(2009) 12 PAT CK 0003

In the Patna High Court

In Re: Jai Shree Udyog P. Ltd. (In Liquidation)

Date of Decision : 03-12-2009

Acts Referred:
Companies Act, 1956 — Section 454

Citation : (2010) 154 CompCas 195 : (2010) 1 PLJR 140

Hon'ble Judges : Ramesh Kumar Datta, J

Bench : Single Bench

Judgement

Ramesh Kumar Datta, J.—A report has been filed being O. L. R. No. 33 of 2009 dated November 20, 2009 at flag-8 by the official liquidator stating that the company (in liquidation) ceased to carry on business in 1982 and assets were disposed of in the year 1995-96 to pay the liabilities of the banks and financial institutions and at present there does not appear to be any liability either of the banks or the financial institutions. This fact is also borne out from the statement of affairs filed by the ex-director u/s 454 of the Companies Act, 1956.

2. It is also pointed out that from the examination of the statement of affairs dated March 16, 2009, it appears that the company does not possess any assets and properties in the shape of balance at bank, cash in hand, marketable securities, bills receivables, trade debtors, loan and advances, unpaid calls, stock in trade, work in progress, freehold property land and buildings, leasehold properties, plant and machinery, furniture, fittings, utensils, etc., or investment other than marketable securities, lease stocks, vehicles etc., except a liability to the extent of Rs. 11,93,478.92. Apart from the same, it is pointed out that the E.S.I. Corporation by its letter dated March 27, 2009 had also demanded an amount of Rs. 9,24,493 payable by the company (in liquidation).

3. It is further pointed out that the statement of affairs was got prepared through M/s. R. N. Mishra and Company, chartered accountant, for which he has raised a bill of Rs. 12,000. It is stated that the ex-management has deposited a sum of Rs. 7,000 and Rs. 5,000 totalling Rs. 12,000 with the official liquidator for meeting the expenses.

4. Permission is, accordingly, being sought for making payment of the sum of Rs.

12,000 aforesaid to M/s. R. N. Mishra and Company, chartered accountants.

5. It is also prayed that since there are no assets of the company to be realised, no useful purpose can be served by continuing the present proceedings and, accordingly, an order of dissolution of the company may be passed observing that the official liquidator cannot proceed with the winding up of the company for want of funds and assets.

6. On a consideration of the entire facts and circumstances of the case, this Court is inclined to accept the prayer made on behalf of the official liquidator.

7. It is, accordingly, directed that a sum of Rs. 12,000 may be paid by the official liquidator to M/s. R. N. Mishra and Company, chartered accountant towards his bill of Rs. 12,000 for preparing the statement of affairs as required u/s 454 of the Companies Act, 1956.

8. The preliminary report filed by the official liquidator along with O. L. R. No. 33 of 2009 is taken on record and the settlement of list of creditors is dispensed with. The preparation and audit of the final accounts is also dispensed with.

9. This Court is of the view that it is not possible for the official liquidator to proceed with the winding up of the company since there are no funds or assets to be realised; hence, it is just and reasonable that the company should be dissolved and it is, accordingly, ordered that the company is dissolved. The official liquidator is directed to forward a copy of the dissolution order to the Registrar of Companies, Bihar and Jharkhand within thirty days from the date of this order.

10. It is further made clear that it would be open to the authorities of the Employees State Insurance Corporation to proceed to realise their dues from such other persons, including the ex-directors of the company, who may be liable for the same, in accordance with law.