(2011) 10 KAR CK 0023

In the Karnataka High Court

Case No : OSA. No. 44 of 2010

Xalted Information Systems Private Limited — APPELLANT

Vs

Arasor Corporation — RESPONDENT

Date of Decision : 15-10-2011

Acts Referred:

Citation : (2011) 10 KAR CK 0023

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : M. Dhyan Chinnappa for M/s Crestlaw Partners, for the Appellant; Janshan Baar for Sri E. Massilamani and Smt. Brindha M., for the Respondent

Final Decision : Allowed

Judgement

N. Kumar, J.—In both these appeals, the appellants are challenging the order passed by the learned Company Judge admitting the company petition, after recording a finding that prima facie the petitioner in the company petition has made out a case for admission. In the appeal for the first time, the appellant has filed an application for dismissal of the company petition on the ground that the company was not in existence on the day the company petition was filed and therefore, in such a petition, no order of admitting the company petition could have been made. Even on merits, they contend that though the appellants filed a detailed statement of objections contesting the claim of the company and produced several documents, without considering the same and by observing that the defence of the respondent''s counsel is not valid, the learned Company Judge has proceeded to pass the order of admission. In support of their contention that the company was not in existence, they have produced the documents and also pointed out the relevant provision of law.

2. Per contra, the Learned Counsel for the respondent pointed out that even though the company was declared void by operation of law, once the franchise tax and other taxes were paid, the company gets revived from the day it was declared as void and if the certificate of incorporation at all times remains with

full force and effect and therefore, the contention that the company petition itself was not maintainable is not correct. More over, the said contention was not raised before the learned Company Judge. On merits, he contends that two contentions were urged in opposition to the company petition, which has been considered by the learned Company Judge who has rightly overruled those objections and admitted the petition and it is not a case for interference at this stage.

3. If a company was not in existence on the day the petition was filed, certainly in a proceeding initiated by such a non-existing legal person, no order of winding up could be passed. This point was not urged before the learned Company Judge. The reason is that the respondent was not aware of the same and he became aware of the same after the order and after filing of the appeal. The petitioner is a company incorporated in the State of Delaware in the United States of America and the fact that the charter of the corporation became void for non-payment of franchise taxes was not within their knowledge. No doubt, any objection to the maintainability of the petition has to be raised at the earliest point of time. However, the maintainability of the petition is a pure question of law. Because the respondent was not aware of the fact and if he has not raised that objection in the statement of objections, he cannot be precluded from raising such an objection. At the same time, it would not be appropriate for this Court to go into the said question in an appeal when that was not the subject matter of the petition. We are of the view that the said question has to be urged by the respondent before the learned Company Judge and it is for him to decide the said question of jurisdiction.

4. In the instant case, the company petition is admitted. We have gone through the order. Though at the stage of admitting the company petition, the learned Company Judge is not expected to write a detailed order, as the order of admission in a company proceedings would have serious consequences, now the law is well settled that an order of admitting the company petition is an appellable order and once it is appellable, the order to be passed by the learned Company judge should disclose his application of mind to the pleadings of the parties, the documents produced and the law on the point so that the Appellate Court could consider whether a case for admission as held by the learned Company Judge is made out or not. Viewed from that angle, the order passed by the learned Company Judge would not satisfy the said legal requirements. In fact, the learned Company Judge has not referred to the statement of objections filed, the documents on which reliance is placed, except by observing in two sentences what the defence of the respondent is. We have gone through the order. We are satisfied that there is no proper application of mind to the material placed before him before he passed the impugned order. As an Appellate Court, it is open to us to go into the said question but once we start doing it, we will be sending a wrong signal and the Company Courts will be passing the orders without observing what the case of the parties, the rival contentions, documents relied on Therefore, we do not propose to go into the merits of the case. We

deem it proper to send back the matter to the learned Company judge to write a proper order keeping in mind the requirement of law as laid down by various judgments of the Apex Court as well as the Division Bench of this Court. In our view, that would meet the ends of justice. Hence, we pass the following:

ORDER

Both the appeals are allowed. The impugned order passed by the learned Company Judge is hereby set aside. The entire matter is remitted back to the Company Judge for fresh disposal in accordance with law in the light of the observations made. It is made clear that it is open to the respondent to file a separate application or amend his statement of objections regarding maintainability of the petition and urge the same before the learned Company Judge who will decide the said question also at the stage of admission.

All the pending and miscellaneous applications are ordered to be filed.