
(2003) 07 AP CK 0059

In the Andhra Pradesh High Court

Case No : CA No's. 986 of 2002 and 169 of 2003 in CP No. 133 of 2001

K. Subhakar Rao

APPELLANT

Vs

Monetreck Computers and Others

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Companies Act, 1956 — Section 450(3)

Citation : (2003) 5 ALD 428 : (2003) 3 APLJ 273 : (2004) 50 SCL 723

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

Advocate : Party in Person in CA No. 986 of 2002 and P.V. Rama Raju, in CA No. 169 of 2003, for the Appellant; M. Srinivasa Reddy, for Respondent No. 1, B. Vishwanatha Reddy, in CA No. 986 of 2002 and for Respondent No. 3 in CA No. 169 of 2003, M. Anil Kumar, for the Official Liquidator, in CA No. 986 of 2002 and Respondent No. 2 in CA No. 169 of 2003 and T. Surya Karan Reddy, SC for Central Government, in CA No. 986 of 2002, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Ramana, J. 1. The applicants, who claim to be small money depositors, in M/s. D.C.L. Finance Limited (company in liquidation) have filed these two applications. C.A. No. 986 of 2002, has been filed by Sri. K. Subhakar Rao, u/s 466 of the Companies Act, 1956 read with Rule 116 of the Companies (Court) Rules, 1959 praying to recall the order dated 14-12-2001 passed by this Court in C.A. No. 855 of 2001 in C.P. No. 133 of 2001 and restore status quo ante in the larger interests of the small money deposit holders, while C.A. No. 169 of 2003 has been filed by Sri. C.V. Subba Rao, praying to stay the operation of the said order.

2. It is the contention of the applicants that the financial position of the company in liquidation is not so grave as to warrant its winding up. According to the applicants, C.A. No. 855 of 2001 is a collusive application, the same having been filed by the 1st respondent-M/s. Monetreck Computers at the behest of the

company in liquidation, the applicants contended that the appointment of Provisional Liquidator being a drastic measure, ought not to have been resorted to by this Court, as prayed for by the 1st respondent in the said application. In support of this submission, he placed reliance on the judgment of the High Court of Madhya Pradesh in *Kailash Prasad Mishra v. Medwin Laboratory (P) Ltd.* (1995) 5 Comp LJ 449. The applicants submit that if the order dated 14-12-2001, passed by this Court in C.A. No. 855 of 2001 is allowed to operate, persons like him, who have deposited small amounts in the company in liquidation, will not be able to realize or recover their money as any amount of money realized through the sale of the properties of the company in liquidation would first be appropriated towards the dues of the secured creditors. They contended that inasmuch as the company in liquidation made a statement before the Company Law Board that they will pay off the dues of the depositors in a phased manner, there was no necessity for the Court to appoint a Provisional Liquidator. According to the applicants, by reason of appointment of Provisional Liquidator, the undertaking given by the company in liquidation before the Company Law Board is defeated. Inasmuch as the Liquidator appointed by this Court is only a Provisional Liquidator, it was contended by the applicants that he not being a full-fledged Official Liquidator, would not enjoy the same powers as that of the Official Liquidator, and therefore, the powers of the Provisional Liquidator should be limited and restricted. In support of his contention, that the Provisional Liquidator does not enjoy the same powers as that of the Official Liquidator, the learned Counsel placed reliance on the judgment of the High Court of Madras in *Sri Chamundi Theatre Mysore Talkies Ltd. v. S. Chandrasekara Rao* (1974) 45 Comp Cases 60.

3. Sri K. Gopala Krishna Murthy, the learned Counsel appearing on behalf of the secured creditor would submit that the company in liquidation is due to them monies to the tune of Rs. 26.00 crores. The applicants being only small money depositors and unsecured creditors have no locus standi either to question the order of winding up of the company in liquidation -or appointment of Provisional Liquidator. As the company in liquidation was unable to clear their dues, this Court ordered its winding up. When after the order of winding up, it was brought to the notice of the Court by the 1st respondent that the Directors of the company in liquidation were making frantic efforts to alienate the immovable properties, this Court with a view to protect the interests of the company in liquidation and secured creditors and small money depositors, appointed a Provisional Liquidator in C.A. No. 855 of 2001 by order dated 14-12-2001. Inasmuch as pursuant to the orders of this Court, the Provisional Liquidator so appointed, had already taken certain steps in the direction of protecting the immovable properties of the company in liquidation from being alienated by the Directors of the company in liquidation, which include conduct of meetings of the secured creditors, appointment of valuers to value the properties of the company in liquidation and has also put the valued properties to sale by taking out advertisements in newspapers, which sale was even confirmed by this Court, it

would not be proper for this Court at this distance of time, to recall the order dated 14-12-2001 passed by this Court appointing Provisional Liquidator. He would contend that the Provisional Liquidator has all the powers as that of an Official Liquidator, and therefore, the Provisional Liquidator is empowered to exercise all the powers that are vested in the Official Liquidator, and therefore, the applicants who are small money depositors cannot have any grievance with any of the actions of the Provisional Liquidator and his powers need not be limited or restricted. To support this argument, the learned Counsel for the secured creditor sought to rely on the paragraph relating to the Position of the Provisional Liquidator, See Guide to the Companies Act, 1956 by A. Ramaiya; 15th Edition 2001 Treatise Part-II at Page 3461.

4. Heard the learned Counsel for the applicants and the learned Counsel for the secured creditor at length.

5. As can be seen from the averments and the arguments advanced on behalf of the applicants, the only grievance of the applicants is that in the event any money being realized through the sale of the properties of the company in liquidation, their claims would stand subordinate to the claims of the secured creditors, and they being small money depositors, would run the risk of realizing their monies. At the first instance, it may be noticed that though this Court appointed Provisional Liquidator as far back as on 14-12-2001, the applicants have not taken any steps to get the said order set aside immediately or prefer appeal thereagainst. After lapse of more than one and a half year, they have come up with the present applications seeking recall/stay of the said order. Be that as it may, though the applicants sought recall/stay of the order of appointment of Provisional Liquidator, they have neither attributed any mala fides to the Provisional Liquidator nor have placed any material before this Court to show that the Provisional Liquidator so appointed by this Court has misused the powers vested in him or has misappropriated the amounts realized by him through the sale of the properties of the company in liquidation. It, may be noticed that pursuant to the orders passed by this Court appointing Provisional Liquidator, the Provisional Liquidator so appointed, has taken over charge of the properties of the company in liquidation, and has taken certain steps, which include conduct of meetings of the secured creditors, valuation of the properties of the company in liquidation and sale thereof, which sale was even confirmed by this Court.

6. To consider the question whether or not the Provisional Liquidator appointed by this Court has the same powers as that of the Official Liquidator, it is useful to refer to Section 450(3) of the Companies Act, 1956 which reads thus:

Where a Provisional Liquidator is appointed by the Court, the Court may limit and restrict his powers by the order appointing him or by a subsequent order, but otherwise he shall have the same powers as a Liquidator.

7. By a reading of the above provision, it becomes clear that unless this Court

limits or restricts the powers of the Provisional Liquidator either by the order by which he was appointed or by a subsequent order, the powers of the Provisional Liquidator will be the same as the Official Liquidator. In the instant case, it may be noticed that this Court while appointing the Provisional Liquidator as Official Liquidator of the company in liquidation has not chosen either to limit or restrict the powers of the Provisional Liquidator, and as such, the Provisional Liquidator should be understood to be vested with same powers as that of the Official Liquidator. Though this Court is competent to vary its order appointing the Provisional Liquidator by a subsequent order by limiting or restricting the powers of the Provisional Liquidator, no material whatsoever has been placed by the applicants to justify limiting or restricting the powers of the Provisional Liquidator. The administration of the affairs of the company in liquidation and the activities being undertaken by the Provisional Liquidator are under constant scrutiny by this Court. All the actions taken by the Provisional Liquidator hitherto with the permission of the Court have been found to be in the interest of the company in liquidation and also in the interest of the secured and unsecured creditors. None of the activities of the Provisional Liquidator encountered any resistance from any quarter and every action taken by him was found to be in accordance with law and within the powers vested in him. As long as the activities and administration of affairs of the company in liquidation by the Provisional Liquidator remain to be under the constant control of this Court and so long as his activities are found to be in the best interests of the company in liquidation and the secured and unsecured creditors, there should be no reason to limit or restrict his powers, and more so when no allegation of misuse of powers or any oblique motive is attributed to the Provisional Liquidator. Merely because the applicants are small money depositors and they would face difficulty in realizing their deposits from the company in liquidation, is not a ground for this Court to exercise its power u/s 466 of the Companies Act, 1956 to recall or stay its order appointing Provisional Liquidator and appointing in his place an Administrator to administer the affairs of the company in liquidation. The applicants have not placed any material or proof to the satisfaction of the Court that the proceedings in relation to the winding up of the company in liquidation are required to be stayed. Reliance placed by the learned Counsel for the applicants on the judgment of the High Court of Madhya Pradesh in *Kailash Prasad Mishra v. Medwin Laboratory (P) Ltd.* and the judgment of the High Court of Madras in *Sri. Chamundi Theatre Mysore Talkies Ltd. v. S. Chandrasekara Rao*, in support of their propositions are of no help for the reason that appointing a Provisional Liquidator and limiting or restricting his powers depends upon facts and circumstances of each case. In the instant case, no grounds have been shown either to recall the order appointing Provisional Liquidator or limiting or restricting his powers.

8. At this stage the learned Counsel for the applicants argued that the applicants should be permitted to participate in the winding up proceedings. It is always open to the petitioner to file appropriate applications seeking permission of the

Court to allow them to participate in the liquidation proceedings.

9. For the reasons foregoing, I do not find any substance in the applications, and they deserve to be dismissed, and they are accordingly dismissed. No costs.