specially in respect of issuance of notification under the Act of 1978.

26/ Having held that the notification dated 16.6.2015 does not suffer from the defect of inherent lack of jurisdiction and it is applicable to the winding up proceedings under the Companies Act, this Court is required to see the effect of the notification. In the present case, only the notification under Section 3 has been issued and no notification under Section 4 has been issued. The effect of issuance of notification under Section 3 is that the suits or other legal proceedings (which include the winding up proceedings also as held above) are suspended during the period notification remains effective but

such a notification under Section 3 alone without issuing any notification under Section 4, will not have any effect on the orders already passed in the present winding up proceedings.

27/ Learned counsel appearing for the respondent on 24.8.2015 had rightly admitted before this Court that the orders which are passed prior to the issuance of the notification are to be complied with. Even otherwise the object of the Act and the notification is to provide relief against unemployment. This Court while passing the order dated 7.4.2015 and appointing the Official Liquidator of this Court as Provisional Liquidator, has considered the fact that the respondent-Company is a running concern employing large number of workers, therefore, to strike the balance between the interest of the petitioner-creditor as also the respondent-Company, this Court had passed following order on 7.4.2015 :-

“.....This court considering the entire circumstances of the case has already admitted the winding up petition by order dated 1/10/2014. Substantial time has lapsed thereafter. The division bench has already rejected the respondents prayer for grant of stay.

Counsel for petitioner referring to the order of the Company Law Board dated 11/2/2015 has expressed the apprehension that the respondent company may indulge in alienation of the assets of the company. The said apprehension is not found to be without any basis. Though, after admitting the petition, the interest of the petitioner is required to be protected, but at the same time this court is conscious of the fact that the respondent company is a running concern employed large number of workers. Therefore, keeping in view the entire circumstances of the case, the OL is appointed as provisional liquidator on the following conditions:-

[1] That, the provisional liquidator will take paper possession of all the assets of the company in liquidation and prepare an inventory of all the immovable and movable assets of the

company in liquidation and the respondent will extend full co-operation to the OL in this regard.

[2] The respondent company is permitted to carry out its business activity but it is restrained from alienating or creating any charge on immovable or movable properties of the company.

[3] The respondent company will furnish details of account in respect of sale of its finished product to the OL on monthly basis. The respondent company will also submit previous three years audited balance sheet and fixed asset register to provisional OL within two weeks from today.”

28/ In view of the legal and factual position noted above, the respondent is required to give effect to the order dated 7.4.2015.

29/ The OL in OLR 17/2015 has alleged that the respondent-Company is not cooperating with the OL and is not furnishing the full particulars in pursuance to the order dated 7.4.2015. The reply to the OLR filed by the respondent reflects that the direction of this Court has not been complied with in entirety. The said direction has been issued with a view to permit the respondent to run the business activity and at the same time to protect the assets of the Company from being misappropriated. The above direction is in consonance with the Scheme and object of the Act of 1978. Hence the direction is to be fully complied with.

30/ In these circumstances I hold that by virtue of the notification dated 16.6.2015 issued under Section 3 of the Act of 1978, the further proceedings in the present winding up petition are stayed till 16/6/2016. However this order will not effect the order already passed on 7.4.2015 appointing Provisional Liquidator on certain conditions prior to issuance of the notification. To give effect to the order dated 7.4.2015 and

to protect the properties, the respondent-Company is directed to give inspection of books of accounts and records of the company to the inspecting officer appointed by the Regional Director/Registrar of Corporate Affairs. The Managing Director and other Directors and officers of the respondent-Company are also directed to provide/submit the requisite information and document in this regard to the Inspecting Officer.

31/ OLR 17/2015 and I.A. No.4759/2015 are accordingly disposed of.

List after 6 weeks.

C.C. as per rules.

(PRAKASH SHRIVASTAVA)
Judge

Trilok.