

Ajay Kumar Verma Vs. R.G. Soft Drinks Private Limited

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Court : Delhi

Decided On : Nov-12-2008

Reported in : 156(2009)DLT23

Judge : Gita Mittal, J.

Acts : [Companies Act, 1956](#) - Sections 433, 439, 442, 443, 446, 454 and 456; State Financial Corporation Act; Delhi High Court (Company Court) Rules - Rules 11 and 130

Appeal No. : Company Petition No. 95/1983 and CA No. 921/2008

Appellant : Ajay Kumar Verma

Respondent : R.G. Soft Drinks Private Limited

Advocate for Def. : Rajesh Raina and ; Manisha Tyagi, Adv.

Advocate for Pet/Ap. : Rachna Gupta, Adv. in CA No. 921/200

Disposition : Application dismissed

Judgement :

Gita Mittal, J.

C.P. No. 95/1983

1. One Shri Ajay K. Verma has brought the present petition under Section 433 read with Section 439 of the [Companies Act, 1956](#) which was registered as CP No. 95/1983 for winding up of the company. The petitioner has filed the present petition on the premise that despite service of statutory notice dated 10th August, 1983, M/s R.G. Soft Drinks Private Limited-respondent company failed to pay the amount of Rs. 33,600/-. The respondent-company has failed to pay this amount. The petitioner had contended that this amount was deposited on 7th June, 1983 as a business security which the respondent company was bound to refund to the petitioner.

2. The respondent had contested the petition. By an order dated 10th October, 1984, the petition was admitted. Thereafter, on 31st May, 1985, an order was passed on CA No. 604/1985 under Section 442 and 443 of the [Companies Act, 1956](#) in CP No. 95/1983 appointing the Official Liquidator attached to this Court as the provisional liquidator with directions to take into possession the records of the company.

3. Pursuant to the orders passed, the Official Liquidator issued a general notice dated 3rd June, 1985 assuming charge of the company and its assets and ordered that none should interfere with the company's property which vested in the court.

4. As the petitioning creditor in CP No. 95/1983 was not coming forward, the Registrar of Companies filed an application dated 3rd January, 1986 for being substituted as the petitioner.

5. On 14th February, 1986, an application being CA No. 60/1986 was listed before the company court which had been filed by the Canara Bank. This bank had taken over the Lakshmi Commercial Bank Limited and had filed this application under Section 446 of the [Companies Act, 1956](#) for permission to continue the original Suit No. 1260/1983. On 19th February, 1986, the court was of the view that the petitioner was not taking any interest in the case and was not pursuing the matter since 14th February, 1985. It was also noticed that every effort by the court to get the citation published by the secured creditor or by the Registrar of Companies was unsuccessful. The court was, therefore, of the opinion that the winding up petition deserves to be dismissed. The same stand was taken by learned Counsel

representing the Official Liquidator and the petition was consequently dismissed.

6. More than nine years after the dismissal of the petition, the directors of the company filed CA No. 285/1995 pointing out that the petitioning creditors in CP No. 95/1983 stood substituted by the Registrar of Companies by the order passed on 2nd May, 1985 which had filed the formal application for substitution in CP No. 95/1983 on 13th January, 1986. It was also urged in this application that once the court had appointed the Official Liquidator as the provisional liquidator and the Official Liquidator had assumed charge of the company and issued a general meeting notice under Section 456 of the [Companies Act, 1956](#), the position could not be reversed in the winding up petition and the same ought not to have been dismissed. The court's attention was also drawn to Rule 11 of the Delhi High Court (Company Court) Rules where under the petition could not be dismissed even if the original petitioner has ceased taking interest in prosecuting the winding up petition.

7. CA No. 285/1995 was taken up for consideration on 2nd May, 1995 when the court directed that the application for winding up which has now been filed under the signatures of the Managing Director of the company be treated as company petition for winding up. The court directed admission of the same and directed issuance of fresh citation. The court also appointed the Official Liquidator attached to this Court as the provisional liquidator. It was directed that the file of CP No. 95/1983 be tagged with the present case.

8. CA No. 85/1995 was filed by Shri G.B. Srivastava son of Diwan S.K. Lal, a director and attorney of M/s R.G. Soft Drinks Private Limited. In his affidavit, he has stated that he was on payroll on behalf of the company.

9. Perusal of the record shows that all orders with regard to the winding up are being reflected in CP No. 95/1983 alone. Publication of citation was effected in the 'Statesman' (English), 'Jansatta' (Hindi) and the Delhi Gazette.

10. Be that as it may, the position remains that the original petitioning creditor has not been paid any amount till date. The record also shows that other creditors have proceeded against the company before the Debt Recovery Tribunal.

11. The company has remained in provisional liquidation. In any case, since 2nd May, 1995, the funding status of the company does not appear to have improved. No opposition to the winding up of the company has been received.

12. I find that CA No. 644/2008 has been filed by Mr. G.P. Srivastava son of Diwan S.K. Lal pointing out that PICUP is now exercising its power under the State Financial Corporation Act and enforcing the coercive process for recovery of its dues even against the directors of the company. It is evident there from that the company is not in a position to pay its debts even to secured creditors. The land, plant and machinery of the company stands sold. It would be, therefore, clearly evident that the substratum of the company stands eroded and the present case is a fit case for passing the final winding up order.

13. Therefore, M/s R.G. Soft Drinks Private Limited is directed to be wound up. The official liquidator attached to this Court is appointed as the liquidator of the company with the directions to proceed in the matter in accordance with law.

14. Ms. Manisha Tyagi, learned Counsel appearing for the Official Liquidator is not in a position to state as to whether the assets of the company have been sold and the order dated 2nd May, 1995 has been complied with. Immediate steps for taking over and securing all assets, movable and immovable, and records of the company shall be under taken.

15. Notice of the winding up order shall be issued to all the secured creditors who have been represented and appearing in the matter. Notices to them shall be issued by the Official Liquidator who shall facilitate the inquiry.

16. The Official Liquidator shall ensure inspection of the records of the Registrar of Companies forthwith and obtain copies of all records of the company as may be available.

17. Inasmuch as Shri G.P. Srivastava is represented in court, he shall positively file his statement in accordance with Section 454 of the [Companies Act, 1956](#). He shall appear before the Official Liquidator on 8th December, 2008 at 11.00 a.m. so that further proceedings in accordance with Rule 130 and other statutory

provisions can be complied. Shri G.P. Srivastava shall ensure that he furnishes the following informations positively to the Registrar of Companies in any case within one week from today:

- (i) the current addresses of all directors and company secretary of such company;
- (ii) the details of location of assets of the company and their value;
- (iii) the details of all debtors and creditors with their complete addresses;
- (iv) the details of workmen and other employees and any amount outstanding to them; and
- (v) he shall also disclose all details of assets movable or immovable held in their personal name and dates of their acquisition as well as the nature of right, title and interest in the premises J-22, Saket, New Delhi.

18. The last three audited balance sheets of the company shall be placed on record by the deponents with the affidavit.

19. The Official Liquidator shall proceed against the other directors as well in accordance with law.

20. The status report setting out the details of the directors, assets and steps taken with regard to them shall be placed on record.

21. The official liquidator attached to this Court shall forthwith take charge of the assets, books and records of the company forthwith. Fresh citation be also published in 'Statesman' (English edition) and 'Veer Arjun' (Hindi edition) by the Official Liquidator. Intimation to this effect be sent by the Registrar of Companies. The Registry shall inform the Official Liquidator in prescribed form about the winding up of the company.

22. By the same citation, claims be invited by the Official Liquidator from the creditors of the company.

23. The PICUP, UPSIDC, Canara Bank who are claiming to be the creditors of the company, and Shri G.P. Srivastava shall each deposit an amount of Rs. 20,000/- with the Official Liquidator within a period of two weeks from today. The amount shall be kept in the account of the company and utilized for effecting the publication directed hereinabove.

24. The copy of the notice inviting claims and the winding up orders shall be posted on the website of the High Court of Delhi; Ministry of Corporate Affairs; office of the Official Liquidator; Federation of Indian Chamber of Commerce and Industry (FICCI), New Delhi; Associated Chambers of Commerce and Industry of India (ASSOCHAM), New Delhi; PHD Chamber of Commerce and Industry (PHDCCI) as well as on the notice board.

25. On receipt of claims in accordance with law, the Official Liquidator shall take steps for scrutiny and shall place a report before this Court.

List on 25th March, 2009 for the status report of the Official Liquidator.

C.A. No. 921/2008

Learned Counsel for the applicant prays for leave to withdraw this application with liberty to take appropriate legal remedy. The application is dismissed as withdrawn with liberty as prayed for.

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