(2006) 08 KAR CK 0008

In the Karnataka High Court

Case No : Company Application No. 269 of 2004 in Company Petition No. 83 of 1997

Official Liquidator of Dunford Fabrics Ltd. APPELLANT

Vs

G.C. Lohia RESPONDENT

Date of Decision : 31-08-2006

Acts Referred:
Companies Act, 1956 — Section 446, 454, 543

Citation : (2008) 81 SCL 431

Hon'ble Judges : V.G. Sabhahit, J

Bench : Single Bench

Advocate : Deepak, for the Appellant; K.S. Ravishankar, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This application has been filed by the Official Liquidator u/s 543 of the Companies Act, 1956, seeking for recovery of Rs. 1,31,96,186 from respondent Nos. 1 to 5 jointly and severally averring that as per the statement of affairs and the entry in the balance-sheet the relevant entry shown as the debts outstanding for a period of six months amounting to Rs. 31,03,400, considered doubtful Rs. 1,50,903, other debts Rs. 69,44,377 total Rs. 1,01,98,680 and advances recoverable in cash or in kind or for value to be received Rs. 29,89,917 and cash and bank balances : cash balance on hand Rs. 2,346 and bank balance Rs. 5,243 total Rs. 1,31,96,186.

It is averred that no statement of affairs has been filed and the respondents have not taken steps for recovery of the abovesaid amount and the respondents are guilty of misfeasance and are liable to pay the amount as sought for in the application.

Objections have been filed stating that the assets of the company were taken over by KSIIDC under the State Financial Corporations Act and the same was also brought to the notice of the Official Liquidator and in the minutes of the meeting held on 26-7-1999, the said fact of KSIIDC taking possession u/s 29 was brought to the notice of the Official Liquidator and, therefore, the application is liable to be dismissed. The matter was posted for enquiry. On behalf of the applicant PW-1 was examined and Ex. P-1 a copy of the balance sheet has been got marked. On behalf of the respondents, RW-1 was examined and R1 to R3 were got marked.

I have heard learned Counsel appearing for the applicant and learned Counsel appearing for respondents 1 to 3.

2. Having regard to the contentions urged the point that arises for consideration is:

Whether the applicant has proved that he is entitled to recover Rs. 1,31,96,186 from the respondents jointly and severally as sought for in the application?

and I answer the above point in the negative for the following:

Reasons

I have considered the contentions of learned Counsel appearing for the parties and perused the material on record including the evidence adduced by the parties. It is clear from the evidence of PW-1 the only witness examined on behalf of the applicant that the claimant only on the basis of the entry in the balance-sheet as per Ex. P1 for the year ending 31-3-1996, and apart from entries in the balance-sheet, no other material is produced. Apart from reliance upon the entries in the balance-sheet relied upon by the applicant and stating that there is inaction on the part of the said ex-directors for recovering the amount from the sundry debtors and in respect of loans and advances there is no other averment imputing misfeasance on the part of the respondents, it is elicited in the cross examination of PW-1, that he has not verified the account books as the. same has not been submitted apart from the balance-sheet he has not verified any other material regarding misfeasance alleged against the respondents.

3. On the other hand, on behalf of the respondents RW-1 has been examined and R1 to R3 were got marked. Ex. R2 is the minutes of the meeting held in the office of the Official Liquidator dated 26-7-1999, which shows that in the said meeting which was held in the office of the Official Liquidator the ex-directors as managing directors of the company and ex-directors were present and joint manager of IRBI and Deputy Manager of KSHDC were also present and Manager of SBI, Mysore was present and it was brought to the notice of the Official Liquidator that the assets of the company have been taken over u/s 29 of the State Financial Corporations Act, 1951, and in the said meeting it was resolved that the State Bank of India should furnish the list of debtors which are charged them for releasing the same for filing application u/s 446 of the Act for appointing a chartered accountant and wherefore, it is clear from the perusal of the material on record that there is no specific allegation of misfeasance or

misconduct on the part of each of the respondents and the entire claim of the respondents is based upon the entry in the balance-sheet and the said entry in the balance-sheet would not prove that the debts are time-barred as on the date of balance-sheet 31-3-1996, and apart from producing Ex. P1 no other material is produced and material on record shows that KSIIDC has taken assets of the company u/s 29 of the State Financial Corporations Act, 1951, and wherefore the question of directors recovering the amount from the sundry debtors would not arise and in the absence of any specific allegation of misconduct or misfeasance, mere fact that no action was taken by the ex-directors for recovery of the amount which was not barred by time even as per the balance-sheet would not amount to any act of misfeasance or misconduct and wherefore, I hold that the applicant has failed to prove that there is act of misfeasance or misconduct or breach of conduct on the part of the respondents and the same caused loss to the company. It is submitted by learned Counsel appearing for the Official Liquidator that separate application has been filed u/s 454 of the Act for not filing the statement of affairs. The said application will be considered independently. Accordingly, I pass the following order.

4. The application is dismissed with the abovesaid observations and dismissal of the application would not preclude the Official Liquidator to pursue the said application, in accordance with law.