

(2011) 02 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

C K Jayaram

APPELLANT

Vs

Kirloskar Investments and Finance Ltd

RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Citation : 2011 2 CPJ 145 : 2011 2 CPR 239

Hon'ble Judges : R.K.Batta , Vinay Kumar J.

Final Decision : Executing Petition kept pending.

Judgement

1. THE complaint filed by the decree holder was allowed in terms of order dated 6.1.2010 of this Commission and the OP Judgment Debtor was directed to pay a sum of Rs. 56,64,014 with 9% interest thereon from the date of filing of the complaint till payment, besides cost of Rs. 25,000 to be paid by the OP to the complainants. This order of Commission was challenged by the OP Judgment Debtor before the Apex Court and the SLP was dismissed. The Decree Holder has, therefore, filed execution seeking warrant of attachment and sale of all movable and immovable properties of the Judgment Debtors as also order for arrest and detention of the Director/Officer(s) of Judgment Debtors in prison in case the decretal amount is not recovered from the Judgment Debtors.

2. WE have heard Counsel appearing on both sides. Learned Counsel for the Decree Holder has urged that the order of the Hon'ble Karnataka High Court dated 8.8.2001 has no bearing in the execution proceedings as till date neither any order of winding up nor any order of appointment of official liquidator has been passed in the Company petition pending before Karnataka High Court. It is also stated that such plea was put up during the pendency of the proceedings before the Commission as also before the Apex Court and the Judgment Debtor are barred from raising such pleas at the execution stage. It has been further urged on behalf of the Decree Holder that the Commission has sufficient power to lift the corporate veil and pass appropriate orders against the Directors under Section 27 of the C.P. Act. It is therefore urged that the application for execution be allowed.

3. ON the other hand, learned Counsel for the Judgment Debtor has taken us through order dated 8.8.2001 of the Karnataka High Court and has urged that the Decree Holder should approach the Committee appointed by the Hon"ble High Court in terms of para 44 of the said order.

4. THE order of the Karnataka High Court shows that the petitioner therein- Reserve Bank of India in the Company Petition had moved for winding up of the Respondent-Company under Section 45 MC of the Reserve Bank of India Act, 1934 read with Part VII of the Companies Act. The Company petition has been admitted by the Karnataka High Court. After examining the matter, the Karnataka High Court deemed it proper to appoint a Committee instead of appointing official liquidator or to advertise in the newspaper which may have adverse effect on the ability of the Company to generate resources and that publication should be resorted when there is no possibility of rehabilitating the Company. In the interest of the Company, a Committee of eminent persons consisting of former Chief Justice of Madras High Court and former Director General of Police, Karnataka was appointed to look after the affairs of the Company. The Committee was permitted to carry on business of the Company wherever possible and to formulate a scheme for payment of depositors. The order further states that the Management of the Company shall vest with the said Committee and the Committee shall prosecute all litigation for and against the company with the help of their own lawyers. The order further states that the present Management shall not have any control over the Management of the Company and shall not in any way obstruct the working of the Committee. In para 44 of the said order it has been stated as under: "44. The depositors, secured creditors and other unsecured creditors are at liberty to make representation to the Committee and the Committee shall consider their representation and determine whether their request can be acceded to keeping in mind the financial position of the company. The Committee is at liberty to carry on all unfinished construction if it is in the interest of the company."

5. THUS, from the above order of the High Court, it is clear that the Management of the Company is vested with the Committee. It is no doubt true that neither winding up order has been passed nor official liquidator has been appointed, but the Hon"ble High Court has passed the order in question under inherent powers to consider the representations by depositors, secured creditors and other unsecured creditors and the Committee has been given liberty to even carry on all unfinished construction if it is in the interest of the Company.

6. IN this view of the matter, the question of attachment of movable and immovable property would not arise nor any action can be taken at this stage under Section 27 of the CP Act against the Directors who have been divested of the powers of the Management, which are given to the Committee appointed by the Hon"ble High Court. Learned Counsel for the Decree Holder has placed reliance on a number of judgments including Ravi Kant and Ors. v. National Consumer Disputes Redressal Commission and Ors., 66 (1997) DLT 13 (DB)=AIR

1997 Del. 182 and Prudential Capital Markets Ltd. v. Dipankar Guha, (2007) 135 CC 379 (Del.). There cannot be any dispute regarding the proposition laid down by the Delhi High Court in the said rulings. In Ravi Kant and Ors. v. National Consumer Disputes Redressal Commission and Ors. (supra), it has been observed if the corporate personality is used as a cloak for fraud or improper conduct, the Court can go behind the veil. In this judgment, the Delhi High Court has relied upon the Judgment in Ford Leasing Ltd. v. Union of India and Ors., 57 (1995) DLT 623 (DB), wherein a Division Bench of the Delhi High Court held that under Section 27 of the CP Act, the Chairman and the Managing Director of the Company can be preceded against, they being in charge of the Management and control of the affairs of the Company.

7. WE have to bear in mind that in the case before us the property of the Company now vests with the Committee appointed by the Hon'ble High Court and the Management of the Company is also with the Committee. The Judgment Debtor, its Directors/Officers are not in control of the Management of the Company which is being carried out under the directions of the Hon'ble High Court by the said Committee. The Decree Holder may, therefore, approach the Committee in terms of para 44 of the order of the Karnataka High Court and make appropriate representation before the Committee.

8. IN view of the above, at this stage, we are not inclined to order any action under Section 25 or Section 27 of the C.P. Act, as prayed by the Decree Holder. The Execution Petition shall, however, be kept pending with no further orders at this stage. Executing Petition kept pending.