(2018) 02 DEL CK 0645

In the Delhi High Court

Case No : Company Petition No. 247 Of 2012

Robin Garg APPELLANT

Vs

M/S Vij Constructions Lt RESPONDENT

Date of Decision : 27-02-2018

Acts Referred:

Companies (Court) Rules, 1959 — Rule 130
Companies Act, 1956 — Section 446, 542, 543, 543(1)

Citation : (2018) 02 DEL CK 0645

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Anand K.Mishra, Vinod Vij, Ruchi Sindhwani, Megha Bharaa

Judgement

Jayant Nath, J

CA No.1951/2017

1. By this application, the applicant seeks condonation of delay of 114 days in filing the reply. For the reasons stated in the application, the same is

allowed and the delay in filing the reply is condoned. Reply is taken on record.

CA No.1833/2014

2. This application is filed by the OL under sections 446, 542 and 543 of the Companies Act, 1956 seeking a direction to Mr.Vinod Vij to remit the

amount of Rs.16,31,174/- along with 18% interest from the date of receiving the amount to the OL. Other connected reliefs are also sought.

3. The background facts of this case are that on 15.02.2013 provisional liquidator was appointed in this case. One of the work sites of the respondent

company was at Batra Hospital Sidhra, Udhampur (J&K). The provisional liquidator took symbolic possession of the same. The parties, namely, the petitioner and the respondent settled the disputes on 29.08.2013 and the provisional liquidator was discharged on 03.09.2013. The bank account of the respondent company was de-freezed.

4. However, subsequently on account of default on the part of the respondent company in payments of the settled amount to the petitioner and on account of inability of the respondent to pay the OL the expenses incurred on the winding up process, the winding up order was passed against the respondent on 03.03.2014. On 18.03.2014 notices were issued to the Ex.Directors of the respondent company to appear before the OL to file the statement of affairs and for recording their statement. On 28.03.2014, Mr.Vinod Vij, Ex.Director of the respondent company got his statement recorded in part. Recording of his further statement was deferred for 15.04.2014. However, on the said date he did not appear before the OL.

5. In the meantime, it appears that on 16.04.2014 and 22.04.2014 from Batra Hospital said Mr.Vinod Vij had collected a sum of Rs.16,31,174/-. It is this amount, which the OL is asking the Ex.Director to refund.

6. This court on 25.07.2017 had directed Mr.Vinod Vij to file an affidavit as to when the payments were credited in the accounts of the company. This court had on the said date, noted the contention of the learned counsel for the Ex.Director Mr.Vinod Vij who had submitted that the payments were received during the period the amounts were de-freezed, hence cannot be remitted.

7. The Ex.Director has now filed his reply, which is on record. A perusal of the reply would show that alongwith the reply, the statement of account has been placed on record. It transpires from a reading of the statement of accounts and submission of the learned counsel for the Ex.Director that the entire sum of Rs.16,31,174/- has been credited into the account of the respondent Company on 16.04.2014 and 22.04.2014, namely, after the order of winding up passed by this court. Further the said amount appears to have been transferred to the account of one Sh.Charan Jeet Singh, in Jammu and Kashmir bank. This is apparent from a perusal of the statement of accounts of Sh.Charan Jeet Singh of Jammu and Kashmir bank. The said account shows a credit from M/s Vij Constructions Pvt.Ltd. on 16.04.2014 for Rs.8 lacs and on 22.04.2014 for Rs.8,31,174/-.

8. I have heard the learned counsel for the OL and Mr.Vinod Vij, Ex.Director of

the respondent company.

9. The learned counsel for the Ex.Director has stressed that the action of the Ex.Director was bonafide and that he was not aware about the winding

up order or the consequences thereof. He has further stressed that Sh.Charan Jeet Singh being an employee of the respondent company the entire

money was transferred to his account to enable him to make payment of the outstanding dues of the respondent company. It is pleaded that most of

the payments have been made by cheques to the Contractors, Suppliers etc. from whom the work material had been taken for the purpose of

completion of the project. Hence, it is pleaded that money has been expanded for the respondent company only and no direction can be passed against

the Ex.Director.

10. I may note that despite an opportunity by this court vide order dated 25.07.2017 to file an affidavit, there is nothing on record to show that

Sh.Charan Jeet Singh is an employee of the respondent company. Further as per the statement of account which has been filed as an Annexure, there

are payments which have been made to the various entities, namely, Rana Kant, Rajesh, Mahuddin, K.K. Water Supplier etc. from the account of

Mr.Charan Jeet Singh. However, no details whatsoever have been provided to show as to who these entities were and as to whether payments have

been made to these entities bonafidely for any of the works carried out or material supplied for the said Batra Hospital.

11. One cannot help to come to a conclusion that this kind of procedure in releasing funds by a limited company cannot be accepted and is contrary to

normal accounting procedure. A company which bonafidely expands its fund for its project would make payments from its own account based on

invoices raised by the suppliers/contractors giving details of the purpose for which the payments are being released. This ad hoc and haphazard

manner of providing account cannot obviously be accepted.

12. Section 543(1) of the Companies Act, 1956 reads as follows:

â??543. Power of Court to assess damages against delinquent directors, etc.

(1) If in the course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company,

or any past or present director, managing agent, secretaries and treasurers, manager, liquidator or officer of the company-

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company; the Court may, on the application of the Official

Liquidator, of the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into

the conduct of the person, director, managing agent, secretaries and treasurers, manager, liquidator or officer aforesaid, and compel him

to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Court thinks just, or to

contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach

of trust, as the Court thinks just.â??

13. Hence, where in the course of winding up of a company, it appears that any person who has misapplied, or retained, or become liable or

accountable for, any money or property of the company, the court can direct the said person to repay or restore the money. I may only note that under

section 446 of the Companies Act where winding up order has been made, the OL takes into custody and control all the property of the company of

which the company is entitled to.

14. It is apparent from the facts as stated above that Mr. Vinod Vij, the Ex-Director of the Company after passing of the winding up order taken

money from the Batra Hospital which he was not entitled to receive in terms of the aforenoted provisions of the Companies Act. He further claims to

have disbursed the amount for the bona fide payment of debts of the respondent Company which he could not have done. Further this fact itself of

having disbursed the funds to discharge the bona fide debts of the respondent Company is a doubtful contention. Further there is no merit in the plea of

Mr. Vij that he was not aware that he cannot operate the accounts of the company to make bona fide payments for and on behalf of the company.

15. Accordingly, I allow the present application and pass a direction to Mr. Vinod Vij to deposit with the OL the said amount of Rs.16,31,174/-within

four weeks from today.

16. At this stage, the learned counsel for the Ex.Director requests that this court may at least grant eight weeks for the same. Accordingly, in the

interest of justice, the period for depositing the said sum is extended by eight weeks.

17. The application stands disposed of.

18. This court has taken a lenient view of the matter and has not imposed any interest or other cost or penalty on Mr.Vinod Vij, Ex.Director of the

respondent company.

CO.PET. 247/2012

19. Mr.Vinod Vij will now appear before the OL on 22.03.2018 at 3.00 p.m. to complete the recording of statement under Rule 130 of the Companies

(Court). Ex.Director will also take steps for filing of the complete statement of affairs.

20. The learned counsel for the Ex.Director submits that the record of the respondent company is lying sealed in a room/residential premises of the

basement. He also submits that alternate area in the premises is available where the OL can shift their record.

21. Let the OL inspect the alternate area in the premises being offered by the Ex.Director on 08.03.2018 at 2.00 p.m. In case, on inspection the OL

finds the alternate area being offered to shift/store the record suitable, the OL may shift/store the record in the alternate area in the premises.

Thereafter the OL may seal the room where the record is shifted.

22. After shifting of the record on 08.03.2018 if found feasible in the alternative area, the Ex.Director may also be permitted to carry out inspection of

the record. For the said purpose, the OL may de-seal the same and after inspection again seal the premises as required.

23. List on 30.05.2018.

