(2014) 01 KAR CK 0241

In the Karnataka High Court

Case No : Company Application No. 150 of 2005 in Company Petition No. 41 of 1996

Official Liquidator of M/s. Vintek R.F. Products Limited APPELLANT

Vs

Sri. S. Krishnamurthy and Others RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:
Companies Act, 1956 — Section 454 543

Citation : (2014) 01 KAR CK 0241

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : V. Jayaram, for Official Liquidator, for the Appellant; A. Murali, Advocate for Respondent Nos. 4 and 7, Shri. D. Ashwathappa, Advocate for Respondent No. 8, Shri. M.V. Sheshachala, Advocate for Respondent No. 6, Srinivasan and Kashinath, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The present application is filed in the following circumstances:-

M/s. Vintek R.F. Products Limited was ordered to be wound up by this court by its order dated 23.2.2000, in Company Petition Nos. 41/1996 and 42/1997 and the Official Liquidator attached to this court was appointed as the Liquidator of the company.

The company was said to have been incorporated as a public limited company in the year 1989. The registered office of the company was at No. 600/677/02, Bilekahalli village, Bannerghatta Road, Bangalore The main objects of the company was to design, develop and manufacture all kinds of Radio communication equipment and other electronic subsystems.

The authorised capital of the company as per the Balance Sheet of the year 1994-95 was Rs. 10,00,00,000/- that is 1,00,00,000 equity shares of Rs. 10/-

each and the paid-up capital was Rs. 3,55,43,210/-. The following were the directors of the company as on the date of the winding up:-

1. Shri S. Krishnamurthy,

2. Shri S. Sathyanarayana

3. Shri V.G. Padmanabhan

4. Shri S.V. Shanmugavadivelu

5. Dr. Anil S. Thavildar

6. Shri N.K. Nehra

7. Smt. Sudharani Ravindran

8. R. Guruprasad

9. Shri K. Chandrashekar

10. Shri C.R. Venkatramu.

It is stated that the Official Liquidator has filed a criminal complaint against the ex-directors of the company for non-compliance of the provisions of Section 454 of the Companies Act, 1956 Hereinafter referred to as the ''Act'', for brevity;, in an application in CA 2469/2000, as well as an application in CA 15/2001 for non-submission of books of accounts and records of the company in liquidation. The respondents being the ex-directors of the company, it is alleged by the Official Liquidator that they are liable, for the acts of misfeasance, breach of trust and misapplication of funds and that they are liable jointly and severally, in terms of Section 543 of the Act.

It is claimed that as per the Balance Sheet ending 30.6.1994, the ex-directors had disclosed the investments to the extent of Rs. 30,80,925/- and had not remitted the receivables with the Official Liquidator or had submitted the details relating to the receivables. Therefore, it is alleged that the respondents had committed an act of misfeasance and were liable to make good the above amount.

It is further claimed that as per the Balance Sheet aforesaid, there were sundry debtors to the extent of Rs. 3,29,42,421/- It is alleged that the respondents had allowed the debts to become time-barred without taking any action for recovery and therefore they had committed misfeasance in relation to the above amount, which they are liable to make good with interest at 18% per annum from 30.6.1994 till the date of payment. It is further alleged that as per the Balance Sheet, the cash and bank balances were at Rs. 32,57,294/- which has remained unaccounted and therefore were liable to make good the aforesaid amount. It is further alleged that the Balance Sheet disclosed loans and advances to the extent of Rs. 1,95,62,046/- and had allowed the same to become time barred without taking any action for recovery and therefore were liable to make good the same with interest thereon. Hence, in relation to a total sum of Rs. 5,88,42,686/- it is alleged that there are acts of misfeasance, mis-application of funds and breach of trust and the applicant seeks declaration to that effect and to direct the respondents to jointly and severally make good the aforesaid sum.

2. The respondents have entered appearance and have contested the matter.

Respondents 3, 4 and 7 have sought deletion of their names and for dismissal of the application as against them on the ground that they had resigned from the company much before the filing of the winding up petition and have produced a copy of the order where by this court by its order dated 19.4.2001 passed in CA 2469/2000 deleting the names of the respondents from the proceedings on the footing that the said respondents had resigned from the company much before the filing of the winding up petition.

3. Respondent no. 10 has also filed statement of objections to point out that he had ceased to be a director of the company as early as 6.3.1995, which was recorded under a resolution of the Board of Directors and the Registrar of Companies was duly informed of the same and therefore seeks deletion of his name.

4. Respondent no. 9 has also stated that he was a nominal director for a; period less than 24 months till 7.1.1995 and therefore was not answerable to the applicant and has produced Form No. 32 regarding the said circumstance that he was not a director as on the relevant date.

5. Respondent no. 1 has filed statement of objections to contend that he was one of the promoters of the company in liquidation and that the company was doing well till a fire accident occurred in May 1995 and most of the assets of the company were lost in the fire and had incurred a loss of more than Rs. 5 Crore and the company never revived thereafter and that the first respondent was the managing director and he was not able to file a Statement of Affairs upon the company being wound up for reasons beyond his control.

It is stated that in March 1997, the Karnataka State Financial Corporation (KSFC), Bangalore had taken over the assets of the company, including the records and account books though he had requested the KSFC to hand over the same and a copy of the said letter was furnished to the Official Liquidator to demonstrate that he had no control over the company or its assets as on the date of the winding up, namely, 23.2.2000 and that all the books and other documents were in the custody of KSFC and the income tax authority and that the said respondent was not in possession of the same.

It is also pointed out that insofar as the Statement of Affairs are concerned, the same were filed in the year 2007 and this court by order dated 14.9.2007, had dismissed the application u/s 454 filed by the Official Liquidator in that regard.

It is also pointed out that the present application is filed on the basis of an Annual Report of the company of the year 1993-94, which was redundant in view of the Statement of Affairs filed by the respondent subsequently.

Insofar as the claim for Rs. 5.88 Crore as being the total loss which is sought to be attributed to the respondents, it is stated that insofar as the National Savings Certificate and Indira Vikas Patra are concerned, the same had been paid to the Official Liquidator and the receipt is produced. So also the State Bank of India bonds were delivered to the Official Liquidator. It is further stated that M/s. Superline Microwave Private Limited and Vintek Ferrites Limited, had been closed and they were no longer on the registers of the company and some of the sundry debts due to the company were received subsequently and that the Official Liquidator is in control of the account books and would be in a better position to address the financial possession of the company in liquidation. As regards the cash on hand and credit in the various bank accounts, it is stated that they have been carried on to the subsequent assessment years and the last statement of accounts when the company was ordered to be wound up, would be necessary to be examined to arrive at a correct position. It is claimed that they have been considered and the remuneration paid to the employees and the advance towards the raw-materials had been adjusted in their purchase and the advance and deposit with the government authorities is concerned, the monies were available with the respective State Government departments. So also, the income tax deducted at source would also be available with the Central Government Therefore, the claim is not tenable as none of those amounts claimed are accurate nor tenable as it is solely on the basis of the Annual Report of the year 1993-1994.

In the absence of subsequent Annual Reports and also the Final Report filed by the respondent being taken into consideration, the application would have to be rejected.

6. The respondent no. 8 has also filed statement of objections to state that he was not a director as on the relevant date and he had resigned from the directorship with effect from 9.12.1994 and seeks dismissal of the application

It is on the basis of the above that the evidence was tendered in the course of these proceedings. The Official Liquidator has not chosen to substantiate the claim by producing material other than the Annual Report of the year 1993-94 notwithstanding the specific contention raised in the statement of objections of the respondent no. 1. The affidavit in evidence made by the company-paid-assistant attached to the office of the Official Liquidator merely reiterates that the respondents are liable to pay a sum of Rs. 5.86 crore along with interest to the Official Liquidator.

7. As rightly pointed out by the respondents, particularly respondent no. 1, the application is incomplete and inconsistent. Since the basis is on a truncated report of the year 1993-94. it does not establish the acts of misfeasance committed by each of the respondents and as to how the loss had occasioned. It is evident that apart from the partial statement of accounts and balance sheets

for the year 1993-94 without reference to any subsequent statement of account and Balance Sheet, even inspite of the respondents having highlighted the same, would render the application vague and general in nature and can hardly be sustained for if the application were to be allowed, as prayed for, it would result in penal consequence visiting the respondents and therefore, it is required of the applicant to establish the allegations beyond reasonable doubt. Given the circumstance that almost all the respondents had ceased to be directors of the company, much prior to the date of the winding up and that the company was ultimately wound up because it had stopped functioning after the fire accident in its factory premises, destroying all its assets, including its records and whatever the assets and records remained having been taken over by the KSFC and the income tax Department, it was incumbent on the Official Liquidator to have substantiated the application with better particulars.

Therefore, the application fails and is dismissed.