HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

C.P.Nos.197 and 198 of 2014

Date : 30-3-2015

<u>C.P.No.197 of 2014</u>

Between:

Vijayasri Sridhar ..
Petitioner

And

M/s. I ServiceGlobe Pvt. Ltd. ..
Respondent

Counsel for petitioner : Mr. G. Sri Harsha
Counsel for respondent : Mr. H. Sudhakar Rao

The Court made the following :

**COMMON ORDER:**

These two Company Petitions have been filed for an order to wind up the respondent for non-payment of the debts due to the petitioners.

I have heard Mr. G. Sri Harsha, learned Counsel for the petitioners and Mr. A.Laxminarayana, learned Counsel representing Mr. H. Sudhakar, Counsel for respondent.

The petitioner in C.P.No.197 of 2014 is the wife of one Sreedhar, who was the Managing Director of the respondent-company from the year 2008. The petitioner in C.P.No.198 of 2014 is the mother-in-law of the said Sreedhar. The petitioners in these Company Petitions are stated to have lent Rs.3 lakhs and Rs.5 lakhs respectively to the respondent after he became the Managing Director. In January 2014, Sreedhar ceased to be the Managing Director of the respondent and left the company. It is in this background that the petitioners have filed these two Company Petitions for orders to wind up the respondent for non-payment of the above sums of money.

The respondent has filed counter affidavits wherein it has denied its liability. The substance of the counter affidavits is to the effect that the Managing Director of the time has manipulated the business of the respondent-company and indulged in misappropriations for which a criminal complaint has been filed and the same is pending. The respondent has also maintained that there was no need for it to borrow small sums of Rs.3 lakhs and Rs.5 lakhs and that it is only through manipulation by its Managing Director that the said amounts are reflected in the annual accounts of the respondent-company. Alternatively, the respondent has pleaded that the Company Petitions are barred by limitation as it is the pleaded case of the petitioners that the amounts were shown to be borrowed by the respondent in the years 2009 and 2008, respectively, and that the limitation of three years for recovery of the amounts has expired.

The petitioner in C.P.No.198 of 2014 has placed reliance on letter dated 31-1-2008 issued by the Director (Finance) of the respondent-company wherein he has admitted receipt of Rs.5 lakhs through Banker's cheque dated 31-1-2008 and he has also referred to the agreement between the parties that the respondent will pay simple interest @ 12% per annum w.e.f. 1-2-2008. However, no such letter was addressed in respect of the sum of Rs.3 lakhs allegedly advanced by the petitioner in C.P.No.197 of 2014. The petitioners have also relied upon the balance sheets of the respondent-company showing the sums of

Rs.3 lakhs and Rs.5 lakhs as balances due to the petitioners, respectively.

As noted above, the primordium of the case of the respondent is that being the Managing Director from the year 2008, Mr. Sreedhar, the husband and the son-in-law of the petitioners, respectively, has manipulated the accounts of the respondent-company. Besides this dispute on the liability of the respondent, another formidable issue which needs to be resolved between the parties is the aspect of limitation. The learned counsel for the petitioners strongly relied upon the fact that the balance sheet of the respondent as on 31-3-2013 has shown the debts and that therefore the same constitutes acknowledgment. However, the learned counsel for the respondent placed reliance on the Division Bench Judgment of this Court in **Vijayalakshmi Vs. Hari Hara Ginning & Pressing, Nandigaon**[1] wherein while referring to the Judgment of the Karnataka High Court in **State Bank of India Vs. Hegde and Golay Ltd.**[2] wherein it was observed that showing of an amount in a balance sheet amounts to an acknowledgement in terms of the Limitation Act, 1963 (for short "the Limitation Act"), the Bench observed that though they were not expressing any opinion on the said proposition of law, it is a well established law that for giving an acknowledgement, a person has to be conscious of his act to the knowledge of the other person and that, prima facie, merely showing a debt in a balance sheet cannot "as personally advised" be termed to be an acknowledgement in terms of the Limitation Act. Thus, the Division Bench of this Court has not agreed with the Judgment of the Karnataka High Court holding that showing of an amount in the balance sheet amounts to acknowledgement under the Limitation Act. I may however hasten to add that the Division Bench has not expressed its conclusive opinion on this aspect.

From the facts discussed above, it is evident that there is a serious dispute not only on the liability of the respondent to pay the debt but also on the aspect of limitation. In these facts and circumstances of the case, I am not inclined to entertain these Company Petitions and the same are accordingly dismissed. The petitioners are however left free to file civil suits for recovery of the amounts. If such suits are filed, the Civil Court shall dispose of the same on merits without being guided by any of the observations made in this order.

Justice C.V. Nagarjuna Reddy

Date : 30-3-2015

AM

---

[1] 1999(3) ALD 624

[2] 1987(62) Comp. Cases 239