

(2009) 10 DEL CK 0144

In the Delhi High Court

Case No : C.A. (C) No. 18 of 2008 in C.P. No. 439 of 1999

Jagatjit Brown Forman (India) Ltd.

APPELLANT

Vs

Sen Law and Company

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Companies Act, 1956 — Section 446, 454

Citation : (2009) 10 DEL CK 0144

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Purnima Sethi, for the Appellant;

Judgement

Sudershan Kumar Misra, J.—This is an application moved by the official liquidator u/s 446 of the Companies Act, 1956 praying for recovery of an amount of Rs. 46041.84, along with interest @ 18% per annum, from the respondent - M/s. Sen Law and Company.

2. Pursuant to a petition filed on 14th December, 1999, M/s. Jagatjit Brown Forman Pvt. Ltd. was directed to be provisionally wound up on 19th December, 2003 and final winding up orders were passed by this Court on 12th January, 2005. The official liquidator attached to this Court was appointed as its liquidator.

3. The company in liquidation, i.e. M/s. Jagatjit Brown Forman Pvt. Ltd., was in the business of manufacture and sale of liquor and alcoholic beverages and other consumer products.

4. On examination of the statement of affairs filed by the ex-Directors u/s 454 of the Companies Act, 1956 along with a list of debtors, the official liquidator discovered that an amount of Rs. 46041.84 is due to the company in liquidation from the respondent. The Official Liquidator has, therefore, moved this application praying for an order of recovery of the said amount, along with interest @ 18% per annum till its realization in favour of the applicant, against the respondent.

5. On 29th February, 2008, Mr. D.K. Pandey, Advocate, entered appearance on behalf of the respondent, pursuant to a notice issued by this Court on 15th January, 2008. The Official Liquidator was directed to supply a copy of this application, along with supporting documents, to counsel for the respondent within one week and the respondent was given an opportunity to file a reply to the same within three weeks thereafter and the matter was adjourned to 28th May, 2008.

6. However, on 28th May, 2008, there was no appearance on behalf of the respondent and fresh notice of the application was directed to be issued to the respondent, returnable on 20th October, 2008. This order apparently came to be passed due to an oversight and the previous order passed by this Court on 29th February, 2008 where counsel for the respondent had entered appearance went unnoticed. Thereafter, on 28th October, 2008, a statement was made by counsel for the applicant that, in fact, the respondent stood served and since there was no appearance on behalf of the respondent, adverse orders were deferred and the matter was adjourned to 5th March, 2009 in the interests of justice.

7. On 5th March, 2009, the matter was adjourned to 20th July, 2009. On 20th July, 2009 also, there was no appearance on behalf of the respondent and counsel for the applicant prayed for some time to file an affidavit of service of respondent No. 2. Affidavit of service of respondent No. 2 has since been filed and the matter was adjourned to 12th August, 2009. Since there was no appearance on behalf of the respondent even on 12th August, 2009 also, the respondent was directed to be proceeded ex-parte and the matter was adjourned to 15th September, 2009. On 15th September, 2009, the applicant's evidence was completed and arguments were heard.

8. An affidavit of Mr. Sudhir Kapoor, Assistant Official Liquidator has been filed on 27th August, 2009 by way of evidence in support of the application, which is Ex.PW1. The applicant has proved a copy of the statement of affairs filed by the ex-Directors, as also a copy of the ledger account pertaining to the respondent - M/s. Sen Law and Company, which was maintained by the company in liquidation. In that ledger, a debit balance of Rs. 46041.84 is reflected. He has also proved a copy of the demand notice sent to the respondent on 13th September, 2009 by the Official Liquidator u/s 446 of the Companies Act, 1956 seeking recovery of Rs. 46041.84. This notice of demand was duly served upon the respondent. The respondent has not bothered to respond to the notice of demand.

9. The respondent had been duly served with notice of these proceedings and, in fact, on 29th February, 2008, counsel had also appeared for the respondent. However, thereafter, the respondent has chosen to remain absent and, consequently, this Court had no option but to direct that the respondent be proceeded ex-parte.

10. There is no defence to the claim. The amount claimed stands proved.

11. Consequently, the respondent is directed to pay an amount of Rs. 46041.84 to the applicant, along with interest @ 6% per annum from the date of the application till realization of the amount, along with 2% administrative expenses which are to be recovered from the respondent.

12. The application is disposed of.