
(2010) 11 DEL CK 0234

In the Delhi High Court

Case No : Co. Application (C) 12 of 2008

Jagatjit Brown Forman (India) Ltd.

APPELLANT

Vs

Mohit Singh

RESPONDENT

Date of Decision : 01-11-2010

Acts Referred:

Companies Act, 1956 — Section 458A

Citation : (2011) 2 BC 57 : (2010) 174 DLT 305

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Nemo, for the Appellant; Purnima Sethi, for Official Liquidator, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.—The Official Liquidator has filed this petition on behalf of Jagatjit Brown Forman (India) Limited, company under liquidation for recovery of Rs. 7,37,965/- with interest from Mr. Mohit Singh, F-1-2, Licencee C/o Shipra Motel and Resort Limited.

2. After service, response/reply dated 25th August, 2009 has been filed. It is stated in the reply that the supplies were in fact made to Shipra Motel and Resort Limited, whose name was subsequently changed to Shipra Motel and Restaurants Limited and then to Shipra Hotels Limited with effect from 30th May, 2007. It is admitted in the reply that the company under liquidation used to supply "Indian made foreign liquor" to the respondent but the last supplies were made in the year 1998-99. Thereafter, some payments were made by the respondent to the company under liquidation in 1999-2000 and at the end of the financial year 2000, i.e., 31st March, 2000 sum of Rs. 7,29,011.62 was due and payable to the company under liquidation. It is stated that after 1999, representative of the company under liquidation stopped coming to the premises of the respondent and this amount was written off on 31st March, 2002. The defence raised is that this claim is now barred by limitation. No other defence has been raised.

3. In view of the stand taken in the reply, it is directed that the name of the respondent will be read as Shipra Hotels Limited and this order is being passed against them.

4. After filing the said reply, the Official Liquidator and the respondent had filed affidavits by way of evidence but subsequently the respondent stopped appearing and the witness of the Official Liquidator was not cross-examined.

5. The Official Liquidator has proved on record accounts of the company under liquidation, which includes account of Mohit Singh c/o Shipra Motel and Resorts Limited, now known as Shipra Hotels Limited and the amount payable. He has also proved on record the debtors list, ledger as well as the notice for demand dated 13th September, 2005 and the said documents have been marked Exhibit PW-1/1, PW-1/2 and PW-1/3. I need not examine the evidence in detail in view of the clear stand taken by the respondent in the reply wherein they have admitted that they were liable to pay Rs. 7,29,011.62 at the end of the financial year 31st March, 2000. The only defence taken by the respondent is that the said amount was written off on 31st March, 2002 and the claim made by the Official Liquidator on behalf of the company in liquidation is barred by limitation.

6. C.P. No. 439/1999 was filed for winding up of the company under liquidation on 14th December, 1999. Provisional Liquidator was appointed by this Court on 19th December, 2003 and the final winding up order was passed on 12th January, 2005. The present proceedings for recovery were filed on 20th December, 2007. Section 458A of the Companies Act, 1956 provides for exclusion of time in computing period of limitation notwithstanding anything to the contrary in the Limitation Act, 1908, now Limitation Act, 1963. It stipulates that the period from the date of commencement of winding up to the date on which the winding up order is passed has to be excluded. It further states that a period of one year immediately following the date of order of winding up is to be also excluded. Thus, the period between 19th December, 1999 to 12th January, 2005 has to be excluded. Another period of one year from 12th January, 2005 till 11th January, 2006 has to be also excluded. If we exclude these periods, the claim made on behalf of the company under liquidation will be within the limitation period. It is accepted that the credit balance of Rs. 7,29,011.62 was written back only on 31st March, 2002 and the last part payment were made in 1999. In these circumstances, the present application is allowed and a decree for a sum of Rs. 7,37,965/- along with interest @ 12% per annum is passed in favour of the company under liquidation and against the Shipra Hotels Limited. The interest will be payable by the respondent from the date of filing of the petition till payment is made.

The application is disposed of.