

(2018) 04 DEL CK 0252

In the Delhi High Court

Case No : Company Petition No. 248 Of 2010

Re-M/S Apex Continental Ltd Vs

Date of Decision : 19-04-2018

Acts Referred:

Companies Act, 1956 — Section 446, 446(2), 446(2)(b)

Citation : (2018) 04 DEL CK 0252

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Sunil Singh Parihar, Adity Dev Triguna, D.Bhattacharya, Neha Lakhwara

Judgement

Jayant Nath, J

Co. Appl. No. 454/2018

This application is filed seeking condonation of delay in filing the reply.

The application is allowed and the reply is taken on record.

Co. Appl. 1188/2014

1. This application is filed under Section 446 of the Companies Act, 1956 for recovery of an amount of Rs.12,52,712 as principal amount along with interest @ 18% p.a. against the debtor of the company, namely, Sh.Sanjay Vajpayee.

2. It is the contention of the OL that the petitioner Company was provisionally wound up on 15.01.2013 and finally on 16.01.2014. As per the statement of affairs filed by Sh.Virender Kumar Gupta, the ex-director of the company a sum of Rs.12,52,712/- is shown due and recoverable against Sh.Sanjay Vajpayee(respondent). A copy of the statement of affairs has been annexed as Annexure A to the application. It is also pleaded that the OL also examined the balance sheet of the Company wherein also the above amount is shown as outstanding. A copy of the relevant part of the balance sheet is also annexed to the application as Annexure-B. A demand letter dated 06.11.2013 was sent to Sh.Sanjay Vajpayee calling upon him to pay the said amount. In response, a letter

dated 19.11.2013 was received from Mrs. Madhu Vajpayee wife of Sh.Sanjay Vajpayee whereby she pointed that Sh. Sanjay Vajpayee was in judicial custody.

3. I am informed that he is presently not in custody.

4. The respondent has filed his reply. In the reply, it has been pleaded that the petitioner Company was in the business of leasing and financing. In June and July, the said Company had approached the respondent to work in collaboration as the parties had known each other since long. A mutual agreement dated 15.12.2008 was entered into between Sh. Virender Kumar Gupta and the respondent whereby they agreed to join hands to perform the tender work/supplies to the Government Department and Private Sectors under the name of Joint Venture Firm M/s.Apex Continental Ltd. The respondent is said to have worked pursuant to the said mutual agreement.

The petitioner Company under liquidation had also wanted to open a branch office in Lucknow and had also hence approached the respondent for the same. On 20.8.2008 a rent agreement was executed between the Apex Continental Ltd. (Petitioner) and Smt.Madhu Vajpayee, wife of the respondent whereby it was agreed that that the property measuring 1800 sq. ft would be given on rent of Rs.35,000/- per month for office purposes. A copy of the alleged rent agreement has been filed.

It hence pleaded that a sum of Rs.12,52,712/- was given to the respondent in lieu of the services and duties performed by the respondent and the rent due.

5. I have heard learned counsel for the parties.

6. A few facts are noteworthy when one reads the defence of the respondent.

7. It is firstly pleaded that the respondent and the petitioner Company entered into a mutual agreement whereby they agreed to join hands to do tender work/supplies to the government department and to the private sector. However, no details are given. How many tenders were filled, supplies were made to which department, the nature of the supplies made, revenue earned, etc., no details are given. It is not possible to believe this sketchy and vague statement bereft of details being made by the respondent.

8. Another alleged consideration for the said payment is the rentals of the property which was allegedly taken on rent by the petitioner Company as allegedly evidenced by the rent agreement dated 20.08.2008. The Rent Agreement is not registered. The existence of a rented premises would be evident from the documents of the petitioner company like letter heads, purchase orders, invoices, etc. Such document usually have the address of the company. No such documents are filed. In the absence of any proper and cogent evidence on record to show that the petitioner company was operating an office from the stated premises in Lucknow as claimed, the said plea of the respondent cannot be accepted.

9. Even otherwise, it is surprising to note that the commission/consideration payable to the respondent under the alleged mutual agreement dated 5.12.2008 and the alleged lease deed has been paid in one lump sum by means of a single cheque for Rs.12,52,712/-. The plea is not acceptable.

10. Clearly, the defence raised by the respondent is vague. The alleged consideration on account of which payment was made is bereft of details and cannot be believed. It is quite clear that the defence taken is completely moonshine. The amount of Rs.12,52,712/- was a loan to the respondent and the respondent is bound to refund the same.

11. Under Section 446(2)(b) of the Companies Act this court has powers to adjudicate any claims made by or against the respondent. It is clear that in exercise of the said powers, this court should give appropriate directions to the respondent. The powers of this court under Section 446(2) of the Act were also elaborated by the Supreme Court in the case of Sudarsan Chits (I) Ltd. vs. O. Sukumaran Pillai and Ors., AIR 1984 SC 1579 where the Court held as follows:-

"9..... Now at a stage when a winding up order is made the company may as well have subsisting claims and to realise these claims the Liquidator will have to file suits. To avoid this eventuality and to keep all incidental proceedings in winding up before the court which is winding up the company, its jurisdiction was enlarged to entertain petition amongst others for recovering the claims of the company. In the absence of a provision like Section 446(2) under the repealed Indian Companies Act, 1913, the Official Liquidator in order to realise and recover the claims and subsisting debts owed to the company had the unenviable fate of filing suits. These suits as is not unknown, dragged on through the trial court and Courts of appeal resulting not only in multiplicity of proceedings but would hold up the progress of the winding up proceedings. To save the company which is ordered to be wound up from this prolix and expensive litigation and to accelerate the disposal of winding up proceedings, the parliament devised a cheap and summary remedy by conferring jurisdiction on the court winding up the company to entertain petitions in respect of claims for and against the company. This was the object behind enacting Section 446(2) and therefor, it must receive such construction at the hands of the court as would advance the object and at any rate not thwart it."

This is a fit case for this court to exercise its powers under Section 446(2) of the Companies Act.

12. Accordingly a direction is passed to the respondent to deposit with the OL within four weeks from today the said sum of Rs.12,52,712/- along with simple interest @ 7% p.a. from the date of the receipt of the loan till the payment is received by the OL.

13. The application is disposed of.

CO.PET. 248/2010

List on 30.08.2018.