(2004) 01 KAR CK 0026

In the Karnataka High Court

Case No : Company Application No. 166 of 1999 in Company Petition No. 12 of 1987

Associated Duplicator Co. P. Ltd. (In Liquidation) APPELLANT

Vs

Karnataka Electricity Board and Another RESPONDENT

Date of Decision : 30-01-2004

Acts Referred:
Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 446, 446 (2) (b)

Citation : (2004) 120 CompCas 351 : (2004) ILR (Kar) 1517 : (2004) 7 KarLJ 29 : (2004) 52 SCL 325

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Deepak, for the Appellant; N. Krishna Nanda Gupta, for the Respondent

Judgement

D.V. Shylendra Kumar J.

1. The official liquidator in-charge of the winding up proceedings of M/s. Associated Duplicator Company (P.) Ltd., which was ordered to be wound up as per an order passed by this court on July 13, 1995, has filed the application u/s 446(2)(b) of the Act, read with Rule 9 of the Companies (Court) Rules, 1959, praying for ordering the respondent, M/s. Karnataka Electricity Board, to pay a sum of Rs. 12,894 with further interest on the amount of Rs. 10,530 at 6 per cent, from the date of. application till judgment and realisation, etc.

2. In the application, it is mentioned that a sum of Rs, 10,530 had been deposited by the company under liquidation with the respondent and this was the amount which was in deposit with the respondent as on July 13, 1995, when the company was ordered to be wound up and the official liquidator was put in charge of the winding up proceedings. A sum of Rs. 2,334 is claimed as interest up to after the date of application and further Rs. 30 towards notice charges.

3. It is also stated that the application is within the time-limit permitted under

law and the application is based on the statement of affairs of the company, which position was reflected in the books of account of the company. Notice had been issued to the respondent. The respondent has entered appearance and is represented by counsel.

4. The respondent has also filed its objection. While, it is stated that the application is not maintainable it is further averred that the respondent was not aware of the order of winding up proceeding passed by this court on July 13, 1995. While there are certain other general denials, it has been specifically admitted in paragraph 7 of their objections that the sum of Rs. 10,800 has been transferred, which was the deposit in the name of the company under liquidation, to the credit of and in the name of M/s. Pathi Silks as on March 29, 1996, and that is how the respondent denies its liability to return the amount to the official liquidator now in charge of the company under liquidation. Subsequent to the filing of this statement of objections the respondent had also filed an application seeking for impleadment of the said M/s. Pathi Silk as a party to the present proceedings. The application had also been allowed on March 9, 2000. The said M/s. Pathi Silks though served has remained unrepresented.

5. It is submitted that thereafter the matter has to be posted for enquiry regarding recording of evidence on behalf of the parties.

6. I have heard learned counsel for the official liquidator and Sri N.K. Gupta, learned counsel for the respondent, on the application.

7. Sri N.K. Gupta, learned counsel for the respondent submits that the matter has to be posted for enquiry, that counsel is not prepared to make his submissions as he is not ready in the matter and requests the matter to be taken up for enquiry and a date fixed for letting in evidence.

8. I am not inclined to accede to this request. The enquiry and recording of evidence is necessary, where there is an issue and dispute between the parties to the lis.

9. On the pleadings available in the present case the factum of Rs. 10,800, which had been deposited by the company under liquidation and was with the respondent-Board is not disputed. It is also mentioned in the objections that this amount was transferred to M/s. Pathi Silks on March 29, 1996, and at their request. Though it is not stated in the objections, learned counsel submits that it had been so transferred at the request of the company under liquidation.

10. On such undisputed facts what follows is as to whether the respondent is liable to remit this amount to the official liquidator as claimed in the application or as to whether they are justified in denying their liability for the reason that the amount has been transferred to the account of M/s. Pathi Silks on March 29, 1996, and at the request of the company under liquidation as submitted by Sri N. K. Gupta, learned counsel appearing for the respondent.

11. The legal position with regard to the effect of passing of a winding up order u/

s 446 is clear and well settled. In the present case not only winding up order was passed but also the official liquidator was appointed for looking after the affairs and to be in charge of the winding up proceedings. The property of the company under liquidation virtually vests with the official liquidator and it is only the official liquidator, who could transact any business on behalf of the company under liquidation. The erstwhile directors of the company cease to have any authority or control over the affairs of such a company. Action taken by such ex-directors or consequential action by other parties on their request or representations is not binding on the company under liquidation after the date of passing of a winding up order. Assuming that the respondent had acted at the request of the former directors of the company under liquidation and in fact had transferred the amount held on account of the company to any other person as on March 29, 1996, as pleaded in their statement of objections, it is not of any consequence in law and definitely does not absolve their liability towards the company under liquidation. When once the liability of the respondent is not absolved and it continues in law, no other enquiry is required to be conducted in a matter of this nature.

12. Though the amount claimed by the official liquidator is the deposit of Rs. 10,530, the respondent had admitted that the actual deposit that the company had made with them and that was lying to the credit of the company as on the date of passing of winding up order was Rs. 10,800, it is proper that this is the amount that the respondent has to return along with interest as and when it becomes due.

13. Though the official liquidator has claimed interest from the date of the winding up order and at 6 per cent. per annum and also future interest at this rate, I am of the view that as in law the amount does not automatically become payable to the official liquidator as on the date as the amount was in the nature of a deposit that could have been returned only on a request and on discontinuing the power supply for such an amount that was in deposit became payable on the earliest occasion when the respondent was required to return the amount and after receiving a notice from the official liquidator demanding payment of this amount. Learned counsel for the official liquidator has submitted that the first point of time that is when a notice was issued on July 30, 1996, demanding repayment of the amount. Assuming that it has, taken some time, for this notice to reach the hands of the respondent it is only proper to order that the amount shall carry interest on Rs. 10,800, with effect from September 1, 1996, at 6 per cent. per annum, on the principal sum of Rs. 10,800 and shall also carry interest at this rate from September 1, 1996, till the date of realisation.

14. Ordered accordingly.

