(2013) 12 KAR CK 0372

In the Karnataka High Court

Case No : Company Petition No. 104 of 2013 Along with Company Application No. 1086 of 2013

Mr. S.C. Jamakhandimath APPELLANT

Vs

M/s. Jains and Alliance Palms Venture Private Limited, Formerly, M/s. Alliance Palms Developers and Constructions Private Limited RESPONDENT

Date of Decision : 13-12-2013

Acts Referred:

Citation : (2013) 12 KAR CK 0372

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : M.S. Narayan, for the Appellant; Y.K. Narayana Sharma, for the Respondent

Judgement

Anand Byrareddy, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the respondent. It is the petitioner''s case that he is the proprietor of one M/s. Impress Ad. Aids and Displays and that the respondent had approached the petitioner to advertise its products through the petitioner and orders were placed in respect of the same. The contract was for a period of three months in the year 2008. The respondent was required to pay rentals to the petitioner in terms of the agreement from time to time. There was part payment and the respondent is said to have failed to pay the rentals in terms of the agreement and became due in a sum of Rs. 1,02,33,998/- as of September 2008. The respondent is said to have represented to the petitioner that it would be in a position to make payment of the outstanding amount provided it is invested under its project known as ''Alliance El Dorado Park'', to purchase two villas, bearing Nos. 105 and 408 with a built-up area of 2612 square feet and 3210 square feet, respectively, situated at Siddihosakote village, Kasaba Hobli, Anekal Taluk.

Based on the representation, the petitioner had agreed and had entered into an agreement dated 26.9.2008, to purchase the land and building as aforesaid, on a condition that whatever amounts were payable by the respondent, would be adjusted in the sale price of the land and buildings. Thereafter, the respondent is said to have utilised the service of the petitioner in completing the contract, which was extended till February 2009 and it was understood that any payments to be made by the respondent could be adjusted towards the sale price, as referred to hereinabove.

Having proceeded on that basis, there was default on the part of the respondent in completing the transaction and it is in that regard that, after exchange of correspondence, a suit was instituted by the petitioner to recover a sum of Rs. 1,73,41,398.60 with interest. The suit was decreed after contest on finding that the respondent having received the amount was established and it was held that the respondent was bound to refund the same with interest. That is subject matter of challenge in an appeal. Though there was an interim order of stay by this court, on its appellate jurisdiction, subject to payment of deposit of a certain amount by the respondent, the respondent is said to have failed to do so and the order of stay granted has lapsed. The matter has however been admitted to file and is pending final hearing. It is in this background that the present petition is instituted on the respondent''s failure to respond to the notice of demand of the decretal amount, which according to the petitioner, is a crystallised debt due, which the respondent is unable to pay.

2. Given the above circumstances, the debt was not an admitted debt, but is a seriously disputed one in relation to the contract, which was the subject matter of a suit and which is now pending in appeal. Therefore, it cannot be proceeded on the basis that there is an admitted debt, which the respondent has failed to pay. Hence, the present petition for winding up of the company would not be tenable and is accordingly dismissed.

Consequently, the company application is also dismissed.

