

(2012) 03 KAR CK 0110

In the Karnataka High Court

Case No : Company Application No. 1024 of 2004 in Company Petition No. 39 of 1995

Official Liquidator of Pulsar Computer (P.) Ltd. (In liqn.)

APPELLANT

Vs

S. Sudhakar Choudhary

RESPONDENT

Date of Decision : 09-03-2012

Acts Referred:

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

Citation : (2012) 112 SCL 741

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

Bench : Single Bench

Advocate : K.S. Mahadevan and V. Jayaram, for the Appellant; C. Shashikantha and Vishwanath R. Hegde, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Bopanna, J.—The Official Liquidator is before this Court in this application filed u/s 543(1) of the Companies Act, 1956 R/w Rule 260 of the Companies (Court) Rules, 1959, alleging misfeasance on the part of the Directors of the Company-in-liquidation. As a consequence, the applicant has sought for an order to recover a sum of Rs. 8,53,477/- from the respondents. In this regard, it is necessary to notice at this stage that earlier the claim was made for a sum of Rs. 27,47,314/- but the same has been subsequent amended pursuant to the order passed in CA No. 387/2007 to reduce the claim to Rs. 8,53,477/-. Heard the learned counsel for the parties and perused the application papers.

2. The Company-in-liquidation was ordered to be wound up by the order dated 01.12.1999 passed by this Court in Co. P.No. 39/95. Subsequent thereto, the erstwhile Directors have filed their statement of affairs. From the materials which were available before the Official Liquidator viz., the auditors report which contained the balance sheet as on 31.03.1996, the instant application is filed stating that the amount shown towards the heads of sundry debtors, cash/ bank

balances, loans and advances have remained outstanding and the same have not been accounted for by the erstwhile Directors.

3. The respondents on being served with the notice from this Court have appeared and filed their objection statement. The contentions urged in the application have been disputed by the respondents and they have given an explanation that they have not committed any act of misfeasance and that there is no specific pleading to that effect. Even in respect of the amounts which were due to be recovered by the company-in-liquidation, sufficient reasons have been indicated in the objection statement with regard to the action taken by the respondents to reduce the financial burden of the company and also with regard to certain adjustments which were made by the Bankers in respect of the other loans. Thus it is contended that the prayer made in the application is not sustainable and the same is required to be rejected.

4. In the light of the rival contentions put forth, the matter was set down for recording the evidence of the parties. Smt. G. Padmashree, Assistant working in the Office of the Official Liquidator was tendered as P.W.1 and evidence by way of affidavit was produced. The said witness was cross-examined at length on behalf of the respondents. The documents at Exhs.P1 and P1 (a) were marked. The first respondent viz., Sri S. Sudhakar Choudhary was tendered as RW1 and the evidence affidavit has been produced and the said witness has been cross-examined. Further, the third respondent was examined as RW2 who has also filed his evidence by way of affidavit and he has been cross-examined.

5. In the light of the evidence tendered by the parties, the rival contentions put forth requires to be examined.

6. Before noticing the evidence tendered by the parties, the scope of consideration of an application u/s 543(1) of the Act also is to be kept in view. This Court while considering this aspect of the matter, has taken note of the law laid down by this Court in several decisions while disposing of CA. No. 888/2006 on 23.02.2012 (Official Liquidator of Ideal Jawa (India) Ltd. v. Sri Tehmtan Rustom Irani Keeping this aspect in view, the pleadings if noticed would indicate that except for referring to the entries in Ex.P.1.(a) for the purpose of making the claim, there is no specific averments with regard to the act of misfeasance indulged in by the respondents.

7. Be that as it may, a perusal of the evidence tendered by P.W.1 in fact is a repetition of what has been stated in the application. In that regard, the claim as put forth is based on the balance sheet dated 31.03.1996 wherein a sum of Rs. 4,92,022/- was indicated as the amount due by the sundry debtors, a sum of Rs. 1,45,135/- was indicated under the head cash/bank balances and a sum of Rs. 2,16,320/- under the head of loans and advances. Except for referring to the said entries, there is no further evidence tendered on behalf of the applicant.

8. A perusal of the cross-examination of P.W.1 would indicate that except for referring to the said documents, the witness has not made any further inquiries

with regard to the claim put forth. In that light, specific suggestions have been put to the said witness with regard to the amounts indicated therein and in respect of the claim relating to the sundry debtors. It has been extracted from the mouth of the said witness that as on 31.03.1995, an amount of Rs 14,26,969/- was due and due to the efforts of the Directors, a sizable amount had been collected and the balance recoverable was only to the extent of Rs. 4,92,022/- as indicated therein. With regard to the cash/bank balance, it has been suggested to the said witness that certain other amounts were due to the bankers of the Company-in-liquidation and the said bankers had exercised their lien and adjusted the amount towards other outstanding loans. The said witness has expressed her ignorance about this aspect of the matter. Further, with regard to the third head under which the claim has been made towards loans and advances, a specific reference was made to the fact that the said amounts are mostly in deposit with the statutory authorities and therefore, the said amounts are recoverable. The witness on behalf of the applicant has not disputed the said suggestion.

9. In the light of the case that had been built-up by the respondents by way of cross-examination of P.W.1, the testimony of RW1 and RW2 requires to be noticed. Since both of them have tendered evidence by way of affidavit and is on similar lines, the evidence tendered by RW1 is noticed for the instant purpose.

10. In this regard, in line with the suggestion which had been put to the witness examined on behalf of the applicant, respondent No. 1 who was examined as RW1 has elaborated this aspect of the matter. Further, with regard to the amount indicated as due from sundry debtors, it has been pointed out that the amount which was due as on 31.03.1995 was nearly Rs. 15 lakhs and by the time, the balance sheet was filed indicating the amount due as on the date of winding up, nearly 11 lakhs has been recovered from various debtors and the amount which was due from sundry debtors, cash/bank balances was only Rs. 4,92,022/-. However, since the said debtors were also in financial doldrums, no efforts could be made at that stage to recover. If recovery proceedings were to be instituted, the company would have had to incur further expenses which the Company-in-liquidation could not afford at that stage and such expenses would have been additional burden without returns.

11. With regard to the bank/cash balances, detail reference has been made to the bank transaction with Andhra Bank and Oman Industrial Bank and the nature of adjustments which were made by the said bankers in respect of the outstanding loans as the said amount was available in the bank deposits and they had exercised their lien. In this regard also, specific reference has been made with regard to the amounts which were available in deposit with the bank.

12. Further, with regard to the loans and advances, the said witness has mentioned the details of the amounts which were available with the different departments amounting to a sum of Rs. 2,16,320/-. The details indicated in para 7 of the affidavit would indicate that most of the deposits are with different

statutory authorities and one of the items indicated is the amount which had been adjusted as advance amount which was lying with the landlord of the building wherein the company-in-liquidation was functioning and the advance had been adjusted by the landlord towards arrears of rent.

13. Notwithstanding the evidence which has been noticed, vehement submission was made on behalf of the Official Liquidator that the Directors could not have permitted the bankers to make adjustment and similarly, the landlord should not have been permitted to adjust the deposits since it is not permissible from the date of filing of the winding up petition i.e., on 02.03.1995. However, from the evidence of the said witnesses, it is shown that the said adjustments have been made unilaterally. It is also contended on behalf of the Official Liquidator that the outstanding amounts from the sundry debtors in any event should have been recovered by the Directors and since no action had been initiated by them and the said debts have become time-barred, the Directors should be held liable. The said contention is opposed by the learned counsel for the respondents.

14. In this regard, I am of the view that insofar as the sundry debtors, keeping in view the scope of Section 543 of the Act and having noticed the fact that within the period of one year between the two balance sheets dated 31.03.1995 and 31.03.1996, the respondents have made efforts and have recovered the major portion of the amount. Insofar as the unrecovered portion, a satisfactory explanation has been provided as to why the Directors could not recover the said amount. Similarly with regard to the adjustments made by the bankers and the landlord from the deposits which were available in the banks, the Directors cannot be held directly responsible inasmuch as the same were the acts of the bankers and the landlord in adjusting the amount available with them and the Directors in no way could have prevented the same at that stage.

15. Further, with regard to the loans and advances, as already noticed, the witness (PW-1) has admitted that these are the statutory deposits and they are recoverable and it can still be recovered in accordance with law and the same cannot be considered as an act of misfeasance to hold that the respondents are guilty. If at all, it is open to be recovered, the Official Liquidator would have the liberty to seek for recovery in accordance with law. In respect of the other entry, it is shown as the amount available with Magnavision Electronics Limited. The same is also beyond the control of the respondents inasmuch as it cannot be disputed that the said company has also gone into liquidation and the respondents could not have recovered the said amount even if they had made any efforts in that regard. Insofar as the said amount, if in the process of liquidation of Magnavision Electronics Limited, any claims are invited, it would still be open for the Official Liquidator to file a claim with regard to the said amount. In the light of the above, I am of the opinion that insofar as the allegations of misfeasance against the respondents, the same cannot be accepted and therefore as a consequence of the same, no recoveries could be made from the respondents herein.

In view of the above, the application is liable to be rejected and the same is accordingly dismissed.