(2008) 11 DEL CK 0015

In the Delhi High Court

Case No : C.P. No. 3 of 1992

Guest Keen Williams Ltd. APPELLANT

Vs

Josh India Ltd. RESPONDENT

Date of Decision : 06-11-2008

Acts Referred:
Companies Act, 1956 — Section 433, 434, 439, 481

Citation : (2009) 90 SCL 132

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : A.K. Chaturvedi and Lorren Bamniya, for the Respondent

Judgement

Gita Mittal, J.—This petition was filed by Guest Keen Williams Ltd. a creditor under Sections 434 and 439 of the Companies Act, a petition under Sections 433, 434 and 439 was admitted by this Court on 1-9-1992 the Official Liquidator attached to this Court was appointed as the provisional liquidator of the company. The company was thereafter directed to be wound up by an order passed on 25-9-1997.

2. The matter was listed on 7-12-2006 when the court noted that after December, 1999, the official liquidator had not taken any further steps and no status report/compliance report had been filed. It is noteworthy that a report stood filed in the court only one day prior to the date of hearing. No further or effective steps had been taken in the matter after 1995 to comply with the statutory provisions and the rules framed thereunder for a period of almost twelve (12) years. The court noted that recovery proceedings against the creditors of the company had thereby become barred by limitation.

3. In this background, in view of there being no other option but to close the case, this Court had directed dissolution of Josh India (P.) Ltd. in terms of Section 481 of the Companies Act.

4. It was noticed in the order on 7-12-2006 that as there was a lapse on the part

of the Official Liquidator office, an inquiry was directed to be conducted by the official liquidator to ascertain the persons/officers responsible for the lapses. A period of four months was given to file the report.

5. A report dated 7-3-2008 filed by the official liquidator was found to be deficient. By an order passed on 18-3-2008, the Official Liquidator was directed to furnish the names of the officers who were responsible for the lapse between the years 1997 to 2006. The explanation given by the official liquidator was rejected.

6. Again, when the original record was produced before the court on 29-4-2008, the court observed that the same revealed that the official liquidator had not taken any steps for almost 12 years since the winding up order was passed for realisation of the assets of the company and its disbursement amongst the various stake holders. The court had expressed dissatisfaction with the action taken report filed on behalf of the Official Liquidator who was directed to conduct a de novo inquiry into the matter as to why steps were not taken for a long time since the passing of the order so as to fix the responsibility on the officers found responsible for the same. A period of three months was given for completion of the inquiry which would have lapsed in July, 2008.

7. Despite the specific schedule fixed by the court, on the 11-8-2008, further time was sought to file the report. The court had directed the Official Liquidator to complete the inquiry in terms of the order dated 29-4-2008 positively within six weeks.

8. From the above, it would therefore appear as if there is effort to cover up the truth is not revealed and the persons who are responsible for the lapses are shielded.

9. It is stated today by Mr. A.K. Chaturvedi, the Official Liquidator, that inquiry was not possible because he has no records of the staff which was dealing with the file. To say the least this submission is hopelessly appalling. The staff which was assigned to the office of the official liquidator is holding the designation of Assistant Official Liquidator and Deputy Official Liquidator. Even the period concerned is not old inasmuch as the matter relates to the period between 1999 to 2006. Even if record for the earlier period was not available, it is impossible to believe that the record for the period after 2000 was not available. There would be certainly record of delegation/assignments by the Ministry and payment of salaries etc., which would have enabled the Official Liquidator to undertake the inquiry which was directed by the court.

10. Mr. A.K. Chaturvedi submits that this inquiry may be handled by an independent person.

Accordingly, a direction is issued to the Secretary, Ministry of Corporate Affairs to direct an officer of the rank of a Joint Secretary to conduct an inquiry in terms of the order dated 29-4-2008 into this matter and place a report before this Court within one month from today. The Official Liquidator and his staff shall ensure that every cooperation is given and the record is produced before the officer who is appointed to conduct an inquiry.

11. It is noteworthy that the position noticed above has been brought to the notice of this Court in several cases which are being listed by the Registry for the reason that not a single report has been filed in cases of companies under liquidation despite passage of decades since the passing of the winding up orders. In this background the official liquidator was directed to carefully get all files examined and place a statement before this Court with regard to any other similar case where despite passing of winding up orders, no steps have been taken with regard to the affairs of the company. It is necessary to note that despite passage of over four months and repeated queries, the Official Liquidator is not in a position to state even the exact number of companies which are under liquidation, status of the liquidation proceedings; number of immovable properties of the companies which are under the seal of the Official Liquidator or number of the properties of companies under liquidation which are yet to be sealed. Details of these is yet another matter.

12. It is stated that for this reason the claims of companies worth crores are becoming time barred. Immovable properties of the companies is also in a precarious position. These properties include huge factories and plants residential and office buildings and large tracts of lands. Certainly the spirit, intendment, object of the statute is being completely defeated. Complaints with regard to even immovable assets are being received.

13. From the above, it is evident that the office of the Official Liquidator is in a hopeless situation and, as placed, is unable to undertake the serious task of liquidation of the companies which are assigned to it. A herculean effort and immediate steps are required to be imperatively taken especially having regard to the valuable assets of the company which include immovable property worth crores of rupees.

14. I find that in a host of cases, concerted efforts may have been made to ensure that the complete position with regard to the assets of the company is not put on record. Either possession of a part of the asset is taken or, incomplete information is given resulting in orders to be passed which have resulted in grave prejudice to the assets of the company.

15. Mr. A.K. Chaturvedi, learned Official Liquidator states that the staff assigned to him is not trained in either scrutiny of assets or the records and have no knowledge of the companies or the Company Court Rules. He submits that in order to effectuate effective liquidation proceedings, trained staff especially those having a background in scrutiny of accounts in the nature of qualified company secretaries and chartered accountants are required to be assigned.

16. It is further submitted that the staff need to be trained in maintenance of files and records as well as in use of computers and that the staff currently

assigned to him has no such training.