

Delhi Automobiles Private Ltd. v. Maruti Limited  
(S. S. Sandhawalia, J.)

the record it is evident that the move to constitute the Committee was initiated at the instance of the Chief Commissioner, Union Territory, Chandigarh when the matter was referred to him for the removal of Shrimati Shakuntla Devi from the membership of the Committee as she had ceased to be a resident in the Notified Area. Though the petitioner has been accused of certain acts of omission and commission as a member of the Committee, which were derogatory to the interest of the Committee, yet none of them formed the reason for the reconstitution of the Notified Area Committee. Consequently the allegation of the petitioner that the impugned notification has been issued *mala fide* because of the alleged misconduct of the petitioner is without any substance and has to be ruled out.

In view of the above discussion, I find no merit in this petition and the same is hereby dismissed but without any order as to costs.

H.S.B.

Before S. S. Sandhawalia, J.

DELHI AUTOMOBILES PRIVATE LTD.,—Petitioner.

versus

MARUTI LIMITED—Respondent.

Company Petition No. 126 of 1977.

March 6, 1978.

*Companies Act (1 of 1956)—Sections 433(f) and 439—Main object of the Company failed and business paralysed—Substratum of the Company virtually disappeared—Existing assets insufficient to meet its liabilities—Winding up of the Company—Whether just and equitable.*

*Held*, that where the main object of the Company was the manufacture of motor cars, automobiles and other mechanical vehicles and the Company was floated for this purpose but has not been in a position to manufacture small passenger cars nor has there been any commercial manufacture or sale of cars at any stage, it is evident that the very object for which the Company was incorporated has failed and therefore the substratum of the Company virtually disappeared. Moreover, the Company is unable

to meet its huge liabilities as the business of the Company has been virtually paralysed and the employees thereof had left, the only conclusion is that it would be impossible for the Company to carry on its business at all and in any case not otherwise than at a loss. The existing and the possible liquid assets of the Company being insufficient to meet even the current and immediate liabilities which must be met in the ordinary course of its business. It is, therefore, evident that it is just and equitable that the Company should be wound up under Section 433(f) of the Companies Act 1956.

(Paras 14 to 16)

*Petition for the Compulsory Winding up of Maruti Limited under sections 433 and 439 of the Companies Act, 1956 praying that:—*

- (i) *Maruti Limited be wound up by this Hon'ble Court under the provisions of the Companies Act, 1956.*
- (ii) *Any other order or orders as may be made in the premises as shall be just.*

V. P. Gandhi, Advocate,—*for the Petitioner.*

Harkaran Singh, Provisional Liquidator.

M. S. Liberhan, Advocate,—*for the Share-holder.*

Raizada Harbans Singh.

G. C. Mittal, Advocate,—*for the dealers.*

#### JUDGMENT

S. S. Sandhawalia, J.—(1) Messrs Delhi Automobiles Private Ltd., has preferred this petition praying that Messrs Maruti Ltd., be wound up under sections 433 and 439 of the Companies Act, 1956. It has been averred that the petitioner is a shareholder of Messrs Maruti Ltd. (hereinafter referred to as the Company) incorporated under the Indian Companies Act, 1956 as a Public Company Limited by shares. The registered office of the Company is situated at the Palam—Gurgaon Road in the district of Gurgaon and the nominal capital thereof was rupees ten crores only. The object for which the Company was established was primarily the manufacture of cars as also other objects set out in detail in the Memorandum of Association thereof. It has been alleged that it was now well-known that the Company has huge liabilities amounting to rupees six crores

Delhi Automobiles Private Ltd. v. Maruti Limited  
(S. S. Sandhawalia, J.)

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which it is entirely unable to meet and there is a scramble amongst its creditors to secure their debts. It is the case that the Company has not been able to manufacture any cars for sale to the public which was its primary object and further owing to the commercial insolvency and various other adverse factors (which have not been specified) its business was completely paralysed and is at a standstill. It has been averred that a large number of the workmen and the former employees of the Company had left their posts and there was no prospect at all of the business being resuscitated.

(2) Lastly it has been averred that though the Company had no liquid assets, it nevertheless possesses enough valuable assets which, if properly disposed of in a fair manner, were expected to be sufficient for payment to all its creditors and leaving a substantial amount available for distribution amongst its contributories. On the grounds aforesaid, it has been prayed that it is just and equitable that the Company should be wound up.

(3) In the reply dated the 26th June, 1977, filed on behalf of the Company, the averment in paragraph 1 of the petition has been stated to merit no reply whilst paragraphs 2 to 5 have been admitted. With regard to paragraphs 6 and 7 it is stated that it is not possible to verify the share holdings of the petitioner in view of the fact that the records of the Company were sealed under the orders of this Court. It has been further averred that the relevant account and other records of the Company for the past two years commencing from May, 1975 up-to-date had been taken away and impounded on the 26th to 28th May, 1977 by the Central Bureau of Investigation in connection with certain enquiries in case No. H.C. 5/77 whilst the rest of the record has been sealed under the orders of the High Court dated the 25th of June, 1977. On the basis of an affidavit of the Secretary and his recollection of the matter it is averred that the liabilities of the Company would roughly amount to about Rs. 565 lakhs as against the assets of about Rs. 534 lakhs. This, however, does not include the value of 297 acres of land owned by the Company which cannot be sold without the permission of the Government of Haryana. It is admitted that due to the paucity of funds it is not possible to make payments to the various creditors. With regard to paragraph 8 it has been specifically admitted that the Company had not been able to manufacture cars for the sale to the public. It has then, in terms, been conceded that the business of the

Company has completely collapsed and most of the skilled labour has already left its employment and that it will not be possible for the Company to resume manufacturing activity easily. Lastly it is the stand that it is not possible to ascertain the exact value of the assets of the Company but according to the respondent it appears that the assets of the Company might ultimately meet the demand of the creditors if the same are disposed of in a proper manner and if in particular distress sales are avoided.

(4) In response to the general notices published in the wake of the winding up petition, affidavits have also been filed on behalf of the Union of India and the State of Haryana. Therein it has *inter alia* been mentioned that under the Commission of Enquiry Act the Central Government has appointed a Commission of Enquiry,—*vide* notification dated the 30th of May, 1977 to enquire into the various matters relating to Messrs Maruti Ltd., and its allied concerns.

(5) The petition at its initial stage was sought to be contested by three shareholders, namely, Messrs R. N. Chaudhry, Mrs. P. Chaudhry and Kartar Singh. The stand taken on their behalf in their objections dated the 30th of September, 1977 was that in the light of the Provisional Balance-sheet dated the 31st of March, 1977, the liabilities and the assets of the Company were equal. It has then been averred that the project was going ahead and would have started manufacturing the cars within a year and apart from this manufacture of cars, there were various other objects of the Company in the Memorandum of Association. It has been alleged that the application for the winding up of the Company is politically motivated and it was sought to be denied that the business of the Company was paralysed before the orders for the appointment of the Provisional Liquidator were made. It has been stated that the Company was carrying on other objects like body-building of buses and had large orders to comply with and apart from this the Company had never thrown open its shares to the public and if this was so done it could yield crores of rupees for running the Company. In the additional objections it is stated that if the Company is allowed to function then all the debts owing to the creditors can be cleared within five years and further it would continue to provide employment to more than 1500 of its employees. It is denied that the object for which the Company was floated had substantially failed and finally it is averred that it is not just or equitable to direct its winding up.

Delhi Automobiles Private Ltd. v. Maruti Limited  
(S. S. Sandhawalia, J.)

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(6) On the pleading of the parties the following issues were struck:—

- (1) Whether the petition is not maintainable?
- (2) Whether there are grounds for passing the winding up order?
- (3) Relief.

In support of its case, the petitioner has examined three witnesses and also got proved on record the statement of affairs (Exhibit P.W. 1/1) filed by the Provisional Liquidator, P.W. 1, Shri J. K. Pahuja, the former Finance Manager of Messrs Maruti Ltd., stated that he has ceased to hold his office due to the retrenchment consequent on the taking over of the same by the Provisional Liquidator. He deposed that Exhibit PW 1/1, the statement of affairs of the Company was prepared under his supervision and was signed by him. He further stated that the petitioner held paid-up shares of the value of Rs 2,50,000 in the Company and had also extended a loan of Rs 1,00,000 to it. He stated that in April, 1977, the financial position of the Company had worsened to such an extent that it was unable to pay even the salaries of its employees and even the stocks and the materials owned by the Company had to be sold in order to meet its liability for the months of April and May, 1977. He was categorical that the Company was not in a running condition either in the months of March or April, 1977. In his cross-examination the witness further deposed that the factory of the Company came to a dead end in March, 1977 and it stopped running even long before the appointment of the Provisional Liquidator. He deposed that the Company was not in a position to make a public issue but had addressed a number of communications to the various States which owed money to it for bus bodies built for them.

(7) P.W. 2 S. M. Rege, the former Secretary of Maruti Ltd., deposed that he had joined in April, 1972 and continued in office till 15th September, 1977. He deposed that by April, 1977 the Company had no liquid funds to meet its liabilities and similarly had no funds to meet the claim of secured and unsecured creditors including its dealers and depositors. He further deposed that in April, 1977 the

entire work of body building as also the job work in the factory came to a standstill and no fresh orders whatsoever were forthcoming. He was categorical that by May, 1977 the Company was not carrying on any work either of body building or of other nature. His stand was that the company was in a state of crisis, and could not survive without substantial funds or additional finance of which there was no likelihood whatsoever from any other source. It was unable to pay even the liability on account of the salaries of the staff which was approximately in the range of Rs. 1,70,000 per month.

(8) The witness deposed that the Company which was originally floated to manufacture small passenger cars could not make any commercial manufacture or sale of cars at any stage though some prototypes more or less of experimental nature were only made. Even by 1977 no cars were being manufactured and the project in that context was merely at an experimental stage. He also deposed that the Company did not even have adequate funds to commercially manufacture cars or to market them. He stated, however, that the Company owned a huge area of 297 acres of land as its premises and has also a huge factory building thereon and in his opinion there was no hope whatsoever for the revival of the Company in its present predicament. In his cross-examination he stated that by the end of March legal notices from the various creditors had started pouring in and further that no meeting of the Board of Directors or of shareholders was ever called after March, 1977. He stated that it was brought to the notice of the Directors that there were no liquid funds in the Company's hands in order to effectively function and this item was considered in the meeting with the permission of the Chairman though no decision thereon was taken.

(9) In re-examination the witness stated that on 2nd February, 1977, Mr Sanjay Gandhi who was the Managing Director of the Company had resigned his office in order to contest the Parliamentary election and thereafter no Managing Director of the Company was appointed. He further stated that two other Directors Messrs M. H. Chidambaram, Chairman of the Company and Shri Raunak Singh had also resigned in April, 1977 and no appointments were made in their place.

(10) P.W. 3 Shri B. D. Anand, Director of the petitioner—Delhi Automobiles Ltd., is a formal witness who deposed to the filing of the petition and his authorisation to do so etc.

Delhi Automobiles Private Ltd. v. Maruti Limited  
(S. S. Sandhawalia, J.)

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(11) It deserves pointed notice that the petition was not at all opposed on behalf of Messrs Maruti Ltd., and in fact Mr. M. L. Sarin, the learned counsel for the Company withdrew from the case with permission on the 19th of January, 1978.

(12) Despite repeated opportunities given to the objectors for leading evidence in rebuttal ultimately no witness was adduced on their behalf. Though technically not conceding the case it appears to be manifest that the objectors were equally half-hearted in opposing the present petition.

Issue No. 1.—“Whether the petition is not maintainable?”

(13) No ground or contention whatsoever could be raised to show as to why and how the present petition for winding up is not maintainable. No evidence has been led on this point on behalf of the respondents. Indeed Mr M. S. Liberhan for the objectors frankly conceded that he was not pressing this issue. The same is accordingly decided against the respondent-company with the finding that the petition is plainly maintainable in its present form.

Issue No. 2.—“Whether there are grounds for passing the winding up order ?”

(14) Herein what first deserves pointed notice is the fact that one of the main objects of the Company was the manufacturing of motor cars, automobiles and other mechanical vehicles. This is evident from para III(a)(1) of the Memorandum of Association of Maruti Limited. It was averred on behalf of the petitioner that in actual fact the Company has not been able to manufacture cars for sale to the public and this stand was in terms admitted on behalf of the respondent-company and indeed does not appear to be otherwise in doubt. PW 2, S. M. Rege, the Secretary of the Company himself stated on oath that though the Company was originally floated to manufacture small passenger cars there was no commercial manufacture or sale of cars at any stage. According to him, the Company which was incorporated in the year 1971 was not manufacturing any cars and the project in that regard is at an experimental stage and some prototypes more or less of experimental nature were made. It is thus evident that the very object for which the Company was incorporated failed and, therefore, it is right to hold that the substratum of the Company has virtually disappeared.

(15) The stand of the petitioner, both in the winding up petition as also in evidence clearly is that the Company was unable to meet its huge liabilities and there was a great scramble for its assets amongst its creditors. Further it was averred in the petition that the business of the Company was completely paralysed and the employees thereof had left and there was virtually commercial insolvency. Even at the stage of pleadings the Company in paragraph 7 of its reply admitted that due to the paucity of funds it was not possible to make payments to the various creditors and has further admitted that at present the business of the Company had completely collapsed and the skilled labour had already left. The evidence adduced on behalf of the petitioner including that of the Secretary of the Company itself and its Financial Manager leaves hardly any manner of doubt that it would be impossible for the Company to carry on its business at all and in any case not otherwise than at a loss.

(16) Again it is evident from the pleadings as also from the virtually unrebutted evidence that the existing and the possible liquid assets of the Company are insufficient to meet even the current and immediate liabilities which must be met in the ordinary course of its business. Apart from the averments in the pleadings on behalf of the Company itself that financial liabilities were making it impossible to make payments to the various creditors, it is in evidence that even the liability for the salary of its employees could hardly be met in the months of March and April, 1977. It is in evidence that capital assets and goods of the Company had to be sold in distress for the meeting of the liabilities on the salaries account alone. Again it deserves notice that Mr. Rege in his re-examination conceded that on 2nd February, 1977, Mr Sanjay Gandhi who was the Managing Director of the Company had resigned his office and two other Directors, Shri M. H. Chidambaram and Shri Raunak Singh had similarly resigned in April, 1977. What is significant herein is that no appointments are said to have been made in their place. It was not even denied at the bar that the Company as such has been left rudderless.

(17) Lastly, it was the stand of the petitioner that in the peculiar situation in which the company has found itself, both the interest of the shareholders as well as of its creditors would be better served by the winding up proceedings and its assets if prudently realised might be able to meet its liabilities. The Company also seems to



Union of India v. Bakhtawar Singh and another (B. S. Dhillon, J.)

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have taken a similar stand that if in particular distress sales are avoided then it might ultimately be possible to meet some of the demands of the creditors in a proper manner.

(18) It is evident from the above that the tests laid by their Lordships in *Seth Mohan Lal and another v. Grain Chambers Ltd.*, (1), for the winding up of a Company are more than amply satisfied in the present case. I am satisfied that it is just and equitable that the Company should be wound up under section 433(f) of the Indian Companies Act, 1956 and direct accordingly.

(19) The Provisional Liquidator shall be the Liquidator of the Company aforesaid and shall forthwith take charge of all the property and effects of the same. The formal winding up order in accordance with form No. 52 of the Companies (Court) Rules, 1959, be drawn up.

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N.K.S.

*Before B. S. Dhillon J.*

UNION OF INDIA,—Appellant.

*versus*

BAKHTAWAR SINGH AND ANOTHER,—Respondents.

First Appeal From Order No. 279 of 1972.

May 4, 1978.

*Motor Vehicles Act (IV of 1939)—Section 110-A—Jurisdiction to entertain claims for damages to property not vested in the Tribunal on the date of accident or of filing of claim application—Such jurisdiction conferred during the trial—Tribunal—Whether can award compensation for damages to property.*

*Held*, that where the tribunal had no jurisdiction to entertain a claim for compensation on account of the damages to property when the cause of action arose, still, if no such claim has been preferred before the Civil Court and subsequently the jurisdiction was vested in the tribunal, it came to have the jurisdiction to try the claim even though the cause of action arose when the tribunal had no jurisdiction to try the same.

(Para 7)

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(1) A.I.R. 1968 S.C. 772.