(2005) 04 DEL CK 0051

In the Delhi High Court

Case No : CA (C) 346/94

Punjab Exchange Ltd. APPELLANT

Vs

Rajdhani Grains and Jaggery RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Citation : (2005) 04 DEL CK 0051

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : M.S. Vinayak, for the Appellant; N.A. Abraham, for the OL, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—M/s. Rajdhani Grains and Jaggery Limited was ordered to be wound up by this Court vide order dated April, 23, 1980 on company petition 23/75 filed by present applicant namely Punjab Exchange Limited.

2. It may be noted that said CP 23/75 was filed by the applicant on the ground that respondent was liable to pay Rs. 2,000/- per month to the applicant as license fee for use of certain premises, license by the applicant to the company which was not paid.

3. The company appealed against winding up order which was also dismissed by the Division Bench on 9th November, 1981. old attached to this Court, who was appointed as the liquidator invited the claims from the creditors of the company. Applicant also made claim of Rs. 1,34,494.73 P on account of arrears of license fee. On 6th March, 1986, the old verified the claim of the applicant to the extent of Rs. 43,744.66p and rejected the rest of the claim . Aggrieved by this decision of the OL, applicant filed appeal being Co. A. 9/86. This appeal was allowed vide order dated 19th July, 1990 by the Company Judge and it was directed that in addition to claim of Rs. 43,744.66 p, its claim to the extent of Rs. 71,123.32 p would be verified, thereby approving the scheme to the extent of Rs.

11,97,44.66 p.

4. Present application is not filed by the applicant making further claim of Rs. 28646.80 p. It is stated in this application that in the Order dated 19th July,90 this Court observed that in the balance sheet of the company as on 31st December, 1979, the license fee due to the applicant was Rs. 119744.66 p. It is also stated in any case the license fee has only been paid up to October, 1983f and further license fee has become due up to February, 1994 and for this period a sum of Rs. 28646.80p is claimed. It is also stated that the premises which were given to the company on license basis were given by the company to sub licensees who are occupying the Gaddies and from whom the fee for use and occupation was to be collected. In any case, pleads the applicant, as far as applicant is concerned it is the liability of the company to pay the applicant and Therefore, prayer is made to allow the aforesaid claim.

5. This matter was heard at length on 25th November, 2003 and detailed order was passed. It would be apposite to reproduce the entire order as that visualises the controversy between the parties. The order dated 25th November, 2003 is as under:-

This application is filed by the applicant claiming payment of an amount of Rs. 2,86,460.80 paise being the license fee. In paragraph 9 of the application the applicant has stated that an amount of Rs. 2,86,460.80 paise has become due to the applicant as arrears of license fee up to February, 1994.

6. The facts leading to the aforesaid claim are that the applicant let out to the respondent the premises known as the Kohinoor Building situated at Katra Baryan, Delhi, on terms of payment of license fee. The respondent company was ordered to be wound up by an order dated April 23,1980. By the same order the official liquidator attached to this Court was appointed as the Liquidator. The Liquidator pursuant to the orders of the Court took possession of the said building. Claims were invited from the various creditors by the Official Liquidator during the course of which the applicant-herein lodged a claim for a sum of Rs. 1,34,494.73 paise with the Official Liquidator as arrears of license fee. The aforesaid claim lodged by the applicant was verified by the Official Liquidator and by an order dated march 6, 1986 the claim of the applicant to the extent of Rs. 43,744.66 paise was admitted and the claim for the remaining amount was rejected by the Official Liquidator.

7. Being aggrieved by the aforesaid order, an appeal was filed by the applicant in this Court which was registered as Company Appeal No. 9/86. The said appeal was admitted by this Court. By order dated July 19, 1990, this Court disposed of the appeal with a direction that in addition to the claim of Rs. 43,744.66 paise, the claim of the applicant to the extent of Rs. 71,123.32 paise be verified. The said order passed by the Company Judge became final and binding on the parties hereto.

8. It would be appropriate to mention at this stage that the applicant who was

the landlord of the aforesaid premises also sought for restoration of possession of the aforesaid premises pursuant to which the Official Liquidator restored back possession of the aforesaid premises to the applicant on November, 17,1983. Therefore, the Official Liquidator has responsibility as also the liability to pay the arrears of license fee up to the said date as he was appointed as Liquidator, provided, however, the same as recovered by the Official Liquidator from the sub-licensees.

9. Be that as it may, it is an admitted position that even the amount of Rs. 43,744.66 paise, which is an admitted amount by the Official Liquidator, is also not paid to the applicant. Besides, the claim to the extent of Rs. 71,123.32 paise was also required to be verified by the Official Liquidator in terms of the orders passed by this Court on July 19,1990. The total amount in terms of the aforesaid order would, Therefore, come to Rs. 1,14,867.98 paise. The Official Liquidator is, Therefore, directed to comply with the order dated July, 19,1990, if not already done, and whatever payment in terms of the said order is required to be made to the applicant, the same shall be so paid by the Official Liquidator treating the said claim as that of the claim of an unsecured creditor.

10. An up to date report in terms of this order shall be filed by the Official Liquidator within three week from today. Whatever payment is admissible to the applicant in terms of this order, the same shall also be so paid by the Official Liquidator within three weeks. The report that is to be submitted by the Official Liquidator shall also indicate as to whether or not the Official Liquidator has collected arrears of license fee from the sub-licensees for the period between April 1980 to November, 17, 1983.

11. A certified copy of the order dated July 19, 1990 passed by the Company Judge in Co. Appeal No. 9/1986 is placed on record by the counsel for the applicant. A copy of the same be furnished to the counsel for the Official Liquidator for his reference.

12. The matter could now be listed on February 6,2004 for further orders, if any.

13. A copy of this order be given dusty to the counsel appearing for the parties.

14. It is clear from the aforesaid order that admitted position is that as per order dated 19th July, 1990 the petitioner would be paid a sum of Rs. 43744.46 p plus Rs. 71,123.32 p i.e., total amount of Rs. 114867.98p. old was directed to comply with this order if not already done and submit the report in this behalf. old thereafter, submitted his report in which it is stated that this amount was in fact paid on 22nd July, 1991 to the applicant. This even admitted by the applicant. However claim in this application is that further amount towards license fee has become due. It is disputed by the old on the ground that possession of the premises was restored to the applicant on 7th November, 1983 itself. Learned counsel for the old also submitted that the applicant has not been able to show that the possession was with the company/OL after the aforesaid date. It is also argued that in any case such an application is not maintainable as, in view of the

provisions of the Companies Act, the applicant was required to file appropriate claim before the OL. Plea that the claim in any case time barred is also raised.

15. When this matter came up for hearing on 27th August, 2004 aforesaid contention of the old were taken note of. However, counsel for the petitioner requested for some time to look into the matter and on his request matter was adjourned to 14th September, 2004 On 14th September, 2004, matter was again adjourned to 14th December, 2004 as none appeared for the parties. On 14th December, 2004 matter was again adjourned to 15th January, 2005 on the request of learned counsel for the applicant. When the matter came up for hearing on 15th January, 2005 Mr. Chander, Assistant Accountant of the applicant has appeared and submitted that his counsel was out of station. However, as the matter which relate to the year 1994 was adjourned from time to time on the request of the applicant and further applicant did not even move an adjournment slip, I refused to grant any further adjournment. Applicant was, however given one week time to file written submissions. No such written submissions have been filed till date, In view thereof I have gone through the record and considered the submissions of the parties from the aforesaid pleadings. The objections of the old are well founded. Applicant has not been able to demonstrate as to whether the possession of the premises was with the old or the company after 17th November, 1993. Nothing has been filed on record to refute the contention of the old that possession of the premises was restored to the applicant on 17th November, 2003 itself. Most of the claim is time barred as well. For all these reasons present application is dismissed as devoid of merits.

No costs.

