

THE HON'BLE SRI JUSTICE S.V.BHATT

C.R.P.Nos.4016 of 2013 & 1257 of 2016

COMMON ORDER:

Heard Mr.Ganshyamdas Mandhani for revision petitioners and Mr.J.Srinadh Reddy for Official Liquidator High Court, Madras.

Notice on Official Liquidator is served in CRP.No.1257 of 2016 and Mr.Srinadh Reddy accepts notice for and on behalf of Official Liquidator in CRP.No.4016 of 2013 as well.

The defendants in O.S.No.287 of 2011 are the revision petitioners in CRP.No.1257 of 2016. The revision is directed against the order dated 28.01.2016 in I.A.No.415 of 2015 filed by revision petitioners under Section 446 of Companies Act, 1956 (for short 'the Act') practically for returning the plaint in O.S.No.287 of 2011 to continue to work out the legal remedies before the Court having jurisdiction to continue to entertain a claim for or against Subhiksha Trading Services Limited/respondent herein.

The defendants in O.S.No.114 of 2011 are the revision petitioners in CRP.No.4016 of 2013. The revision is directed against the order in I.A.No.815 of 2013 filed for adducing the secondary evidence under Section 65 of the Evidence Act.

Mr.Ganshyamdas Mandani made his submissions both on continuation of the proceedings in O.S.Nos.287 and 114 of 2011 and also on the merits in these two Civil Revision Petitions.

This Court is of the view that the consideration of preliminary objection for continuation of the proceedings before the trial Court is taken up and the other contentions urged by Mr.Ganshyamdas Mandhani need not be adverted to.

Mr.Ganshyamdas Mandhani contends that Subhiksha Trading Services/plaintiff in these two suits is under order of liquidation vide order dated 29.02.2012 in CP.No.68 of 2009 before the High Court, Madras. Therefore, under Section 446 of the Companies Act, the array or description of plaintiff in the plaint disentitles the continuation of suit. He further contends that to continue the suit, leave should be obtained from the Company Court or these cases are prosecuted before the learned Company Judge High Court, Madras.

The consideration of legal objection is dependent on the basic facts which are also admitted by the affidavit of the Official Liquidator appointed in CP.No.68 of 2009 which reads as follows:

“1. That by an order dated 29.2.2012 in C.P.No.68 of 2009, the Hon'ble High Court, Madras wound up M/s. Subhiksha Trading Services Ltd and appointed the

Official Liquidator attached to this Hon'ble Court as the Liquidator of the subject company with direction to take charge of the assets and effects of the Company.

2. Aggrieved by the said order an appeal in O.S.A.No.124/2012 has been preferred by the Ex-Management of the subject company which was dismissed on 5.08.2015 by the Hon'ble Division Bench of High Court, Madras. In view of the above dismissal, the winding up order already made on 29.02.2012 has become effective.

3. Pursuant to the said order, Officer of the Official Liquidator, High Court, Madras initiated steps for taking possession of assets of the company (in Liquidation) at the Registered office situated at Flat No.2, 2nd Floor, Habib Complex No.5, Durghabai Deshmugh Road, R.A.Puram, Chennai-600028 on 28.10.2015. However, same could not be taken place, as said premises were already sealed by the EOW Officials in connection with criminal cases against the subject company. By an order dated 09.11.2017 in C.A.No.1211/2015 in C.P.No.68/09 the Hon'ble Court, Madras directed the EOW Police Officials to remove the seal placed by them.

4. That the Official Liquidator has no knowledge about the subject proceedings initiated by the Company till the Civil Revision Petition was served by the defendants. Apart from the above, Subject Company was defunct and lost its individuality in light of winding up order passed by the Hon'ble High Court of Madras. In this context it is humbly submits that to commence or continue with any suit or other legal proceedings as envisaged under Section 446 (1) of the Companies Act, 1956 leaves of the Hon'ble High Court, Madras is mandatory. According to the provision 446 (1) "when a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceedings by or against he company shall be commenced, or if pending at the date of winding up order, shall be proceed with, against the company, except by

leave of the court and subject to such terms as the Court may impose”.

5. In view of settled principle of law, court below has no jurisdiction to invoke such provisions except to issue appropriate direction to the parties as may be deemed fit in the subject matter. Hence, the grounds raised in the civil revision petitioner deserve for intervention by the Hon’ble High Court of Andhra Pradesh for the reasons as stated above.”

From the above, it is clear that the continuation of both the suits as things stand is impermissible. Section 446 of the Act since is comprehensive, the suits are directed to be returned within eight (08) weeks from the date of receipt of copy of this order under notice or intimation to Official Liquidator, High Court Madras, appointed in CP.No.68 of 2009. In the meantime, the Official Liquidator is given liberty to take steps for continuation of these proceedings before the High Court of Madras.

Civil Revision Petitions are ordered as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Date: 28.09.2018
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