HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Company Application No.85 of 2015

Date : 10-3-2015

Between :

M/s. Ventech Industry Ltd.
(In Provisional Liquidation) .. Complainant

And

Mr. D. Koneru Madhav .. Accused

Counsel for complainant : Mr. M. Anil Kumar, Counsel for the Official Liquidator

Counsel for accused : Mr. S. Niranjan Reddy for Mr. J. Krishna Dev

The Court made the following:

ORDER:

This Company Application is filed under Sections 454(5) and 454(5A) of the Companies Act, 1956 (for short "the Act") r/w. Rule 9 of the Companies (Court) Rules 1959 for taking cognizance of the offence committed by the accused under Section 454(5A) of the Act; to summon the accused for being tried and punished in accordance with sub-section (5) of Section 454 of the Act for having willfully and deliberately not complied with the requirements of sub-sections (1), (2) and (3) of Section 454 of the Act.

This case has a long history. M/s. Ventech Industry Ltd., was ordered to be wound up by this Court by order dated 26-12-2002 in C.P.No.18 of 2002 and the Liquidator attached to this Court was appointed as the Official Liquidator. Thereafter, as the statement of affairs was not filed by the persons who are at the helm of affairs at the time of winding up of the company, the Official Liquidator filed Company Application No.629 of 2003 under sub-sections (1) to (3) of Section 454 of the Act. The accused herein was one of the accused in the said Company Application. As the accused has not responded to the summons issued by this

Court, Non-Bailable Warrant was issued and a direction was given to the Central Bureau of Investigation (CBI) to issue Red Corner Notice. Accordingly, Red Corner Notice was issued by the CBI. As the whereabouts of the accused were not traced, this Court by order dated 18-3-2014 has closed the complaint by directing the CBI to inform the Official Liquidator immediately upon tracing the accused and permitted the Official Liquidator to file a fresh application seeking the relief claimed in the said application in the event the accused is traced.

In the present application, the Official Liquidator has informed the Court that on 4-2-2015 he has received letter dated 3-2-2015 from the office of the Superintendent of Police, CBI, Koti, Hyderabad, informing that the accused herein was detained by them at Rajiv Gandhi International Airport on the intervening night of 2/3-2-2015 at 1.25 Hours and that therefore he has filed the present application as the accused was the ex-Director of the company in liquidation. On 11-2-2015, the Sub-Inspector of Police, Panjagutta Police Station, brought the accused to the Court. The learned Government Pleader for Home (Telangana State) submitted that the Passport of the accused has been seized and the same is in the custody of the Panjagutta Police. The case was adjourned to enable the accused to file the statement of affairs.

The accused has filed a counter affidavit along with the statement of affairs of the company in liquidation in Form No.57. In his counter affidavit, the accused has traced the background in which he was compelled to become the Director in the company in liquidation following the untimely death of his father. He has further stated that being a young man of 23 years of age without any experience, and the Directors who were appointed were also inexperienced in the affairs of the company, most of the decisions were taken by the senior employees, to which the Board has only formally assented and that with the passage of time, the Board of Directors became unresponsive and started resigning one after the other. He has further averred that the production activity of the company has come to a stand still and the workers have made their claim to the tune of Rs.30 lakhs which was settled by the accused; that when the winding up proceedings were initiated, no notice of the same was received on account of the fact that the registered office of the company was shifted to the factory premises as a result of which *ex parte* winding up order was passed by this Court on 26-4-2012; that the family life of the accused has run into rough weather leading to separation from his wife and later in February 2008, he has got married to his present wife, a Chinese citizen, and they came together to India in March 2008; that as the said marriage was not approved by the mother of the accused, there was estrangement between him and his mother and that the accused along with his wife moved back to China in 2008 in search of employment opportunities and eventually they have settled down there. It is further averred that the accused was blessed with a baby boy and when he arrived i n India to see his mother, he was detained by the immigration authorities in the night of 2/3-3-2015; and that on enquiries he came to know the reason for his arrest. The accused has asserted that at no point of time, he was involved in the management of the company and that he did not have access to and was never in possession of any of the Books of the Company which were being prepared and maintained by senior employees and that the last Annual Return which was in the year 1999-2000 was also prepared by the employees along with the statutory auditors. He has further averred that he has recently visited the office of the Official Liquidator and has caused a thorough search of the entire records available with them and it was revealed that no Books of Accounts of the company in liquidation were available with them and that based on the last Annual Report and the Balance Sheet filed by the company, he has prepared the Statement of Affairs to the best of his knowledge.

On receipt of the Statement of Affairs, the Official Liquidator has submitted his first report wherein he has pointed out the following deficiencies :

(i) The Statement of Affairs in Form No.57 should be drawn on Non-Judicial Stamp paper with notary and Form No.58. Affidavit of concurrence in Statement of Affairs also should be drawn on Non-Judicial Stamp paper duly signed by another former Director.

(ii) Balance at Bank - Rs.44,30,057/-: The accused has not submitted the name of the Bank, address, account number and related documents.

(iii) Loans and Advances : Rs.34,25,000/- : The accused has not submitted full details and its relevant files.

(iv) Loans and Advances – Deposits – Rs.1,83,03,034/- : The accused has not submitted full details and its relevant papers.

(v) The accused have not disclosed the details of the entire assets of the company (in Liqn.) and also not delivered the relevant records.

(vi) The accused has not disclosed the details of Employees/Workmen and also not delivered those record.

The accused has filed an additional counter affidavit wherein he has narrated the various efforts made by him to trace the records. He has averred that in view of the serious disputes developing on account of the company not running profitably and non-payment of workmen dues, law and order situation has arisen wherein the management and officers working with the company in liquidation were not permitted free access to the factory premises and the premises was ransacked by some of the miscreant employees of the company due to the support of the local strongmen, resulting in filing of criminal complaints i.e., FIR No.5 of 2002 lodged on 20-2-2002, FIR No.13 of 2002 lodged on 26-4-

2002 and FIR No.15 of 2002 lodged on 4-5-2002. That as the records available with the Official Liquidator did not contain the relevant information as on the date of winding up order for the purpose of filing the Statement of Affairs, the accused approached the two Banks with whom accounts of the company were maintained; that the Bank account with Canara Bank, Ameerpet Branch was maintained only for the purpose of payment of salaries while the account with the State Bank of India, Somajiguda Branch was operated by the company for all other purposes; that the accused has approached the concerned personnel of both the Banks seeking information relating to the accounts maintained and that both the Banks upon verification informed that the details of the said accounts are not retrievable as the systems have been updated after which information pertaining to old accounts is not available in the new systems. The accused has also claimed to have visited the office of the auditor of the company in liquidation and that he was informed by Mr. Anil Kumar Mehta, Managing Partner of the Auditor company, that only information for a period of eight years would be maintained by them and that no information or documents pertaining to the company in liquidation were available with them. The accused has further stated that Mr. Ramesh, the former Senior Accountant of the company, informed him that all the sundry creditors of the company were settled to the mutual satisfaction of the parties and the signatures of the creditors/vendors of the company in liquidation were obtained on vouchers which were maintained at the factory premises and that unfortunately the said vouchers are also not available. That the Official Liquidator informed the accused that claims were submitted by the State Bank of India, the Commercial Tax Department and one T.C.I. Freight and that with regard to the personal guarantee given to the State Bank of India, the accused has entered into one time settlement whereunder a sum of Rs.53 lakhs was paid to them. He has filed a copy of letter dated 29-3-2006 evincing such payment.

The Official Liquidator who is present at the hearing has submitted that the State Bank of India is the lone secured creditor while the Commercial Tax Department falls under the category of priority creditor; that land admeasuring Ac.9-20 gts. situated at Kazikpally village, Jinnaram Mandal, Medak District and Ac.44-30 gts., situated at Peddakaparthy village, Chityal Mandal, Nalgonda District, were sold and the amounts of Rs.42,00,000/- and Rs.72,00,000/-, respectively, were realized through those sales and paid to the secured creditor and that a sum of Rs.20,93,81,609/- has been admitted by the Official Liquidator as the amount due to the secured creditor. He has further submitted that all the claims for recovery under Section 543 were barred as the winding up order was passed as far back as the year 2002 and that as the maximum period of limitation for filing a suit or application for action for misfeasance is five years from the date of passing of the winding up order. He has further submitted that even if any amounts are recoverable by the company, the same have become time barred.

Under Section 454(5) of the Act, if any person, without reasonable excuse makes default in complying with the requirement of filing of the statement of affairs, he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to Rs.1,000/- for every day during which the default continues, or with both. The facts pleaded by the accused, and not controverted by the Official Liquidator, would reveal that his non-filing of the statement of affairs of the company in liquidation till recently is not deliberate or intentional and the incomplete nature of the statement of affairs is obviously due to the helpless situation in which the accused has placed himself. In these facts and circumstances of the case, I am of the opinion that the accused is not liable for any punishment. Accordingly, further action against the accused is dropped and the Company Application is closed.

Justice C.V. Nagarjuna Reddy

Date : 10-3-2015
Note: Furnish copy in a week

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