

(2015) 07 KAR CK 0140
In the Karnataka High Court
Case No : O.S.A. No. 20 of 2014

Kingfisher Airlines Ltd.

APPELLANT

Vs

Aerotron Ltd.

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

Citation : (2015) 4 AKR 454 : (2015) 192 CompCas 328 : (2015) 4 KCCR 3404

Hon'ble Judges : Vineet Saran, J;Aravind Kumar, J

Bench : Division Bench

Advocate : S.V. Rajesh, for the Appellant; S.S. Naganand, Senior Counsel, A.C. Achappa and NDA Partners, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vineet Saran, J—The respondent-company Aerotron Ltd., having its office in the United Kingdom, had filed Company Petition No. 214 of 2012 under section 433(e) and (f) read with sections 434 and 439(1)(b) of the Companies Act, 1956, for winding up of the appellant-company. The case of the respondent is that certain amounts were admittedly due to be paid by the appellant-company to the respondent-company for which an agreement was entered into between the two companies on February 24, 2012, whereby the appellant-company had acknowledged its liability to pay the outstanding amounts in instalments spread over several months between March and October, 2012. The appellant contested the matter by denying its liability to pay the said dues, on the ground that the same were disputed dues and it also raised an objection that since the respondent-company was carrying on business in India with an established place of business in India and having failed to comply with the provisions of sections 592 to 594 of the Companies Act, it would be prohibited from bringing a suit or instituting legal proceedings in India, as provided under section 599 of the Companies Act. After hearing learned counsel for the parties, vide a reasoned order dated December 6, 2013, passed by the learned company judge, company petition has been admitted and posted for hearing on the question of

advertisement of the petition. Challenging the said order of admission of the company petition, this appeal has been filed.

2. We have heard Sri S.V. Rajesh, learned counsel for the appellant as well as Sri S.S. Naganand, learned senior counsel along with Sri A.C. Achappa, learned counsel for the respondent and perused the records.

3. To support his contention that the respondent-company is carrying on business activities in India, learned counsel for the appellant has placed reliance on certain print outs of the website of the respondent-company wherein it has been stated that the company provides support system to its customers in India as well as other countries by providing technical assistance, spare supplies and distribution. It is submitted that on the website of the respondent-company it is also mentioned that the company has developed new markets in Egypt, India, Kazakhstan and Jordan. On the basis of this, learned counsel for the appellant has vehemently contended that the company is carrying on business in India. However learned counsel has not been able to show any document in support of his contention that the respondent-company is having any office, warehouse, store house, etc., within the territory of India or any of its employees are permanently posted in India. The documents on which learned counsel for the appellant has relied upon only goes to show that the respondent-company provides technical service in India by providing spare parts and other technical assistance which would not mean that they have any establishment or office in India but provide such services on demand, as and when required by staff or engineers going to India temporarily for providing such services. As such, we are not satisfied with the objection of the appellant that in such circumstances the respondent-company would be obligated to comply with sections 592 to 594 of the Companies Act, 1956.

4. Learned counsel for the appellant has relied upon the decision of the Delhi High Court rendered in the case of Dabur (Nepal) P. Ltd. Vs. Woodworth Trade Links P. Ltd., (2013) 112 CLA 216 : (2012) 175 CompCas 338 , to support his contention that if a company has an office or establishment within the territory of India it would have to comply with the provisions of sections 592 to 594 of the Companies Act. On facts, the said decision would not be applicable as in the said case the company in question was a subsidiary of an Indian company which admittedly had its warehouse, store house in India where the goods of the company was stored. The said company also had transactions within India and had an address of correspondence in India. As such, we are of the view that the ratio of the said judgment would not be applicable to the facts of this case.

5. As regards admission of the debts by the appellant-company payable to the respondent-company, the learned company judge has placed reliance on the agreement between the two companies dated February 24, 2012, whereby the appellant-company has acknowledged an outstanding of US \$ 56,16,024.12 plus accrued interest after January 31, 2012. Admittedly the said amount has not been paid within the time provided in the said agreement or even thereafter.

Thus, being prima facie satisfied that the appellant-company was unable to pay its debts, company petition has been admitted. In such facts, admission of the petition cannot be faulted.

6. In the end, learned counsel for the appellant has also submitted that under the Foreign Exchange Management (Establishment in India of Branch or Office or other Place of Business) Regulations, 2000, there is a prohibition under regulation 3 for establishing branch office in India by a foreign company without prior approval of the Reserve Bank of India. In view of the fact that we have already held above that the appellant has not been able to place any material on record to show that the respondent-company has any office (be it a site office or project office or warehouse or store house) within the territory of India, the provisions of the Regulations of 2000 would not be applicable. In view of the aforesaid, we do not find any good ground to interfere with the order of admission passed by learned company judge. Appeal is accordingly dismissed. However, there shall be no order as to costs.