(2010) 09 KAR CK 0016

In the Karnataka High Court

Case No : Company Petition No. 94 of 2009

Sapta Innovation Design and Consulting (P.) Ltd. — APPELLANT

Vs

Worldmartt Retail Stores and Services Ltd. — RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:
Companies Act, 1956 — Section 434

Citation : (2010) 105 SCL 52

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Aditya Sondhi, for the Appellant;

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In this company petition filed u/s 434 of the Companies Act the Petitioner-company has prayed for an order to wind up the Respondent-Company.

2. Petitioner is a private limited Company incorporated under the provisions of the Companies Act and engaged in offering services in the field of design, consultancy, creation of retail market environments, brand development and website design. Respondent is a public limited company engaged in providing retail support services to malls, service apartments and hotels.

3. Respondent-Company approached the Petitioner-Company and engaged them to render services in designing and promoting the brand image and identity of its retail service in India and abroad. Annexure A is the memorandum of understanding between the Petitioner-Company and Respondent-Company dated 7-6-2008. In terms of the memorandum of understanding at Annexure A, the Petitioner contends, that they have extended services to the Respondent-Company and raised invoices as per Annexure B series. Annexure C is the acknowledgement given by the Respondent-Company for having received the invoices from the Petitioner-Company. According to the Petitioner, the

Respondent-Company is liable to pay in all a sum of Rs. 19,86,721.85 by the end of July 2008. The three cheques issued by the Respondent-Company on 25-8-2008 for Rs. 2,00,000, on 30-8-2008 for a sum of Rs. 2,00,000 and on 2-9-2008 for Rs. 4,00,000 came to be returned with a shara ''funds insufficient''. Though the fact of dishonour of cheques was brought to the notice of Respondent-Company, they failed to pay the amounts due under the cheques.

Finally the Petitioner-Company issued a statutory notice on 23-3-2009 as per Annexure G. The Respondent-Company having received the statutory notice have sent an untenable reply as per Annexure H dated 6-4-2009. Hence, this petition.

4. Notice sent from this Court came to be returned with a postal shara that the registered office of the Respondent-Company is sealed. This Court vide order dated 28-8-2009 held service of notice on Respondent as sufficient. Further this Court on 28-8-2009 admitted the petition and permitted the Petitioner-Company to take out advertisement. In compliance of the order of this Court the Petitioner-Company has taken out the advertisement and copy of paper publication is filed before the Court.

5. Heard arguments of the learned Counsel for the Petitioner-Company and perused the entire petition papers.

6. The memorandum of understanding dated 7-6-2008 as per Annexure A is not in dispute. The invoices raised by the Petitioner-Company as per Annexure B series are not in dispute. The fact of issuing three cheques for a sum of Rs. 8,00,000, dishonour of the said cheques and intimation of the same to the Respondent-Company is not in dispute. The Respondent-Company in its reply dated 15-12-2008 admitted the fact of dishonour of cheques and promised to pay a sum of Rs. 6,00,000 by 15-1-2009 but failed to do so. This material on record establishes the fact that Respondent-Company was due in certain sum to the Petitioner-Company.

7. For the first time the Respondent-Company in the reply notice at Annexure H dated 6-4-2009 contend that the services rendered by the Petitioner-Company are substandard. Earlier to the reply dated 6-4-2009, the Respondent-Company has not whispered a word with regard to the quality of work and services rendered by the Petitioner-Company. At the stage of issuing reply to the statutory notice, the defence taken by the Respondent-Company cannot be said to be valid, bona fide and genuine. Further it is seen that the registered office of the Respondent-Company is now sealed by the statutory authorities. Even the notice issued from this Court came to be returned with a shara as Respondent-Company is sealed. This material on record establishes the fact that the Respondent-Company is not functioning and failed to pay the dues to the Petitioner-Company.

8. For the reasons stated above, the following:

ORDER

(i) Petition is hereby allowed.

(ii) The Respondent Company is ordered to be wound up.

(iii) The Official Liquidator is appointed as Liquidator of the Respondent Company.

(iv) Petitioner Company shall deposit a sum of Rs. 25,000 with the Official Liquidator to meet the initial winding up expenses.

(v) Petitioner Company to take out advertisement of this order in one edition of ''THE HINDU'' English Newspaper within fourteen days from the date of receipt of copy of this order.

(vi) Petitioner Company to serve certified copy of this order with the Registrar of Companies within thirty days from the date of receipt of copy of this order. Ordered accordingly.