(2010) 09 KAR CK 0036

In the Karnataka High Court

Case No : Company Petition No. 132 of 2000

Besto Clutches and Spares APPELLANT

Vs

Cauvery Software Engineering Systems Ltd. RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Companies Act, 1956 — Section 433 (e), 433 (f)

Citation : (2011) 167 CompCas 342 : (2011) 105 SCL 212

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In this petition the Petitioner has prayed for winding up of the Respondent-company u/s 433(e) and (f) of the Companies Act, 1956 (''the Act'').

2. Petitioner contends that the Respondent-company was in occupation of a premises belonging to the Petitioner under a leave and licence agree-merit. Since the Respondent-company failed to vacate the premises and to pay the licence fee, Petitioner filed a suit in LE and C Suit No. 32/38/1992 on the file of Small Causes Court at Bombay. During the pendency of this suit, the parties arrived at a compromise and, accordingly, the suit came to be decreed in terms of a compromise petition filed before the Court, as per Annexure G. Since the Respondent-company failed to honour the terms of compromise petition at Annexure G, the Petitioner filed Misc. No. 289/1994 for issuance of contempt proceedings against the Respondent-company. This Misc. No. 289/1994 came to be dismissed with an observation that the Petitioner can enforce the decree by executing the decree. Thereafter the Plaintiff initiated execution proceedings in Misc. No. 289/1994. On an interlocutory order in this Misc. No. 289/1994, the Respondent-company filed a revision petition before the High Court of Bombay in CRP No. 125/1995. This CRP No. 125/1995 ended in a compromise order dated 15-2-1995. As per this compromise, the Petitioner paid a sum of Rs. 22,00,000

to the Respondent-company and inturn the Respondent-company has delivered possession of the premises in question to the Petitioner. In this revision petition, liberty was reserved to the Petitioner to agitate with regard to the municipal taxes, telephone and other charges in accordance with law.

3. Since the Respondent-company failed to pay agreed charges for the period from 1992 to 1995, the Petitioner issued a statutory notice on 17-9-1996 and another notice on 12-10-1996. The Respondent-company issued a reply notice on 6-11-1996 denying the liability. Hence, this petition.

4. This Court vide order dated 18-1-2005 admitted the petition and permitted the Petitioner to take out advertisement. Accordingly, the Petitioner had taken out the advertisement on 2-2-2005 in English daily '' The Hindu'' and the paper publication is placed before this Court. Pursuant to the advertisement, no objections are received opposing the winding up of Respondent-company.

5. In the statement of objections, the Respondent-company contends that the claim of Petitioner is barred by limitation and there is no specific determination of the claim and that they are not liable to pay any dues.

6. Heard arguments on the side of the Petitioner and perused the entire petition papers.

7. From the material on record, it is not in dispute that the eviction proceedings LE and C Suit No. 32/38/1992 ended in a compromise. Clause 4 of compromise decree reads as under:-

Defendants agree and undertake to this Hon''ble Court to pay to the Plaintiffs regularly Rs. 70,000 (Rupees Seventy Thousand only) per month as mesne profit for use and occupation of the suit premises, the first of such payment to be made on 6th April, 1992 ending on 25th April, 1992 and subsequent payments to be made on or before 6th day of each succeeding month ending on 25th day of each succeeding month and regularly every month Rs. 38,000 (Rupees Thirty Eight Thousand only) per month towards use of furniture, fixtures and fittings lying in the suit premises along with the said sum of Rs. 70,000 (Rupees Seventy Thousand only). Defendants also agree and undertake to pay to the Plaintiffs regularly Rs. 20,000 (Rupees Twenty Thousand only) per month towards parking charges along with the said sum of Rs. 70,000 (Rupees Seventy Thousand only) and Rs. 38,000 (Rupees Thirty Eight Thousand only) per month.

8. Further the High Court of Bombay in CRP No. 125/1995 reserved liberty to the Petitioner to agitate with regard to the arrears of municipal taxes, telephone and other charges either before the executing Court or any other competent Court.

9. It is also seen from the record that in the execution proceedings in Misc. No. 513/1995 arising out of LE and C Suit No. 32/38/1992, the Court of Small Causes at Bombay did not allow the claim of Petitioner for mesne profits but allowed the claim insofar as it relates to arrears of municipal taxes, electrical power consumption charges, telephone charges, maintenance charges, etc.

Further in revision application No. 62/1996 vide order dated 17-7-1999 even the claim of Petitioner for mesne profits came to be allowed. In these orders, the Petitioner was permitted to amend the execution petition and seek appropriate relief for recovery of amount from the Respondent.

10. From the material on record, it is seen that the Respondent-company was found due certain money to the Petitioner as on 24-2-1995. The amount due to the Petitioner is under a decree of the Court in case No. LE and C Suit No. 32/38/1992. The present petition is filed on 5-6-2000. Therefore, the claim of Petitioner is within the time and not barred by limitation. Therefore, there is no substance in the contention of the Respondent-company that the claim of the Petitioner is barred by time.

11. As stated above, the amounts payable by the Respondent-company is determined by competent civil court in suit No. LE and C Suit No. 32/38/1992, Misc. notice No. 535/1995 and revision application No. 62/1996. Therefore, there is determination of the amounts payable by the Respondent-company in these proceedings. The proceedings before the competent civil courts referred to above are not denied and disputed by the Respondent-company. In the execution case initiated by the Petitioner, the amounts payable to the Petitioner are specified. Therefore, it is deemed that the Respondent-company is unable to pay the debts due to the Petitioner-company.

12. For the reasons stated above, the following,

(I) The petition is hereby allowed.

(II) The Official Liquidator is appointed as liquidator of the Respondent-company.

(III) Petitioner-company shall deposit a sum of Rs. 25,000 with the Official Liquidator to meet the initial winding up expenses.

(IV) Petitioner-company to take out advertisement of this order in one edition of ''The Hindu'' English Newspaper within fourteen days from the date of receipt of copy of this order.

(V) Petitioner-company to serve certified copy of this order with the Registrar of Companies within thirty days from the date of receipt of copy of this order. Ordered accordingly.