(2010) 09 DEL CK 0047

In the Delhi High Court

Case No : Company Application No. 139 of 2008, Company Application (C) No. 6 of 2010 (Previously numbered as Company Application (M) No. 156 of 2002) and Company Petition No. 191 of 1997

CRB Capital Markets Ltd. APPELLANT

Vs

Mr. Indra Kumar Surana RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:
Companies Act, 1956 — Section 446, 454

Citation : (2011) 161 CompCas 288 : (2011) 105 SCL 553

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Bhuvan Gugnani, for the Appellant; Rajiv Bahl, Manisha Tyagi for Official Liquidator, Manisha Singh Nair and Swati Setia for Reserve Bank of India, for the Respondent

Judgement

Sudershan Kumar Misra, J.—This is an application by the Official Liquidator u/s 446 of the Companies Act, 1956 for the recovery of an amount of Rs. 1,00,000 with interest @ 18% per annum from 1st April 1997 till realization, from the respondent Mr. Indra Kumar Surana.

2. Pursuant to a petition filed on 21st May, 1997, M/s CRB Capital Markets Ltd. was directed to be provisionally wound up on 22nd May, 1997. The Official Liquidator attached to this Court was appointed as its provisional liquidator.

3. The company in provisional liquidation, i.e. M/s CRB Capital Markets Ltd., was in the business of finance, hire-purchase, leasing, advancing loans and accepting deposits under various Schemes.

4. On an examination of the statement of affairs filed by the Ex-Directors u/s 454 of the Companies Act, 1956 as well as the records available with his office, the Official Liquidator discovered that an amount of Rs. 1,00,000 is due to the company in provisional liquidation from the respondent on account of a staff loan/ advance. The respondent is stated to have been an employee of the company in

provisional liquidation. The Official Liquidator has, therefore, moved this application praying for an order of recovery of the said amount, along with interest @18% per annum till its realization in favour of the applicant, against the respondent.

5. The respondent has been duly served. On 11th May, 2004, the respondent was also ordered to be proceeded ex parte. Nevertheless, fresh notice was directed to issue to the respondent on 18th February, 2008, returnable on 30th April, 2008, which was also served. An affidavit of service in this regard was filed by the applicant on 27th March, 2009. There has been no appearance on behalf of the respondent throughout these proceedings.

6. An affidavit of Shri Dinesh Chand, Deputy Official Liquidator, was filed on 5th July, 2004 by way of evidence in support of the application. Ex.P-1 is a copy of the ledger maintained by the company in provisional liquidation, pertaining to the running account in respect of the respondent, that indicates that a sum of ` 1,00,000 is due and payable by the respondent, as on 31st March, 1997. Ex.P-2 (Colly) are copies of the demand notice dated 24th March, 1999 which was sent by the applicant to the respondent for recovery of the aforesaid amount; of the final demand notice dated 3rd November, 1999 sent by the applicant to the respondent; and of a communication dated 5th October, 2001 reminding the respondent of his liability to pay the aforesaid amount, and also referring to the earlier two communications. Ex.P-3 (Colly) are the AD receipts for the abovementioned communications, evidencing that they were duly served on the respondent. The original documents have also been placed on record by the applicant.

7. There is no defence to the claim. The amount claimed stands proved.

8. Consequently, the respondent is directed to pay an amount of Rs. 1,00,000 to the applicant, along with interest @ 6% per annum from the date of this application till the date of realization of the amount in favour of the applicant.

9. The application is disposed of in the above terms.