(2012) 03 KAR CK 0010

In the Karnataka High Court

Case No : Company Application No. 1120 of 2007 in Company Petition No. 159 of 2001

Official Liquidator of M/s. Span Projects Private Limited (in Liquidation), attached to High Court of Karnataka IV Floor, D and F Wing Kendriya Sadan, Keramangala Bangalore - 560034 — APPELLANT

Vs

Sri R.B. Shet, Sri Sandeep Kumar Musaddi and Sri S.K. Sha Deorah — RESPONDENT

Date of Decision : 15-03-2012

Acts Referred:

Companies (Court) Rules, 1959 — Rule 260
Companies Act, 1956 — Section 454, 538, 543 (1)

Citation : (2012) 03 KAR CK 0010

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

Bench : Single Bench

Advocate : Mahadevan and Sri Jayaram, for the Appellant; L.M. Ramaiah Gowda, for R1, for the Respondent

Final Decision : Allowed

Judgement

A.S. Bopanna

1. The Official Liquidator on behalf of the Company in liquidation has filed the instant application u/s 543(1) of the Companies Act. 1956 R/w Rule 260 of the Companies (Court) Rules, 1959. By the said application, misfeasance has been alleged against respondents who were erstwhile Directors of the Company in liquidation and as a consequence thereof, a sum of Rs. 2,21,59,085.25ps. has been claimed from the respondents with interest at 18% p.a. Respondent Nos. 2 and 3 though served are un-represented. The first respondent has appeared and filed the objection statement, disputing the liability on the first respondent for the said amount and the allegation of misfeasance has been denied on the ground that the first respondent was not a Director of the company as on the date of winding up.

2. In view of the claim put forth in the application and the dispute raised by the first respondent, the matter had been set down for evidence. The witness on behalf of the applicant was examined as P.W. 1 and the documents at Exhs.P1 to P1 (c) were marked. The first respondent examined himself as RW1 and documents at Exhs.D1 to D9 were marked.

3. In the light of the above, I have heard the Learned Counsel representing the applicant as well as the first respondent and perused the application papers.

4. The Company in liquidation was ordered to be wound up by order dated 03.10.2002. The statement of affairs was thereafter filed by respondent Nos. 2 and 3. Based on the balance sheet dated 31.03.2001, the applicant has raised the claim of Rs. 10,00,000/- being payable as a share application money which was available with the company pending allotment of shares and the same had not been remitted to the Official Liquidator. Further, a sum of Rs. 43,27,345.56ps. is claimed as the value of the inventories indicated in the balance sheet, but not handed over to the Official Liquidator. A sum of Rs. l,68,31,739.69ps. was the amount due and payable by the sundry debtors, cash and bank balance, loans and advances for which respondent Nos. 2 and 3 had not accounted in the statement of affairs nor furnished details subsequently to the Official Liquidator. Hence, in all, a sum of Rs. 2,21,59,085.25ps. is claimed.

5. Before adverting to the claim as made and the evidence tendered or. that aspect by the applicant, the preliminary objection raised by the first respondent contending that the instant application is not maintainable against him requires to be noticed. In this regard, it is the contention of the first respondent that in fact he was an employee of the company and was made the Director barely for a period of one year and even then he has resigned as a Director with effect from 02.06.2001 i.e., more than a year prior to the date of winding up. In this regard, the Form No. 32 which was filed before the Registrar of Companies is marked as Ex. D4. Though other documents have been referred and marked, for the instant purpose it is sufficient to refer to the documents at Exhs.D2 and D3 whereby this Court in earlier proceedings initiated against the first respondent also u/s 454 as well as Section 538 of the Companies Act had exonerated the first respondent herein after accepting his contention that he was not a Director of the Company in liquidation. Hence, based on such documentary evidence itself, without adverting to other oral evidence, it is to be held that the first respondent cannot be held liable for the instant claim as well and as such, the application is not maintainable against. the first respondent.

6. Insofar as the claim put forth against respondent Nos. 2 and 3, the application provides the details with regard to the claim as indicated therein. The said amounts as indicated in the claim is based on the documents which is produced and marked as Ex. P1 in the evidence of Sri Vasanth Kumar, who was examined as P.W. 1. The reference to the document at Ex. P1 would indicate that it is the balance sheet as on 31.03.2001 which is audited and is also signed by respondent Nos. 2 and 3. What is also relevant to be noticed is that the company

was ordered to be wound up on 03.10.2002 and therefore, the balance sheet available based on which the claim has been raised is for the immediately preceding financial year and therefore, the same would be reliable as there could be no change in circumstance subsequently unless indicated by any other document which in any event is not on record. Insofar as the relevant entries relating to the claim, the said entries have been separately marked as Exhs.P1(a) to P1 (c). The evidence tendered on the said claim insofar respondent Nos. 2 and 3 are concerned, the same has remained unchallenged.

7. Under such circumstances, when the Official Liquidator has relied on the very audited balance sheet of the Company in liquidation produced by respondent Nos. 2 and 3 along with the statement of affairs filed by them, the said document has to be treated as the one which has been admitted by respondent Nos. 2 and 3 themselves. Therefore, in the absence of any contrary evidence led by respondent Nos. 2 and 3 before this Court to dispute the claim and when the claim made in the instant application has been explained both in the pleading as well as in the evidence tendered by P.W. 1, the said clam requires to be accepted as against respondent Nos. 2 and 3.

8. Insofar as the interest claimed by the applicant, I am of the opinion that the interest at the rate of 18% as claimed would not be just and reasonable. Therefore, in my view, appropriate interest to be granted in the instant case would be at the rate of 6% p.a. on the amount claimed. In the result, the following :

ORDER

1). The application against respondent No. 1 stands dismissed as not maintainable.

2). The application insofar as respondent Nos. 2 and 3 stands allowed.

3). Respondent Nos. 2 and 3 are held jointly and severally liable to pay the sum of Rs. 2,21,59,085.25 ps. with interest at 6% p.a. from 03.10.2002 i.e., the date of the winding up.

4). The applicant is entitled to recover the said amount from respondent Nos. 2 and 3 in accordance with law.