

C.P. No. 60 of 2001

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

National Investors Forum v. M/s Golden forests (India) Ltd.

Present: Shri R.K. Chhibbar, Senior Advocate with
Shri Anand Chhibbar, Advocate for Petitioner,

Shri Anil Sharma, Advocate and
Mr. Kanchan Sehgal, Advocate for
respondent company.

Shri B. Uma Kanta, Advocate and
Ms. Gagan Deep Kathuria, Advocate

HEMANT GUPTA, J.

M/s Golden Forests (India) Limited is a company incorporated under the Companies Act, 1956 (for Short the Act) on 23.2.1987. The company was given certificate for commencement of business under section 149(3) of the Act.

The Company announced some beneficial deposit schemes ensuring highest returns to its investors, creditors or consumers. The company thus attracted large number of investors and creditors. By the end of close of 7th financial year i.e. 1994, the turnover was Rs. 154 crores and by the end of 1997, it achieved the business target of Rs. 1,000 crores. During the course of hearing of the present case, it is admitted by the company that it has 24, 65, 231 investors who have invested sum of Rs. 980.14 crores as principal excluding returns thereon.

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Petitioner is National Investors Forum who has sought the winding up of the company on account of its inability to pay admitted debts. Members of the petitioner forum are the investors. When the petition was filed, the petitioner was not a registered society. However, on an objection being raised by the company, the petitioners have got themselves registered as a society under the provisions of societies Registration Act. It has been alleged that the respondent has collected more than 3,000 crores of rupees from investors, creditors and consumers by making false promises in the name of social justice, economic freedom for all. It has been alleged that the company got deposited the savings of millions of people which they have saved out of income of blood and sweat. The company have assured to repay the money of investors but in spite of such assurances, it has nor made the payments. It is alleged that a legal notice was issued to return the money within 3 weeks and this notice was published in the Hindi Daily Bhaskar on 14.3.2001 as service by registered post was not possible. It may be stated that the Directors of the company were arrested on 24.12.2000 in respect of allegations contained in six different FIRs lodged by the Vigilance Department, Government of Punjab. In spite of such notice, the company failed to settle the claim of the petitioners, therefore, the present petition for winding up was filed.

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In response to such petition, company has filed a detailed written statement wherein it has been stated that the company has adequate assets and resources to pay back all its debts. It is further stated that the company has moved an application before Hon'ble Mumbai High Court to remove the receiver and permit the company to hasten the process of repayment of the investors under the supervision of court. It has been stated that the company would welcome the intervention of the Chandigarh High court in whose supervision the investors may be repaid to prevent any further loss of prestige of the company which is financially viable and investor friendly. It has been mentioned that there was a restraint order from Chief Judicial Magistrate restraining the respondents from operating their lockers, bank accounts till the investigation is over by the Vigilance Department. However, the armament lok adalat at Chandigarh was pleased to order on 20th August, 2001 that there is no bar to operate on the accounts of the respondent's company. It was stated that since the matter is Subjudice before the Mumbai High Court therefore, it cannot be said that the respondent has failed or neglected to pay its creditors or is unable to pay its debts. It is further stated that the problems of the company are transitory in nature. On merits, the company showed its readiness and willingness to pay the amount and dues payable to the

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investors. However, it is stated that the appointment of liquidator is against the interests of investors as distress sale of the assets which constitute the security of the investors would yield much lower proceeds. The company sought a consolidated scheme to be filed on repayment to the satisfaction of the court.

This court on 17.8.2001 restrained the company not to alienate the property. On October 12, 2001, the comments of permanent lok Adalat at Chandigarh are called as in spite of restraint order, some assets of the company have been alienated. On 23.11.2001, respondents sought time to place on record a comprehensive proposal in support of the plea that the company is in a position to off-set its liabilities and is otherwise sound. On 2.5.2002, the petition for winding up was admitted and factum of admission was ordered to be published in the newspapers and official gazette of U.T. Chandigarh.

The respondent company filed C.P. No. 237 of 2001 under section 391(1) of the Act seeking permission to enter into an agreement and making arrangement with the class of investors. On 20th December, 2001, company was directed to give wide publicity to the proposed arrangement to enable any interested person to file objections. However, the counsel for the company stated on August 1, 2002 that the company is unable to comply

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with the directions issued to give wide publicity and therefore, the company petition No. 237 of 2001 filed by the company seeking permission to enter into agreement was dismissed as withdrawn.

In response to the publication of Admission Notice, three sets of objections have been filed – one by the Golden Group Investors Welfare Association, Delhi through its General Secretary, Shri Chet Ram Sharma Vide C. A. No. 929 of 2002, second by the Golden Forest India Limited from Orissa vide C. A. No. 935 of 2002 and third by the Investors and Marketing Members Welfare Society (Regd.), Calcutta through its General Secretary vide C.A. No. 819 of 2002. The winding up petition has not been properly advertised. There are 25 lac investor/creditors all over India and the publication of the factum of admission in Indian Express, Chandigarh edition, Dainik Tribune and official Gazette of U.T. Chandigarh is not sufficient, as such publication reaches hardly 1 to 2 per cent of the total number of investors. The company has been publishing advertisements in various newspapers all over India that the investors of the company will receive their payments since the receiver appointed by the Mumbai High Court is likely to commence the sale of the assets of the company to generate liquidity to pay to all the investors of the company. It

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was further contended that this Court should not pass any order which may go contrary to the order passed by the Mumbai High Court, in public interest litigation initiated by the securities & Exchange Board of India. It was also argued that the property of the company should be put to sale so that investors realise that the Central Bureau of Investigation should be directed to investigate into the affairs of the Company.

I have heard Shri R.K. Chhibbar, Senior Advocate for the petitioner and also Shri B. Uma Kanta, Advocate for the objectors as all well as Shri Anil Sharma, Advocate for the company at great length.

Shri chhibbar has vehemently submitted that once the petition is admitted, there is no discretion with the court but to pass the order of winding up and appoint official liquidator as liquidator of the company. It was argued that the arrangement proposed by the company has been withdrawn by the company and the petition has been ordered to be admitted. In these circumstance, the order winding up is a natural consequence. The reliance was placed upon the cases reported as Advent Corporation Pvt. Ltd. (1969)39 Company Cases 463, Seksaria Cotton Mills Ltd. (1969)39 Company Cases 475 and Focus Advertising Pvt. Ltd. (1974)44 Company Cases 567. However, I am

unable to accept such a wide proposition. Admission of a petition for winding up of the company is prima Facie proof of the admitted liability. The object of publication of admission in the newspapers is to invite objections from the persons interested, for and against the order the order of the winding up of the company. If there is no discretion with court at that stage but to pass the order of winding up, the very purpose of publication of the admission is rendered nugatory. The company court is required to examine whether the winding up of the company is in the interest of shareholders, secured and unsecured creditors, worker as wells as in public interest. It is natural consequence of admission of petition. Thus, I am unable to accept the argument raised by Shri Chhibbar that the company court has no discretion after the admission of the petition but to pass the order of winding up. The judgements relied upon by the petitioner, no doubt, have taken a view that the Court has or discretion to refuse to make a winding up order ex debito justitiae if the company neglects to pay the sum demanded. However, the said judgements are distinguishable and not applicable to the facts of the present case. Here the company has stated on an affidavit that it has assets more than the due amount. The management of the company is not able to sell the property because of its physical disability being in custody, in an FIR lodged by vigilance Bureau, Punjab Keeping in view the projected solvency of the company, it

will not be fair and reasonable to pass an order of winding up but the interest of the creditors is required to be watched which will be best served by appointing a provisional liquidator for effecting sale of the property of the company. A Division Bench of this Court in *Ambala Bus Syndicate P. Ltd. V. Bala Financiers P. Ltd.* (1986)59 Company Cases 838, has quoted with approval the view of Division Bench of Calcutta High Court reported in *Bengal Luxmi Cotton Mills Ltd. v. Mahaluxmi Cotton Mills Ltd.* AIR 1955 Cal 273 Wherein it has been held that the basis of making an order of winding up against a company is that it has ceased to be commercially solvent and accordingly it is fit and proper in the interest of creditor and shareholders not to allow it to function further as a company. The basis of winding up order on the ground of company's inability to pay its debts is always insolvency. In view of the above, it is not possible, at this stage, to hold that the company is insolvent so as to discharge its liability towards the creditors.

Shri. B. Uma Kanta, Advocate opposed the winding up and argued that the winding up order will not be above to protect the interest of large number of investors we have invested their hard earned money. It is pointed of that the affairs of the respondent company have be carried out in a calendestine manner so as to deprive

investors of their returns. It is argued that the affairs were conducted in an organised manner to siphon off the funds of the company and the matter is required to be investigated by Central Bureau of Investigation. The winding up order would be detrimental to the interests of the shareholders. The court may not pass any order which is by contradictory to the order passed by the Mumbai High Court keeping in view the possibility of transfer of all cases to Supreme court in view of the transfer application filled by SEBI.

A perusal of the written statement filed by the company shows that the liability is not disputed. Rather, it has sought intervention of this, court in whose supervision the investors may be repaid to prevent further loss of prestige to the company. It has been stated that the company has assets worth Rs. 1500 crores as against liability of only Rs. 761 crores and this company is very much in a position to pay its dues. It is stated that the company was set up in 1987 and till 1988, there has been no default in repayment of any maturity amounts and refunds of investors. The company disclosed that in 1998, SEBI filed writ petition No. 344 of 1998 before Mumbai High Court seeking, inter-alia, that the company may be prevented from conducting its business. Such writ petition was opposed on the ground that the petition was not maintainable as an instrumentality of state without

any statutory power, was not entitled to seek any relief against the private party. The respondent company was called upon to satisfy the Mumbai High court in the interest of investors with regard to its workability. The company got their assets valued which were assessed at Rs. 1071.55 crores in addition to Rs. 33880 crores on account of moveable assets and bank balance as on 31.12.1997 against the total liability of 761 crores as on 31.12.1997. It is further stated in the written statement that the company invited offers for the sale of its certain properties but none of the buyers had shown any interest in view of the restraint imposed by Mumbai High court dated 30th September, 1999. Ultimately, Mumbai High Court has appointed Mr. Justice M.L. Pendse (retd.) as private receiver for sale of 19 properties as set out in the schedule vide order dated 31.1.2000.

In view of the above, it is apparent that there is no dispute about the liability of the company towards the investors. It is the stand of the company that it has assets more than Rs. 1,000 crores which are sufficient to discharge the liability of the investors. It has come on record that the Directors of the company are in custody since December, 2000 and the company has not been able to dispose of any of the property for payment to the investors. It is also on record that the private receiver appointed by Mumbai High Court has also not been able to

sell any property so far. Thus, a mechanism is required to be drawn so as to facilitate the sale of the property of the company at the earliest with a view to ensure payment to the investors without any further delay. The interest of such large number of creditors is required to be watched by the company court and the management of the company cannot be permitted to take such investors for a ride. The scheme which the company has earlier proposed, has been withdrawn from the court. A large number of cases have been filed before this court by the investors as well as in different courts throughout the country.

Therefore, with a view to protect the interests of the large number of creditors, shareholders and the company, it is just and appropriate to appoint provisional Liquidator for control, management and sale of the moveable and immovable property so as to fetch maximum price thereof with a view to satisfy the claim of 25 lac investors in a proper manner. However, I am of the opinion that the official Liquidator attached to this court may not be able to take over the responsibility of management and sale of the property of the company keeping in view the meager resources at his command and inadequate infrastructure available. The official liquidator attached to this court is managing the affairs of over 177 companies. The additional responsibility of this company will require whole time attention to facilitate sale of

property and to deal with the investors spread over the entire country. Therefore, instead of appointing official liquidator, it is necessary to entrust the responsibility of the provisional Liquidator to such a person who commands respect and is able to discharge the onerous responsibility in a fair manner. Such provisional liquidator may have to look after the affairs of the company including its property and take steps for sale thereof. All such affairs should be supervised by a person who can discharge the duties of the provisional liquidator fairly and inspire confidence amongst the creditors as well as with the shareholders of the company.

Apart from vesting of the property with the provisional liquidator so as to facilitate the sale thereof to liquidator the claim of the investors, the affairs of the company are also required to be investigated by an independent agency. The company has avoided investigation by an agency appointed by Mumbai High Court on one pretext or the other. A committee appointed by Mumbai High Court consisting of representative of Reserve Bank of India and that of SEBI has found that the substantial amounts of money have been mobilised by alluring investors of promise of unrealistic returns through agents who have been paid hefty commission and other incentives. It has been found that the entries in the accounts books do not reveal their correct state of

affairs, misleading nomenclatures which would generally promote probe hide more than they reveal, substantial expenses have been incurred other than those which are warranted, such expenses lead one to believe that the company is not pursuing objectives sought in its schemes and at the same time frittering away the investments mobilised from gullible investors. The committee conclude that the report has been prepared in the absence of audit and accounts of the company on account of its noncooperation. The report reads as under: -

“On the basis of the documents and information available with the undersigned the detailed analysis of which is contained in the earlier part of this report, it is evident that the schemes floated by M/s Golden Forest (I) Ltd. Both in regard to performance and account keeping leave much to be desired.

The analysis of schemes reveals that all schemes floated by the company are open ended and are inducting investors on on-going basis. Substantial amounts of money have been mobilised by luring investors on promises of unrealistic returns through agents who have been paid hefty commission and other incentives. Mobilising big amounts and even promises of heavy returns per se are not wrong provided it can be backed up by bonafide healthy practices and

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skillful management of affairs to generate returns to fulfil the promises made. This is where unfortunately the company has been found to be seriously wanting.

In view of the varying figures of land owned by the company and its subsidiaries and in view of the fact that the area of land owned by the company and its subsidiaries had been shown to be substantially higher - 15,000 acres of land as deposed before the MRTPC and approximately 29,000 acres as stated to SEBI – than that shown to the undersigned (approx. 9000 acres), belies that the company has been trying to mislead the undersigned regarding the quantum of land owned by them. The reason for their refusal to co-operate with the independent appraising agency appointed by the undersigned may have been motivated by their desire to hide the exact figure of land owned by them and their subsidiaries.

The security provided by creating lien on land is illusory since the issue of post dated cheques does not guarantee payment but only action in case of non payment and finally the assets created in the form of land does not indicate realisable value enough to meet the liability which the company has already undertaken.

The analysis further reveals that the

schemes have survived so far only on account of the induction of new subscribers, amounts received from whom have gone for the payment of the previous subscribers. The entire scheme which has very insignificant component of plantation activity is likely to run into serious problems if this chain of inducting new members comes to a halt. Also, it needs to be borne in mind that the amount of from income generated by the company since its inception has been negligible (Rs. 58 lakhs) as compared to the total amount paid to the investors (Rs. 412 crores). In any case, such schemes by its very nature – new investors in the chain servicing old investors – are bound to break and cannot be sustained for indefinite period.

Similarly for the accounts, the entries analysed do not reveal the correct state of affairs. Misleading nomenclatures which would generally pre-empt probe hide more than they reveal. Substantial expenses have been incurred on items other than those which warranted such expenses leading one to believe that the company is not pursuing the objectives stated in its schemes and at the same time frittering away the investments mobilized from gullible investors.

In fact , the development receipts and expenditure

account for the year ended 31.3.1997 shows a deficit of approximately Rs. 62 crores. Evidently, if the development expenditure – a major portion of which constitutes payment to be made to the investors – is higher than the development receipt and the return on the assets created by the company is negligible, then it may be surmised that the company may be on the brink of liability mis-match problem, which with the passing of time would only get aggravated.

The inspection of the Department of Company Affairs and also the report of the Income Tax Department consequent upon the search and seizure operation conducted in the case of the company have brought out some serious unethical lapses which further reinforce the apprehensions.

It would, therefore, not be unreasonable to conclude that the schemes of M/s Golden forests (I) Ltd. are not being run in the best interests of investors and there is a possibility of the investors getting hurt in case even a minor aberration develops in the schemes because prima facie there is no indication of any mechanism in place which could affirm the company's credibility in terms of meeting its commitments.”

Shri Anil Sharma, Advocate for the company, objected to the investigation into the affairs of the company by Central Bureau of Investigation but submitted that this court can appoint any person to investigate the affairs of the company in terms of Section 237 of the Act. It is apparent from the proceeding paragraph that the company has not cooperated with the committee appointed by Mumbai High Court to investigate the affairs of the company. However, I am of the opinion that the affairs of the company ought to be thoroughly investigated in view of the allegations that the business of the company is being conducted with intent to deceive its creditors and members with a fraudulent and unlawful purpose. Such systematic investigation into the affairs of the company will bring out the extent of land owned by the company, its legal and valid title, its marketability, valuation as well as to find out whether the company has siphoned off money to its Directors, associates, subsidiary companies, etc. Such investigations are required to be conducted by an auditor who shall exercise such powers and duties inclusive of those contained in Section 227 of the Companies Act.

Thus, I am of the opinion that keeping in view the serious allegations against the management of the company and deficiencies prima facie found by the committee consisting of representatives of the Reserve Bank of India and SEBI, the affairs of the company are

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required to be investigated thoroughly. However, the sale of the property by the provisional liquidator is not dependent upon completion of the investigations. Investigation will proceed independent of the sale of the properties.

In view of the above, I am of the opinion that instead of winding up of the company, the interest of creditors shareholders and the company, would be served if the following directions are issued:-

1. The provisional liquidator shall be appointed. Such liquidator will take into his custody or under his control, all property, effects or actionable claims to which the claim is or appears to be entitled. All the property and effects of the company shall be deemed to be in the custody of the court from the date of this order.
2. Provisional liquidator shall have power to sell the moveable and immovable property, actionable claims by public auction or otherwise subject to the approval of this court and shall have all powers of liquidator contemplated under the Act.

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3. All properties of the company shall be managed, controlled, regulated by the provisional liquidator to be appointed by the court henceforth. The liquidator shall be at liberty to appoint personnel with the approval of the Company Court including chartered accountants and other administrative staff and to do all acts and things necessary to carry out the directions to the provisional liquidator.
4. The provisional liquidator shall prepare an inventory of all the properties of the company, its subsidiaries and associates created with the funds of the company including the property alienated either by way of sale or by delivery of possession in pursuance of the orders passed by the Lok Adalat.
5. The company shall not sell, lease, mortgage, alienate or incur any encumbrance against any property, moveable or immovable, in the name of the company or its subsidiaries without the permission of this court, except the funds required for normal functioning of the company as may be permitted by provisional liquidator with the approval of the Court. It is also directed that respondent company shall not

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withdraw any amount for the purpose of paying it to its Sister concerns, associates and Directors or any other company or persons.

6. The Directors and all administrative staff, officers of the company are directed to provide all assistance to provisional liquidator to discharge his responsibility without any demur or delay.
7. The provisional liquidator will prepare a scheme for settlement of the claims of the investors especially keeping in view the interest of small investors in the first instance.
8. The provisional liquidator shall submit preliminary report to this court and the parties are at liberty to move this court in case any further directions or clarifications are required.
9. The affairs of the respondent company shall be investigated by auditors to be nominated separately to investigate comprehensively into the affairs of the company including valuation of land purchased, marketability of the title and such other issues which may arise

June 18, 2003
Kadyan

Sd/-
HEMANT GUPTA
Judge.