IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	28.10.2022
Judgment pronounced on	11.11.2022

CORAM

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

Comp. Application No.117 of 2017
in
Company Petition No.303 of 2010

The Official Liquidator
High Court, Madras
as the Liquidator of
M/s.Rayalaseema Commodities Limited.
(in liquidation) ... Applicant

vs.

M/s.International Bey. & Filling Ind.
Rep. by its Directors,
P.O.Box 5178, Sharjah,
U.A.E. ... Respondent

This Company Application is filed under Section 460(4), 446(2) and 458(A) of Companies Act, 1956 read with Rules 9, 11(b) of Companies (Court) Rules, 1959, to direct the respondent/debtor firm to pay a sum of Rs.22,00,000/- along with an interest @ 18% per annum payable with effect from 26.04.2012 till date of entire settlement.

For Applicant : Mr.Pamarthi Sridhar
Official Liquidator

For Respondent : M/s.K.P.Gopalakrishnan
Mr.K.G.Pavithra

ORDER

This application is presented by the Official Liquidator for recovery of a sum of Rs.22,00,000/- from the respondent with interest thereon at 18% per annum from 26.04.2012 until the date of payment.

2. In support of this application, the Official Liquidator has filed a report dated 31.07.2017. In the said report, it is stated that the Official Liquidator was appointed as the Liquidator of M/s.Rayalaseema Commodities Limited by order dated 26.04.2012 in C.P.No.303 of 2010. Pursuant thereto, the Official Liquidator called for and received the statement of affairs from Mr.Kishore Datwani, ex-Director, on 04.01.2013. In the said statement of affairs, the trade debtors of the company in liquidation were disclosed in Schedule-II to List-A. The respondent herein, International Beverages and Filling Industries, Sharjah, UAE, was shown as a trade debtor, and the amount due from the respondent was indicated as Rs.22,00,000/-.

3. The application was opposed by the respondent by filing a counter to the above mentioned report. In the said counter, the respondent stated that the commodities purchased by the respondent from the applicant were on cash against document (CAD) basis. In particular, the respondent stated that an order was placed by the respondent on the applicant for the supply of 3000 cases of Alphonso mango pulp. The total value of the consignment was US dollars (USD) 71,100. The full payment in respect thereof was made. In January, 2010, the Sharjah Municipality rejected 2092 cases, i.e. the content of two containers. Pursuant thereto, there was exchange of correspondence between the parties for refund of money. On account of the failure of the applicant to refund money received for the returned containers, the respondent contends that USD 47,400 is due and payable by the applicant.

4. Both parties adduced evidence. The applicant examined Mr.N.Sivakumar, Estate Assistant in the Office of the Official Liquidator, High Court, Madras, as P.W.1. In course of the examination in chief of P.W.1, the statement of affairs was exhibited as Ex.A1 and the demand notice dated 03.04.2013 was exhibited as Ex.A2. P.W.1 was cross examined

by learned counsel for the respondent. Mr.Sanjeev Malhotra, ex-Director of the applicant, was examined as P.W.2. The photo copy of Form-32 in respect of Sudarshan Overseas Limited, which was the previous name of the applicant, was exhibited as Ex.A3 and the photo copy of the letter dated 29.01.2010 (addressed to P.W.2) was exhibited as Ex.A4. P.W.2 was cross examined by learned counsel for the respondent. The respondent relied upon documentary evidence by exhibiting 10 documents as Exs.R1 to R10. The said documents included a purchase order(Ex.R6) and an invoice(Ex.R7).

5. The Official Liquidator submitted that the respondent purchased 3000 cartons of Alphonso mango pulp from the applicant. By adverting to the invoice (Ex.R7), it was submitted that the invoice value is USD 71,100. The Official Liquidator submitted that Mr.Kishore Datwani, ex-Director, filed the statement of affairs and that the list of trade debtors was annexed thereto as Schedule-II to List-A. The list of trade debtors included the respondent and the document evidences that the amount due and payable by the respondent is a sum of Rs.22,00,000/-. In the absence of proof of payment by the respondent, the Official Liquidator submitted that the claims stands proved by the invoice and the statement of affairs.

6. In response, Mr.Gopalakrishnan, learned counsel for the respondent, invited my attention to the purchase order (Ex.R6) and pointed out that the payment was on CAD basis through the respondent's bank, namely, ABN AMRO Bank, Dubai, UAE. Therefore, he submitted that the 3000 cartons of Alphonso mango pulp, which was supplied by the applicant to the respondent under invoice dated 20.04.2009, was received upon making payment of the full invoice value of USD 71,100. By referring to Ex.R10, which is a communication dated 28.05.2012 from Mr.Sanjeev Malhotra, for and on behalf of Origin Foods Limited, he submitted that the applicant admitted that it had taken back two containers from the respondent upon rejection by the Sharjah Municipality for failure to meet quality parameters. In this regard, he contended that Origin Foods Limited is another name of the applicant.

7. He also referred to the oral evidence of P.W.2 and submitted that Mr.Sanjeev Malhotra admitted in his cross examination that the goods were purchased by the respondent on CAD basis. He further submitted that Mr.Malhotra admitted that the respondent rejected two containers and that he was asked to negotiate with the respondent in relation thereto. In these

circumstances, he contended that the applicant owes the respondent the sum of USD 47,400 towards the value of the two rejected containers. As regards the claim made by the applicant, he submitted that the statement in the statement of affairs that the respondent owes a sum of Rs.22,00,000/- to the applicant is not corroborated by any supporting documents. Indeed, he submitted that the author of the statement of affairs was not examined by the applicant. For all these reasons, he submitted that this application is liable to be dismissed.

8. From the evidence on record and upon considering the submissions of the contestants, it appears that the claim of the Official Liquidator is substantially based on the statement of affairs. The said statement of affairs was exhibited as Ex.A1. The said document was executed by Mr.Kishore Datwani on 04.01.2013. This is evident from the affidavit of concurrence in Form No.58 of Mr.Kishore Datwani. In Schedule-II to List-A of the statement of affairs, the trade debtors of the company in liquidation are listed. One of the trade debtors specified therein is International Beverages and Filling Industries/the respondent herein, and a sum of Rs.22,00,000/- is said to be due from the said entity.

9. Apart from the statement of affairs, the Official Liquidator has not produced any evidence in support of the claim. The respondent has placed on record the purchase order dated 14.07.2008. The said purchase order is in respect of the purchase of 9,000 cartons of 'KHAAS' natural Alphonso mango pulp and 29,000 cartons of 'KHAAS' natural Totapuri mango pulp. The total value of the purchase order is USD 759,600. The packing list and invoice pertaining to the supply of 3,000 cartons of Alphonso mango pulp crop 2008 is on record as Ex.R7. The packing list refers to invoice No.SOL/EXP/EOU/008/09-10 dated 20.04.2009. The invoice corresponding thereto indicates that the supply is at a price of USD 71,100. On 20.04.2009, the exchange rate for conversion of USD to INR was about 1 USD = INR 49.95. If the said exchange rate is applied, the amount due and payable would be about Rs.35,51,445/-. As against this, the amount due and payable as per the statement of affairs is Rs.22,00,000/-. The Official Liquidator did not examine Mr.Kishore Datwani as a witness. In the proof affidavit of Mr.Sivakumar, P.W.1, he relied entirely on the inclusion of the respondent in the list of trade debtors in the statement of affairs. In course of cross examination on 25.01.2018, P.W.1 admitted that he did not know the person who signed the statement of affairs. He further

admitted that he had not seen the ledger accounts of the respondent and that no records are available except for Ex.A1. In course of cross examination of Mr.Sanjeev Malhotra, P.W.2, on 28.02.2019, he admitted that the company in liquidation exported mango pulp and guava pulp on CAD basis. As regards the specific transaction, he stated that he did not know whether it was on CAD basis. However, he admitted that the purchase order(Ex.R6) provided for purchase on CAD basis. He further admitted that he was aware of the rejection of two containers by the Sharjah Municipality and that he was asked to negotiate with the respondent in that regard. Thus, there is no evidence, documentary or oral, as to the basis of the claim of Rs.22,00,000/-.

10. Upon being called upon to do so, the respondent produced a document indicating that payment of USD 71,100 was made to Origin Foods Limited in relation to Invoice No.SOL/EXP/EOU/008/09-10 dated 20.04.2009. This invoice appears to *prima facie* tally with the packing list and invoice (Ex.R7) relating to the supply of 3,000 cartons of Alphonso mango pulp to the respondent. In order to rebut the contention that the applicant was also known as Origin Foods Limited, the Official Liquidator

produced the certificate of incorporation and name change of the applicant and the certificate of incorporation of Origin Foods Limited. These documents evidence that Origin Foods Limited and the applicant are separate entities.

11. The question as to whether the applicant has established the claim of Rs.22,00,000/- remains to be considered. As stated earlier, the invoice value of INR 71,100 would convert to a sum of about Rs.35.51 lakhs at the conversion rate of 49.95, which was applicable in April,2009. This amount does not tally with the claim. The purchase order on record indicates that multiple transactions for the sale and purchase of products, such as mango pulp, took place between the applicant and the respondent. The correspondence between the parties points in the same direction. By taking the above fact into account along with the fact that the amount payable under the invoice on record does not tally with the amount claimed in the application, the possibility that the amount claimed in the application does not arise out of the invoice on record cannot be ruled out. The Official Liquidator has failed to examine the author of the statement of affairs or provide any corroborating evidence for the claim of Rs.22,00,000/-. In the circumstances, the said claim cannot be sustained.

12. Accordingly, Comp.A.No.117 of 2017 is dismissed without any order as to costs.

rrg 11.11.2022

SENTHILKUMAR RAMAMOORTHY

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Comp.A.No.117 of 2017

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