(2013) 07 DEL CK 0274

In the Delhi High Court

Case No : Co. Petition 379 of 2012 and C.A. No. 1501 of 2012

Hardeep Gill — APPELLANT

Vs

Pumpkin Studio Pvt. Ltd. and Another — RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:
Companies Act, 1956 — Section 397, 398, 433, 433(c)

Citation : (2013) 4 ILR Delhi 3246

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Advocate : Sujeet Kumar Mishra, for the Appellant; Ajit Singh, for R-1, Ms. Gurpreet Gill and R-2 in Person, for the Respondent

Judgement

R.V. Easwar, J.—This is a petition filed by Mr. Hardeep Gill, one of the directors of Pumpkin Studio Private Limited ("Company"), the first respondent herein, for the winding up of the Company under sections 433(c), (f) and (g) of the Companies Act, 1956 ("Act"). One of the other directors, Mrs. Gurpreet Gill, has been impleaded as the second respondent. She has filed the reply to the petition on behalf of the Company. The Company was incorporated in 2002 to carry on the multimedia centre where training was to be imparted to students and to carry on the software development. A franchise agreement was entered into by the Company with Maya Academy of Advanced Cinematics for period of five years in this behalf. Initially the petitioner and the second respondent were the only shareholders of the Company whose authorised, issued, subscribed and paid-up share capital was Rs. one lakh only; subsequently, one Taruna Ummati was inducted as a shareholder and she and the petitioner held 30% shares each, whereas respondent No. 2 held the balance 40% shares in the Company.

2. Soon there were allegations of mismanagement levelled by the second respondent, who was stationed in Chandigarh, against the petitioner herein, who was managing the Company''s affairs in Delhi and disputes arose. The franchise agreement was terminated in 2005. The second respondent filed a petition under

sections 397-398 of the Act in the Company Law Board ("CLB") which directed that the petitioner would manage the affairs of the Company together with respondent No. 2. An appeal against the order of the CLB is said to be pending before this Court in Company Appeal (SB) No. 17/2009. Despite the order of the CLB the disputes continued and the board meetings could not be conducted. The annual returns of the Company, the profit and loss accounts and the balance sheets could not be filed with the Registrar of Companies ("ROC"). There was thus a stalemate.

3. In the above background, respondent No. 2 filed Company Petition No. 182/2010 before this court under clauses (e) and (f) of section 433 for the winding up of the Company. This petition was, however, permitted to be withdrawn with liberty to file appropriate recovery proceedings vide order of the learned single judge (Manmohan, J.,) dated 20-9-2011.

4. It is contended in support of the present petition that it is just and equitable that the Company be wound up. It is contended that respondent No. 2 herself had earlier sought winding up of the Company on the same grounds and therefore there cannot be any objection from her to the present winding-up petition. Moreover, it is contended, the substratum of the Company is lost and hence it is just and equitable that it is wound up. It is also pointed out that the business of the Company has been suspended for more than a year and therefore clause (c) of section 433 applies; and that the company has not filed its annual return, balance sheets and profit and loss accounts for five consecutive years with the ROC and therefore clause (g) of section 433 applies.

5. On behalf of the respondents, the petition for winding-up is not opposed. No reply to the present petition has been filed by the respondent No. 2. This Court, therefore, directed her to file the reply in Court and to pay costs of Rs. 5,000/- for the delay in fling the reply. The learned counsel for the company however preferred not to file any reply and submitted that she would argue the matter without filing the filing the said reply. It is submitted that the petitioner has started another company with a similar sounding name - Pumpkin Academy of Digital Arts - and has taken away all the assets of the respondent-Company which should be directed to be returned to it. It is also submitted that criminal proceedings and proceedings for infringement of trade mark are pending against the petitioner, in addition to the Company appeal pending before this Court.

6. Considering the aforesaid submissions and the facts of the case, the winding-up petition is admitted. The business of the Company has been suspended for more than one year and so clause (c) of section 433 of the Act applies; the annual accounts and annual returns have not been filed since the year 2007 which attracts clause (g) of Section 433. In addition to these two clauses, I am of the view that it is just and equitable that the Company be wound up. Its share capital is small and is held by only three persons. It is more akin to a partnership concern. There are allegations against each other by the two directors (the petitioner herein and respondent No. 2) and the business has ceased. There is a

stalemate. In fact, the substratum of the Company seems to have been lost. Moreover, the Company is becoming debt-ridden due to the burden of maintaining of its office. It is stated in the present petition that as on date the Company owes an outstanding debt of Rs. 50,00,000 towards ICICI Bank which the Company is unable to pay. There are other proceedings against the petitioner stated to be pending. It is therefore held that clause (f) of section 433 is also attracted.

7. The petition is, therefore, admitted. The Official Liquidator attached to this Court is appointed as the Provisional Liquidator (''PL'') of the respondent. The OL is directed to take over all the assets, books of accounts and records of the respondent forthwith. The OL shall also prepare a complete inventory of all the assets of the respondent before sealing the premises in which they are kept. He may also seek the assistance of a valuer to value the assets. He is permitted to take the assistance of the local police authorities, if required.

8. The Company and its directors/servants/agents etc. are restrained from selling, transferring, mortgaging, alienating, creating any charge, or parting with possession of any of its immovable assets.

9. The directors of the Company are directed to file a Statement of Affairs with the Provisional liquidator within twenty-one (21) days from today. They shall also appear before the Provisional Liquidator on 7th August, 2013 at 3 p.m. and make a statement under Rule 130 of the Companies (Court) Rules, 1959.

10. Citation to be published in two newspapers-The Statesman (English) and Jansatta (Hindi) in terms of Rule 24 of the Companies (Court) Rules, 1959 (''Rules''). The cost of publication shall be borne by the Petitioner. A copy of this order shall be issued to the Official Liquidator within 5 days from today. He shall file status report before the next date of hearing.

List on 29th October, 2013 for further proceedings.

