(1999) 01 KAR CK 0044

In the Karnataka High Court

Case No : Company Petition No. 80 of 1994

M/s. Karnataka Rubbers Limited — APPELLANT

Vs

Karnataka State Financial Corporation, Bangalore and Others — RESPONDENT

Date of Decision : 25-01-1999

Acts Referred:
Companies Act, 1956 — Section 433 (c)
Karnataka State Financial Corporations Act, 1951 — Section 29

Citation : AIR 1999 Kar 254 : (2000) 101 CompCas 421 : (1999) 3 KarLJ 65

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Sri B.S. Keshava Iyengar and Sri F.V. Patil, Sri Dinesh Kulkarni, for the Appellant; Sri K. Gopal Hegde, Sri Ashok B. Hindigeri, Sri C.S. Ramdas, Sri B.S. Hadimani, Smt. Shobha Bhavikatti, for the Respondent

Judgement

1. This is a petition filed u/s 433(c) of the Companies Act wherein the petition presented by the Managing Director of the Company seeks an order of winding up. The contentions raised in the petition are that for a variety of reasons the Company ran into difficulties and reached a stage where it was neither able to do business satisfactorily nor was it able to repay large amounts which it owed to the various financial institutions. According to the petitioner as a result of this situation, in the year 1992 the K.S.I.I.D.C. exercising powers u/s 29 of the Karnataka State Financial Corporations Act locked the premises as a result of which the business came to a standstill. According to the petitioners for several years, the assets of the Company were not liquidated and since the liabilities kept increasing, in the year 1997 they filed a writ petition asking for appropriate directions from the Court inter alia for purposes of reviving the Company. In the meanwhile, the KS.I.I.D.C. contends that after a lot of effort a buyer was found for the Company''s properties and that the same was sold and a certain amount of money was recovered. That is a separate issue which I am not dealing with as far as the present petition is concerned. Before me, the petition has been strongly opposed by the financial institutions and particularly the Canara Bank to

whom substantial amounts of money are due. On behalf of the bank it is contended that it is due to gross mismanagement on the part of the persons in charge of the business of the Company that a financial crisis was created and the bank also contends that this was deliberately done after borrowing amounts from the institutions and that the present petition to the Court is an attempt to get out from the liabilities on the part of the Directors. The bank therefore opposes the winding up and it has also been pointed out by the bank that pursuant to negotiations the bank did make available a lot of further assistance for purposes of reviving the unit and it is the contention of the bank that these additional amounts have also been misused.

2. Though I fully appreciate the anxiety of the financial institutions, the position in law is very clear insofar as if it is demonstrated that the operations of the Company have come to a standstill and that the business has not been carried on for more than one year, ground exists for a winding up order to be made. Certain other objections were also pleaded which I have examined and I find that none of them can come in the way of the Court granting the application filed on behalf of the petitioners. At the same time, I do appreciate the parallel liabilities and the need to secure the interest of the financial institution and from this point of view I propose to issue certain specific directions to the Official Liquidator.

3. The petition succeeds. The Company is ordered to be wound up u/s 433(c) of the Companies Act. The Official Liquidator is appointed Liquidator for this purpose. The petitioners represented by the Managing Director and the other Directors to deposit a sum of Rs. 5,000/- per Director with the Official Liquidator against initial expenses for the winding up proceedings within a period of four weeks from today. The Directors shall also keep the Official Liquidator informed of their exact whereabouts for the next five years. As far as the liquidation proceedings are concerned, the Official Liquidator shall take all necessary steps for securing the interest of the financial institutions. The Official Liquidator shall look into the complaint that has been made on behalf of the Company as also on behalf of the Canara Bank that the assets of the Company were valued at over Rs. Five Crores and that the same has been sold for a much lower amount and the circumstances under which this has happened. If it is necessary, the Official Liquidator to seek necessary directions from the High Court from time to time.

4. The petition is accordingly allowed and stands disposed off. The necessary advertisement to be published by the petitioner in the local edition of the Times of India within two weeks from today and a copy of the same be filed with the office of this Court and the office of the Official Liquidator.

5. C.A. Nos. 367 and 369 of 1998 are also allowed. The petitioner''s learned Advocate to make the necessary amendment in the cause title. The Official Liquidator to take note of the fact that respondent 5 is also a party to these proceedings while taking all further steps, particularly while examining the legality or otherwise of the alienation made in favour of respondent 5.

6. Before parting with this petition, I need to take serious note of the submissions canvassed by the learned Counsel who represents the bank that several crores of rupees of public money are involved in this case and it is his contention that the failure of the Company has been deliberately brought about and that the Directors who have applied for winding up of the Company are trying to take advantage of their own wrongs in order to get out of their personal liabilities. The Official Liquidator is directed to forthwith engage the services of a competent Chartered Accountant for purposes of investigating into the complaint put forward by the bank and the bank is directed to deposit a sum of Rs. 10,000/- with the Official Liquidator within four weeks against initial expenses. The Official Liquidator shall direct the Chartered Accountant to carry an immediate and thorough investigation into the records of the Company and the conduct of the Directors and to submit his brief report to this Court for purposes of ascertaining as to whether there has been misfeasance on their part as also whether any funds of the Company have been misused, diverted or misappropriated. The Official Liquidator shall instruct the Chartered Accountant to investigate into the case thoroughly as it is the intention of this Court that no guilty person be he a director or employer of the Company should be spared.

7. It has become endemic, for Companies to avail of large sums of public finance, for the funds to be imprudently used, for the money to be diverted, siphoned out or misappropriated and for the Company to be thereafter taken into liquidation and when this happens, all the sins are forgiven because no steps are taken against the guilty persons. It is high time that those incharge of the affairs of companies realise that they are trustees not only of corporate assets but also in respect of the massive amounts of money made available by financial institutions and it would be necessary for the Courts, in order to bring about a level of purity in corporate affairs, to make a glaring example of those guilty persons involved in a few cases, which step is very much in the public interest.

8. Copy of the order to be furnished to the learned Advocates forthwith.

