(2012) 04 KAR CK 0100

In the Karnataka High Court

Case No : Company Application No. 1875 OF 2007 and Company Petition No. 106 OF 2002

M/s. DEEBE Power Systems Pvt. Ltd. APPELLANT

Vs

Sri K. Balasubramaniam, Sri Devaraj Uchil Davsadan and Sri M. Padmanabha RESPONDENT

Date of Decision : 16-04-2012

Acts Referred:
Companies Act, 1956 — Section 543 (1), 634

Citation : (2012) 04 KAR CK 0100

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : K.S. Mahadevan and Sri V. Jayaram, for O.L, for the Appellant; G. Krishnamurthy, for R3, for the Respondent

Final Decision : Allowed

Judgement

A.S. Bopanna

1. The Instant application is filed by the Official Liquidator on behalf of the Company in liquidation u/s 543(1) of the Companies Act. By the said application, the Official Liquidator has alleged misfeasance and breach of trust against the respondents who were the erstwhile Directors of the Company in liquidation. In that regard, under different leads, a total sum of ` 11,66,171/- with interest at 18% p.a. is claimed.The respondent Nos. 1 and 2, though served are unrepresented. The 3rd respondent has appeared through counsel and filed his statement of objections disputing the claim put forth in the application in so far as the 3rd respondent is concerned. In that light, the matter had been set down for evidence. The witness on behalf of the applicant was examined as PW-1 and the document at Exs.P1 and P2 were marked. The 3rd respondent filed his affidavit by way of evidence as RW-1.

2. Heard Sri V. Jayaram learned counsel appearing for the applicant and Sri G. Krishnamurthy, learned counsel appearing for the 3rd respondent and perused

the application papers.

3. The Company in liquidation was ordered to be wound up on 20.12.2002. Subsequent thereto, the respondent No. 1 has filed the statement of affairs and the 2nd respondent has adopted the same. Admittedly, the 3rd respondent has not filed the statement of affairs since it is contended by the said respondent that he had resigned as a Director of the Company in liquidation in the year 1997 and in any event, he was not incharge of the day-to-day affairs of the Company in liquidation. The Official Liquidator, on going through the Statement of accounts filed along with the statement of affairs, has raised the claims as made in the instant application. The first claim of ` 9,24,000/- is in respect of the difference of value relating to the furniture and fixture plant and machinery, vehicles and land and building. In that regard, it is contended that the valuation indicated to the statement filed, is at ` 18,00,000/- while the valuation made by M/s. Tecsok engaged by the Bank of India is in a sum of ` 8,76,00/-. The difference is therefore sought from the respondent. The second claim relates to the indication of the amount under the head of debtors. In this regard, since proceedings initiated for recovery of ` 1,35,436/- was dismissed as barred by limitation and therefore the respondents are held responsible for the same. The third claim relates to the cash and bank balance amounting to a sum of ` 9,164/-. The last claim relates to the loans and advances which had been indicated since a sum of ` 1,04,790/- was indicated towards telephone deposit, but a sum of ` 7,219/- was recovered and therefore, the balance of ` 97,571/- is claimed from the respondents.

4. The upper division clerk M. Ramamurthy was examined as PW-1 by filing his affidavit by way of evidence. In fact, he has reiterated the points stated in the application. The statement of affairs was marked as Ex.P1 and the relevant entries therein to make the claim in the application have been marked as Exs. P1(a) and P1(b). The valuation report of M/s. Tecsok is marked as Ex.P2. The said witness has been cross-examined at length on behalf of the 3rd respondent. Keeping in view the contention put forth by the 3rd respondent, appropriate suggestions have been made to the witness. The witness in that regard, admits that the 3rd respondent herein has not filed the statement of affairs and no action has been initiated against him. The witness also admits that the 1st respondent was incharge of the day-to-day affairs and the 3rd respondent does not know the details. The said portion of the cross-examination coupled with the evidence tendered by the 3rd respondent as PW-1, would indicate that the 3rd respondent infacts was not incharge of the day-to-day affairs of the Company in liquidation though no documentary evidence have been filed with regard to the resignation in the year 1997. Even assuming for a moment that the fact of resignation has not been established, the allegation of misfeasance and breach of trust against the director could be made and established only if it is found that such Director was incharge of the day-to-day affairs of the Company, Therefore, when admittedly the 3rd respondent was not incharge of the day-to-day affairs, the claim intiated herein against the 3rd respondent cannot be sustained.

5. The question that would therefore arise in with regard to the claim which has been made against respondent Nos. 1 and 2. Having noticed the nature of the claim and also the evidence tendered through PW-1, the first item relates to the difference in valuation, between the one indicated in the statement of affairs and the one by the valuers viz. M/s Tecsok. Admittedly the valuation indicated in the statement of affairs is of the year 2003 while the valuation has been made by M/s. Tecsok in the year 2005. When valuation relates to furniture and fixture, plant and machinery as also vehicle, naturally there would be depreciation. In other words, the valuation indicated in the statement of affairs based on the balance sheet would be on book value and therefore, even though there is a difference in value and the respondent Nos. 1 and 2 have not disputed the claim on the face of it, would not be sustainable and therefore, claim of ` 9,27,000/- cannot be sustained even against respondent NOS. 1 and 2. In so far as other claims the same relates to debtors, cash and bank balance and also the deposit which was indicated with the Telephone Department but not realised. These aspects relate to the day-to-day affairs of the Company and the 1st respondents who was incharge of the day-to-day affairs along with. 2nd respondent was required to explain the said discrepancy. Though these are no detailed pleadings in the application with regard to the nature of misfeasance and breach of trust, the fact that there is short fall of the amount recovered from the amount which is indicated is the statement of affairs needed explanation from respondent Nos. 1 and 2. Hence the claim made under the said heads in any event, would be maintainable as recoverable from respondent Nos. 1 and 2, Therefore, on deducting a sum of ` 9,27,000/- which has been disallowed by me from the total claim made in the application, the applicant would be entitled to recover a sum of ` 2,42,173/- from respondent Nos. 1 and 2 jointly and severally.

6. In so far as the interest which has been claimed in the application at 18% p.a., I am of the opinion that it would be unreasonable to grant such interest and the appropriate interest to be granted would be 6% p.a. on the amount which has been indicated above In the result, the application against the 3rd respondent is dismissed and the application against respondent Nos. 1 and 2 is allowed in part. The Official Liquidator shall recover a sum of ` 2,42,171/- with interest at 6% p.a. from the respondent Nos. 1 and 2 by treating this order as a decree as contemplated u/s 634 of the Companies Act