
(1984) 01 KAR CK 0020
In the Karnataka High Court
Case No : Company Petition No. 19 of 1983

Syndicate Bank

APPELLANT

Vs

Southern Oils and Extractions Limited and Others

RESPONDENT

Date of Decision : 09-01-1984

Acts Referred:

Companies Act, 1956 — Section 433 (e), 434
State Financial Corporations Act, 1951 — Section 29

Citation : (1985) 57 CompCas 81

Hon'ble Judges : M.P. Chandrakantaraj, J

Bench : Single Bench

Judgement

Chandrakantaraj Urs, J.—This petition is under ss. 433(e) and 434 of the Companies Act, 1956, by the Syndicate Bank, a body corporate constituted under the Banking Companies (Acquisition and Transfer of Under takings) Act, 1979, praying for an order of the court winding up the first respondent company. Respondents Nos. 2 to 12 are said to be its directors.

2. Respondents Nos. 1, 2, 4, 6, 8, 10, and 11 are served represented while the others, through served have remained absent and unrepresented and this orders made against those respondents ex parte.

3. The petitioner has alleged that a total sum of Rs. 45,82,566.84 was advanced to the first respondent company. The aforementioned amount claimed is said to be the balance shown in the books of the company under various accounts held by the first respondent company with the bank. It is also asserted that the amounts claimed by the petitioner-bank is also reflected in the balance-sheet of the first respondent company for the year ended December 31, 1980, and also in the balance-sheet for the year ended December 31, 1981, wherein the liability has been admitted. It is further alleged that from the very inception of its business, the respondent company became a defaulter, inter alia, in respect of the above mentioned loans sanctioned and disbursed by the bank. It is also stated that several original suits for various sums ranging from Rs. 57,340.51 to

Rs. 2,49,070 have been filed in the Civil Court at Raichur in the year 1982, and that the said suits are pending. Despite the several demands made by the bank and the statutory notice issued, the first respondent company has failed to pay the aforementioned sum against its loan accounts with the petitioner-bank. The statutory notice is produced at annexure B and annexure C is the postal acknowledgment for having served the statutory notice. Under these circumstances, a prayer is made for an order winding up the first respondent company.

4. The respondents who have entered appearance including the first respondent have filed their common statement of objections. It is asserted for the first respondent that the company's factory and business establishment at Raichur in the Karnataka State has been taken over by the Karnataka State Financial Corporation in exercise of its power under s. 29 of the State Financial Corporations Act, 1951. In other words, the company's place of business and the factory and its equipments, buildings, etc., has been taken over by the Karnataka State Financial Corporation which also have made an application in these proceedings which has remained unnumbered and in which the said Financial Corporation has represented its support for the winding up proceedings, but remaining outside such proceedings. In the supporting affidavit, they have brought to the notice of the court that the Financial Corporation acted under s. 29 of the State Financial Corporations Act, 1951, and taken over physical possession the factory, its premises and all machineries which are said to have been mortgaged or hypothecated to the Corporation.

5. It is, in these circumstances, that an objection has been raised by the first respondent whether the winding up proceedings are maintainable. The averments in para. 6 of the petition have been admitted, but the first respondent contends whether the actual claim reflects the correct position. It is, however, stated that it is a matter for verification. In other words, the loan facilities extended to the respondent company will manufacturing its products at Raichur and its registered office is at Bangalore. It is sent that while it has not denied the liability in an unspecified, sum the respondent company has shifted the blame for the correct state of affairs of its finances to act of commissions and omissions and acts of mismanagement on there part of the eleventh respondent. It is stated further stated all dues to the bank were paid until April 30, 1982, and there were no defaults in the matter of payment of loans. However, with the appointment of respondent No. 11 as managing director, the company appears to have been a doldrums since May 6, 1982. It is alleged that the said managing director has acted illegally bringing about the present state of affairs. There is nothing else in the statement of objections which requires to be noticed by the court.

6. The question is whether the prayer of the petitioner-bank should be granted. The accuracy of the claim is doubted, though the claim itself is not disputed by the respondent company. Therefore, that the company is due in a sum exceeding

the sum of Rs. 500 is not to be doubted by this court. That it is unable to pay its debts is demonstrated by its own ascertain that its factory premises together with the machinery, etc., have been taken over by the Karnataka State Financial Corporation. In other words, the company, which is incorporated under the Companies Act, with an authorised share capital of Rs. 25,00,000 divided into 2,00,000 equity shares of Rs. 10 each, and 5,000 11% per annum redeemable cumulative preference shares of Rs. 100 each, having a unsubscribed capital of Rs. 15,50,100 for production, export, import, purchase, sale, supply, exchanges, distributes, redistributes, process, pack stores and nearly to deal with agricultural produce either of vegetable origin or animal origin, as it exists today has not toes means of pausing its objects as disconnected by it. It has no factory which it can work, Added to this, it has not denied the allegation made by the petitioner-bank filed against it by the other creditors for recovery of large sums in the Civil Judge's Court at Raichur.

7. In these proceedings, this court will not examine this question whether the taking over by the Karnataka State Financial Corporation is a valid and legal act or not, except to admit these fact the that Karnataka State Financial Corporation is in controls and possession of the factory premises and has to work out all its rights in terms of these provisions of the State Financial Corporations Act, 1951. But that will be at a later stage. Nothing is pointed out to me in s. 29 of the States Financial Corporations Act or other provisions of the Act which can be dismissed to empower the financial corporation to take over the management of the respondent company or its business. As earlier stated, it can only acquire the right to possess and control and management of the sets that come into its hands and nothing more.

8. From these undisputed facts, this courts has to come to this irresistible conclusion that the respondent company is not carrying on its business and mores not is the any evidences to re correct its business in any manner. In this connection, however, I must notice what is submitted from these Bar and these statement of objection that some of the respondents have ceased to be directors. Having regard to these relevant date, their obligates under the Companies Act, in these relevant of a winding up order being made by this court it a later stage will be examined. This court passing an order winding up the first respondent company will not affect their legal rights and obligations it they have ceased to be directors.

9. In so far as these application of the Karnataka States Financial Corporation is concerned, it is placed on record, that since it has taken possession fall assets hypothecated to it on its own, it is not possible to treat that Corporation as a supporting creditor. It has further stated that it will work out its rights under the State Financial Corporation Act which question has been left open to be decided in the appropriate forum. The application is taken on record for the sole purpose of corroboration of the admissions made by the respondent company.

10. In these circumstances, the respondent company cannot resist a winding up

order under s. 433 of these Companies Act not only on these ground alleged by the bank but also in these Companies Act not only on the ground alleged by these bank but also in these public interest, mores so when it has lost its substratum.

11. In the result, I direct that these respondent company be wound up in these light of the discussion made above and for the reasons given above.

12. The petitioner shall advertise the making of this order within fourteen days from this date, a notice in these prescribed form in one issue of Decreases Heard of Bangalore. Petitioners also shall serve a copy of the certified copy of the orders on these Registrar of Companies in Karnataka, within one months from this date.

13. The official liquidator attached to this court it appointed liquidator of the respondent company. He shall take charge of all the assets of the respondent company which shares not already in the possession of the Karnataka States Financial Corporation. All person accountable as officer of the company shall render all assistance required under law to these official liquidator in the discharges of his duties as liquidator.

14. A sum of Rs. 1,000 shall be deposited by the petitioner-bank within two weeks from today with the official liquidator to meet these initial expenditures of liquidation.

15. Order accordingly.