

(2016) 01 MAD CK 0110

In the Madras High Court

Case No : O.S.A. Nos. 252, 253 of 2014 and M.P. No. 1 of 2014

Rudhra Dev Aviation Pvt. Ltd. and Others

APPELLANT

Vs

Globe Detective Agency Pvt. Ltd.

RESPONDENT

Date of Decision : 05-01-2016

Acts Referred:

Citation : (2016) 01 MAD CK 0110

Hon'ble Judges : S. Tamilvanan and G. Chockalingam, JJ.

Bench : Division Bench

Advocate : V. Pavel, for the Appellant; C.A. Diwakar, for the Respondent

Final Decision : Dismissed

Judgement

G. Chockalingam, J.—1. Original Side Appeal No. 252 of 2014 is filed against the order dated 11.09.2014 passed by the learned single Judge in Company Petition No. 325 of 2013 on the file of this Court.

2. Original Side Appeal No. 253 of 2014 is filed against the order dated 11.09.2014 passed by the learned single Judge in Company Petition No. 202 of 2013 on the file of this Court.

3. In the Company Petitions filed by the respondent-Company for winding-up of the appellant-Companies and to appoint the Official Liquidator of this Court as the Liquidator of the appellant-Companies, the learned single Judge passed the following order on 11.09.2014:

"Company Petition No. 325 of 2013:

"9. Having regard to the submissions made by the learned counsel on either side and also taking into consideration the materials available on record before this Court, I pass the following order:

i) The Company Petition is admitted.

ii) Notice to the respondent.

iii) Notice on the Court Notice Board.

iv) Notice to the Registrar of Companies, Chennai.

v) Notice to be affixed in the Registered Office of the respondent-Company.

vi) The petitioner-Company is directed to publish the Company Petition in one issue of English Daily viz., "The New Indian Express" circulated in Chennai and one issue of Tamil Daily viz., "Daily Thanthi" circulated in Chennai and also in the Tamil Nadu Government Gazette, by fixing 14 days in clear advance by fixing the hearing date as 27.10.2014.

vii) The Official Liquidator, High Court, Madras is appointed as Provisional Liquidator and is directed to take charge of the assets of the respondent-Company. The Ex-Directors of the respondent-Company are directed to file their statement of affairs before the Official Liquidator within a period of 21 days. The Company shall deposit a sum of Rs. 10,000/- (Rupees ten thousand only) towards initial expenses before the Official Liquidator in this matter.

Post the matter on 27.10.2014."

Company Petition No. 202 of 2013:

"8. Having regard to the submissions made by the learned counsel on either side and also taking into consideration the materials available on record before this Court, I pass the following order:

i) The Company Petition is admitted.

ii) Notice to the respondent.

iii) Notice on the Court Notice Board.

iv) Notice to the Registrar of Companies, Chennai.

v) Notice to be affixed in the Registered Office of the respondent-Company.

vi) The petitioner-Company is directed to publish the Company Petition in one issue of English Daily viz., "The New Indian Express" circulated in Chennai and one issue of Tamil Daily viz., "Daily Thanthi" circulated in Chennai and also in the Tamil Nadu Government Gazette, by fixing 14 days in clear advance by fixing the hearing date as 27.10.2014.

vii) The Official Liquidator, High Court, Madras is appointed as Provisional Liquidator and is directed to take charge of the assets of the respondent-Company. The Ex-Directors of the respondent-Company are directed to file their statement of affairs before the Official Liquidator within a period of 21 days. The Company shall deposit a sum of Rs. 10,000/- (Rupees ten thousand only) towards initial expenses before the Official Liquidator in this matter.

Post the matter on 27.10.2014."

4. Learned counsel for the appellant-Companies contended that the learned single Judge has not properly appreciated the merits of the case. He further submitted that there is no basis for winding up of the appellant-Companies at the instance of the creditor, without following due process of law and the learned single Judge has not considered the serious consequences involving the winding up of the appellant-Companies, and as such, the impugned orders suffer from material irregularity. He further contended that the learned single Judge failed to consider the fact that the amount payable for the services rendered by the respondent-Company, is only unilateral demand at the instance of the respondent-Company and the demand, which is the subject matter of the winding-up petitions at the instance of the creditor, is neither admitted nor proved. He also contended that the learned single Judge failed to consider the aspect that the respondent-Company is bent upon using the Company Court as a mode of recovery of its dues. Learned counsel prayed that the appeals may be allowed. In support of the above submissions, learned counsel for the appellant-Companies relied on the following decisions of the Supreme Court:

"(a) , 2010 (10) SCC 553 (IBA Health (I) (P) Ltd. v. Info-Drive Systems Sdn. Bhd.):

"33..... A Company Court cannot be reduced as a debt collecting agency or as a means of bringing improper pressure on the company to pay a bona fide disputed debt. Of late, we have seen several instances where the jurisdiction of the Company Court is being abused by filing winding-up petitions to pressurise the companies to pay the debts which are substantially disputed and the courts are very casual in issuing notices and ordering publication in the newspapers which may attract adverse publicity..... "

(b) , 1965 (35) Comp. Cas. 456 (SC) (Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Krishnaswami):

"13. It is well-settled that "a winding up petition is not a legitimate means of seeking to enforce payment of the debt which is bona fide disputed by the company. A petition presented ostensibly for a winding up order but really to exercise pressure will be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the process of the court. At one time petitions founded on disputed debt were directed to stand over till the debt was established by action. If, however, there was no reason to believe that the debt, if established, would not be paid, the petition was dismissed. The modern practice has been to dismiss such, petitions. But, of course, if the debt is not disputed on some substantial ground, the court may decide it on the petition and make the order." (Vide Buckley on the Companies Acts, 13th edition, page 451)."

(c) , 1971 (3) SCC 632 (Madhusudan Gordhandas & Co. v. Madhu Woollen Industries (P) Ltd.):

"20. Two rules are well settled. First, if the debt is bona fide disputed and the defence is a substantial one, the court will not wind up the company. The court

has dismissed a petition for winding up where the creditor claimed a sum for goods sold to the company and the company contended that no price had been agreed upon and the sum demanded by the creditor was unreasonable. (See London and Paris Banking Corporation - (1874) LR. 19 Eq. 444). Again, a petition for winding up by a creditor who claimed payment of an agreed sum for work done for the company when the company contended that the work had not been properly was not allowed. (See Re. Brighton Club and Horfold Hotel Co. Ltd. - (1865) 35 Beav. 204)"

(d) , 2009 (3) SCC 527 (Vijay Industries v. NATL Technologies Ltd.):

"39. It is, however, of some interest to note that the Division Bench (in Mediquip Systems case - , 2005 (7) SCC 42, SCC p.50, para 24) referred to a decision of the Madras High Court in Tube Investments of India Ltd. v. Rim and Accessories (P) Ltd. - , 1990 (3) Comp. L.J. 322 (Mad) where the following principles relating to bona fide dispute had been evolved:

"(1) If there is a dispute as regards the payment of the sum towards principal, however small that sum may be, a petition for winding up is not maintainable and the necessary forum for determination of such a dispute existing between the parties is the civil court;

(2) The existence of a dispute with regard to payment of interest cannot at all be construed as existence of a bona fide dispute relegating the parties to decide such a dispute before the civil court and in such an eventuality, the Company Court itself is competent to decide such a dispute in the winding-up proceedings; and

(3) If there is no bona fide dispute with regard to the sum payable towards the principal, it is open to the creditor to resort to both the remedies of filing of a civil suit as well as filing of a petition for winding up of the company."

In that case also a bona fide dispute was raised by the company."

5. Learned counsel for the respondent-Company contended that the learned single Judge has passed the order based on the materials available on record and after following the principles of law and appreciating the merits of the case. He further submitted that there were exchange of notices between the parties and the amounts due to the respondent-Company had been clearly proved and hence, learned counsel prayed that the appeals may be dismissed.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. It is seen that the respondent-Company is engaged in the business of providing security services for offices, factories, etc. In the course of their business, the respondent-Company provided security services to the appellant-Companies. According to the respondent-Company, the appellant-Companies had not paid the amounts due under various bill amounts. Hence, the respondent-

Company issued notices detailing various bill amounts due, for which, the appellant-Companies sent the reply notices. Since the bill amounts due to the respondent-Company had not been paid by the appellant-Companies, the respondent-Company preferred the Company Petitions for winding-up of the appellant-Companies under the provisions of the Companies Act.

8. In this regard, it is useful to refer the relevant provisions of law regarding winding-up of a Company, as provided under the Companies Act:

"Section 433: Circumstances in which company may be wound up by Tribunal: A company may be wound up by the Tribunal,--

....

....

(e) if the company is unable to pay its debts;

(f) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up;

Section 434: Company when deemed unable to pay its debts: (1) A Company shall be deemed to be unable to pay its debts--

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding one lakh rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

.....

Section 439: Provisions as to applications for winding up--(1) An application to the Tribunal for the winding up of a company shall be by petition presented, subject to the provisions of this section,--

(a)....

(b) by any creditor or creditors, including any contingent or prospective creditor or creditors;

....."

9. It is seen that in the legal notices dated 02.05.2009 issued by the respondent-Company to the appellant-Companies, the respondent-Company has specified the amounts due to them, stating as follows:

"M/s. Rudra Dev Aviation Pvt. Ltd: (Appellant in OSA. 252/2014):

"4. My client hereby calls upon you to pay the sum of Rs. 2,05,886/- along with interest @ 24% per annum as claimed in the previous paragraph within 21 days

of receipt of this notice, failing which my client will be obliged to initiate such action as they are advised including filing of winding up petition against you. The charges of this notice Rs. 1500/- is also payable by you."

M/s. R.R. Info. Park Pvt. Ltd: (Appellant in OSA. 253/2014):

"4. My client hereby calls upon you to pay the sum of Rs. 31,60,735/- along with interest @ 24% per annum as claimed in the previous paragraph within 21 days of receipt of this notice, failing which my client will be obliged to initiate such action as they are advised including filing of winding up petition against you. The charges of this notice Rs. 2000/- is also payable by you."

10. To the above notices, the appellant-Companies replied on 17.07.2009 stating as follows:

"We refer to your notice dated 2nd June 2009. We had asked for certain information/details from your client Globe Detective Agency (P) Ltd. We await furnishing of information after which we shall process for payment."

11. Subsequently, on 22.02.2010, the respondent-Company sent notice to the appellant-Rudra Dev Aviation Pvt. Ltd. (appellant in O.S.A. No. 252 of 2014), stating as follows:

"3. As the amount due to my client has not been settled inspite of several demands, and also my earlier legal notice dated 02/05/2009, my client has no other option other than to issue this legal notice once again. You have not made any payment inspite of your letter dated 17/07/2009. The amount due to my client is an admitted sum and a liquidated one. Though my clients are entitled to claim interest on each billing, they are restricting their claim for interest @ 24% per annum from the date of this legal notice.

4. My client hereby calls upon you to pay the sum of Rs. 2,05,886/- along with interest @ 24% per annum as claimed in the previous paragraph within 21 days of receipt of this notice, failing which my client will be obliged to initiate such action as they are advised including filing of winding up petition against you. The charges of this notice Rs. 1500/- is also payable by you."

12. On 22.02.2010, the respondent-Company sent notice to the appellant-R.R. Info. Park Pvt. Ltd. (appellant in O.S.A. No. 253 of 2014) to its Ambattur address and again on 22.05.2010, the respondent-Company sent notice to the appellant-R.R. Info. Park Pvt. Ltd. (appellant in O.S.A. No. 253 of 2014) to its Guindy address, in which, it is stated as follows:

"3. As the amount due to my client has not been settled inspite of several demands, my client has no other option other than to issue this legal notice. My client has already issued notice dated 02/05/2009 through me and the same may be read as part and parcel of this notice. After my earlier notice dated 02/05/2009 you have made a part payment of Rs. 3,00,000/- only and no further payment has been made by you. Hence this notice is issued afresh. The

amount due to my client is an admitted sum and a liquidated one. Though my clients are entitled to claim interest on each billing, they are restricting their claim for interest @ 24% per annum from the date of this legal notice. As the earlier notice though served on you at your registered office, since it was addressed to your office at Ambattur, this fresh notice is again sent to you.

4. My client hereby calls upon you to pay the sum of Rs. 28,60,735/- along with interest @ 24% per annum as claimed in the previous paragraph within 21 days of receipt of this notice, failing which my client will be obliged to initiate such action as they are advised including filing of winding up petition against you. The charges of this notice Rs. 2000/- is also payable by you."

13. Hence, from the above exchange of notices between both parties, it is clear that there is no dispute regarding the amounts demanded by the respondent-Company and the amounts due to the respondent-Company had been clearly proved. Hence, the argument of the learned counsel for the appellant-Companies that the demand is neither admitted nor proved, is not at all sustainable.

14. It is seen that the above said subsequent notice, dated 22.02.2010 was received by the appellant-R.R. Info. Park Pvt. Ltd., (appellant in O.S.A. No. 253 of 2014) on 25.02.2010 and the above said subsequent notice, dated 22.05.2010 was received by the appellant-R.R. Info. Park Pvt. Ltd., (appellant in O.S.A. No. 253 of 2014) on 01.06.2010. It is also seen that the above said subsequent notice, dated 22.02.2010 was received by the appellant-Rudra Dev Aviation Pvt. Ltd. (appellant in O.S.A. No. 252 of 2014) on 25.02.2010. The appellant-Companies have not paid the amounts as per the above notices within the stipulated time as per the provisions of the Companies Act. It is pertinent to note that the Company Petitions were presented by the respondent-Company before the Company Court on 05.10.2010 for winding-up of the appellant-Companies, after complying with the provisions of the Companies Act, i.e. after expiry of time for payment allowed as per the provisions of the Companies Act. Hence, the Company Petitions filed before the Company Court are maintainable as per the provisions of the Companies Act.

15. Moreover, it is admitted by both parties that the Official Liquidator of this Court, appointed by the learned single Judge, has taken charge and further proceedings are initiated by him in respect of the winding-up of the appellant-Companies and the same are pending progress.

16. The decisions relied on by the learned counsel for the appellant-Companies are not applicable to the facts of the present case, since the amounts due to the respondent-Company have been clearly specified in the notices stated above, which are not disputed by the appellant-Companies.

17. Thus, from the above facts and circumstances of the case and on a perusal of the above provisions of law, it is clear that inspite of issuance of such notices, the appellant-Companies failed to pay the amounts due to the respondent-Company within the stipulated time as per the provisions of the Companies Act.

Thus, it has to be held that the appellant-Companies have been wilfully evading the payments due to the respondent-Company. Therefore, as per the above provisions of the Companies Act, the respondent-Company has every right to file the Company Petitions seeking for winding-up of the appellant-Companies before the Company Court.

18. Hence, we are of the considered view that there is no illegality or infirmity in the impugned orders passed by the learned single Judge. The learned single Judge, after perusing the entire materials available on record and following the provisions of law, passed the impugned orders, which do not warrant any interference by this Court. The appeals are liable to be dismissed.

19. Accordingly, the O.S.As. are dismissed. No costs. The Miscellaneous Petitions are closed.