

(1980) 10 KAR CK 0005
In the Karnataka High Court
Case No : Company Petition No. 4 of 1979
In Re: Printersall (P.) Ltd., Syndicate Bank

Date of Decision : 24-10-1980

Acts Referred:

Companies Act, 1956 — Section 433 (c), 433 (e), 439 (b)

Citation : (1981) 51 CompCas 5 : (1980) 2 KarLJ 458

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Advocate : Tukaram S. Pai, for the Appellant; S. Vijayashankar, for the Respondent

Judgement

Chandrakantaraj Urs, J.—This petition under s. 433(c) and (e) read with s. 439(b) of the Companies Act, 1956 (hereinafter referred to as "the Act"), is presented by the petitioner-Syndicate Bank, Manipal, having one of its branch offices at Bangalore. The petitioner will be referred to in the course of this order as "the Bank".

2. The bank has prayed for the winding-up of the 1st respondent-company, M/s. Printersall (P.) Ltd. (hereinafter referred to as "the company"). Respondent Nos. 2, 3, 4, 5 and 6 are the directors of the company. The company is duly incorporated under the Companies Act on August 10 as a private company with a limited liability. The main objects of the company are as follows :

"(a) To acquire and take over the assets and liabilities of the partnership firm "Printersall" carrying on business at Bangalore as on 16th June, 1966, and to carry on the business of stationers, printers, lithographers, stereotypers, photographic printers, photolithographers, engravers, dry sinkers, envelope manufacturers, book binders, account book manufacturers, machine rulers, numericals printers, paper makers, paper bag and account book makers, box makers, cardboard manufacturers, type foundries, photographers, manufacturers of and dealers in paying, visiting, festive, complimentary and fancy cards, dealers in parchment, ink manufacturers, book sellers, publishers, paper manufacturers and dealers in the material used in the manufacturers of paper

and dealer in or manufacturers of any other articles or things of a character similar or analogous to the foregoing or any of them connected therewith.

(b) To start and carry on the business of printing and publishing books periodicals, newspaper, magazines and undertake the work of a publishing house by running book shop, etc.

(c) to carry on the business of manufacturer and dealers of links of every description and also typewriter ribbons and carbons papers and all other things which can be conveniently manufactured or dealt in by persons carrying on the business of printers, stationers and publishers."

3. It is unnecessary to set out the incidental or ancillary objects for which the company was formed.

4. The bank has granted financial accommodation under the head "Other Secured Loan" bearing No. 2075 at its Gandhinagar branch in the sum of Rs. 5,10,000. This was sanctioned on February 13, 1973, and was renewed on January 27, 1976. On February 15, 1973, the bank granted another secured overdraft loan bearing No. SOD-21700 in the sum of Rs. 1,50,000.

5. It is alleged by the bank that the company has not prospered in its business of running a printing press at No. 26, Crescent Road, High Grounds, Bangalore, in which the company had acquired leasehold right. It is further alleged that the company has become a defaulter in the matter of the two loans advanced by the bank. It is also alleged that the company stopped its business in or about November, 1975, and shut down its premises and the printing press. There was labour trouble and the other creditors of the company started proceedings against it. In these circumstances, the bank issued a registered notice demanding the amounts due in respect of the two aforementioned loans claiming as on the date of the notice a sum of Rs. 11,13,823.86 and Rs. 2,53,674.47. Copies of the notice dated July 5, 1977, were also issued to respondents Nos. 2 to 6, the directors of the company. The notice was served on July 8, 1977, on the company, a copy of the notice and the postal acknowledgment evidencing service of notice are annexed to the petition. After issue of the notice, in November, 1975, the company sold most of its machineries such as printing press and other accessories together with some other movables which had been hypothecated to the bank. The sale was with the consent and active participation of the bank. The amounts so realised from the sale as aforesaid was paid to the bank by the company towards its loans. The bank has now claimed in respect of the secured loan as outstanding on the date of the petition a sum of Rs. 7,95,971.90 with future interest thereon at 15 per cent. per annum and a sum of Rs. 3,23,270.15 with future interest thereon at 15 per cent. per annum in respect of the overdraft loan. It is asserted for the bank that the company, in spite of the statutory notice issued, has failed and neglected to pay the aforementioned sums. In these circumstances, the bank is compelled to file the petition for winding up the company.

6. This court ordered notice to the respondents on February 2, 1979. The petition was admitted on June 8, 1979, and citation was ordered in the Deccan Herald in the first instances fixing the date of hearing on July 13, 1979. Subsequently, the date of hearing was, at the request of the bank adjourned to August 31, 1979, with a direction that the citation be published on or before August 10, 1979. The citation was duly published in the Deccan Herald issue of August 8, 1979, and the same has been filed in court.

7. Respondent No. 6, one of the directors, was served in person even before August 8, 1979, but chose to remain absent and unrepresented. Having regard to the fact that the citation was duly published in the Deccan Herald newspaper, the court felt it unnecessary to order fresh notice to the other directors and as the respondents did not enter appearance on August 31, 1979, or on subsequent dates they were placed ex parte on 21st September, 1979. On the same date, allowing the application of the bank, the official liquidator was appointed the provisional liquidator of the company.

8. Subsequently, the bank was directed to deposit a sum of Rs. 500 initially towards the expenses of the provisional liquidator. Thereafter, on January 16, 1980, the court was informed that respondent No. 2 was dead. In the meanwhile, the official liquidator made a report stating that on preliminary investigation it was discovered that the company had no assets whatsoever and that no useful purpose would be served in winding up the company as it would be an empty formality inasmuch as the question of realising any amounts out of the "nil" assets of the company did not arise much less payments to the secured and unsecured creditors of the company. In these circumstances, it was submitted for the provisional liquidator that this court should in its discretion refuse to wind up the company, as any winding-up order made would only result in an additional financial burden to the official liquidator's office without corresponding benefits from the company's assets to any of the creditors-contributors.

9. On certain queries made by the court of the learned counsel for the bank admitted that the movables and machineries of the company were in fact sold with the consent and knowledge of the bank by the company and the proceeds credited to the loan accounts of the company with the bank. It is also submitted by the learned counsel for the bank that the company, to the knowledge of the bank, has no other movable or immovable assets. Even the leasehold rights have been relinquished in favour of the landlord pursuant to the decree of eviction obtained by the landlord. This fact is alleged in the petition itself and that the bank had paid the arrears of rent on behalf of the company and released the movable assets from attachment. However, the learned counsel pressed that once it is established to the satisfaction of the court that the very substratum of the company has disappeared, it would be impossible either to rehabilitate or resurrect the company particularly when the directors and the shareholders have shown no interest whatsoever in carrying on the business or settling the claims

of the bank and other creditors. He has further contended that having regard to the provision made under r. 293 of the Companies (Court) Rules, 1959, the cost of liquidator incurred by the official liquidator would have to be borne by the Government of India under the directions of this court, if any. It is, therefore, asserted for the bank that as there is sufficient proof given even on the report of the provisional liquidator that the company no longer has either a place of business or any substratum in the form of printing press, machineries, etc., to carry on the business for the purpose for which it was incorporated, it was necessary in public interest to wind up the company.

10. The learned counsel for the official liquidator has relied upon the decision of the High Court of Madras in the case of Karnatak Vegetable Oils and Refineries Ltd. Vs. Madras Industrial Investment Corporation Ltd. and Another, , wherein it was held that the jurisdiction of the court under s. 433 of the Act was a discretionary jurisdiction which need not be exercised at the instance of a single creditor. But in that case the petitioner was secured creditor and the company whose liquidation was sought had sufficient assets to cover the security and the winding-up the proceedings were opposed by the other creditors. Therefore, the case relied upon by the official liquidator is not an authority for the proposition that on the sole petition of a single creditor of a company ought not to be wound up. On the other hand, it is well-settled law, both in England and our country, that where the substratum of the company has gone or its only business has become impossible, the court would consider it just and equitable to wind up such company.

11. In these circumstances, the bank is entitled to succeed in this petition for a winding-up order by this court. Accordingly, respondent No. 1 company shall be wound up and the provisional liquidator shall be the liquidator of the company.

12. In the result, this court directs that the petitioner do advertise the winding-up order in the Deccan Herald within 14 days from to-day. The petitioner to serve a certified copy of this order on the Registrar of Companies not later than one month from this date. Respondents Nos. 3 to 6 do file the statement of affairs with the official liquidator as required under s. 454 of the Act.

13. The official liquidator shall take all steps to recover the debts and other amounts due to the company and shall exercise all the powers under the Act and Rules thereunder to discharge his duties as official liquidator. The official liquidator shall also cause a sealed copy of this order to be served on the company or its directors by pre-paid registered post. It is accordingly ordered.