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IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WPO/292/2023

KOHLBROS WIRELESS SOLUTIONS LLP AND ANR.
VS
UNION OF INDIA AND ORS.

BEFORE:
The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA
Date : 8th June, 2023

Appearance:
Mr. Altamash Alim, Adv.
Mr. Sunit Biswas, Adv.
Mr. Rajashee Bhowmick, Adv.
...for the petitioners

Mr. Shiv Mangal Singh, Adv.
Mr. Jalan Ara Kulsum, Adv.
Ms. Moriam Sanfui, Adv.
...for the respondent Bank

The Court:- The petitioner has made a specious argument to the effect that petitioner no. 2 is an individual having a sole proprietorship firm which is entirely independent of petitioner no. 1, which is a separate juristic entity as a Limited Liability Partnership. The respondent-Bank froze the account of the petitioner no. 1 with the Bank, despite the loan, for securing which the freezing was done, having no nexus with the petitioner no. 1.

Learned counsel places reliance on Section 27(2) of the Limited Liability Partnership Act 2008, where it is provided that the Limited Liability Partnership is liable if a partner of a Limited Liability Partnership is liable to any person as a result of a wrongful act or omission on his part *in the course of the business of the Limited Liability Partnership or with its authority*".

It is submitted that since the loan was taken in the individual capacity of petitioner no. 2, there was no occasion for the Bank to freeze the account of petitioner no. 1 lying with it.

Learned counsel appearing for the Bank places reliance on the several averments made in a previous writ petition filed by petitioner no. 2, being WPO/2366/2022, where petitioner no. 2 had categorically admitted that the loan was being taken to fund a project undertaken by the petitioner no. 1-LLP.

That apart, learned counsel for the respondent-Bank places reliance on an e-mail annexed to the affidavit-in-opposition, from which it is evidenced that the arrangement between the Bank and petitioner no. 2 was that the funds were to be received from Kerala Police in their cash credit account. It is noteworthy that the project-in-question undertaken by petitioner no. 1 was with regard to a work awarded by the Kerala Police.

Learned counsel for the petitioner, in reply, seeks to controvert the allegations by harping on the question of whether an LLP can be saddled with any individual liability for a loan taken by the petitioner no. 2, in his personal capacity or in the capacity of his sole proprietorship, which falls outside the purview of Section 27(2) of the 2008 Act.

However, upon hearing learned counsel for the parties, it transpires that, admittedly, petitioner no. 2 is a 99% stakeholder in the petitioner no. 1-LLP.

That apart, there are pleadings galore in the previous writ petition of petitioner no. 2 to indicate that the loan-in-question was taken by the petitioner no. 2, although in the name of his sole proprietorship, entirely to fund the project of the petitioner no. 1-LLP.

Although the petitioners have sought to make out that Section 27(2) of the 2008 Act was not applicable, since the act in question was not done in the course of business of Limited Liability Partnership, such contention of the petitioners is betrayed by the averments made by the borrower/petitioner no. 2 himself in his prior writ petition.

Even if there is some scope of argument regarding whether Section 27(2) is applicable in terms, there cannot be any doubt that the petitioner no. 2/borrower, at least in his communication and throughout the transaction, had given out to the Bank that the loan was being taken solely to fund a project of the petitioner no. 1-LLP. Hence, in any event, petitioner no. 2 is bound by estoppel for having given out that the provisions of Section 27(2) of the 2008 Act were applicable in the present case since the loan was taken entirely for the business of LLP.

Even if a convoluted argument may be made as to whether the petitioner no. 1-LLP is barred by estoppel, since the loan was taken by petitioner no. 2, the existence of the fact that petitioner no. 2 is a 99% stakeholder of petitioner no. 1 is sufficient to pierce the corporate veil to the effect that it is the petitioner no. 2 who is the controlling mind behind the LLP. Hence, since the Bank has a huge claim against the petitioner No. 2, no irregularity or illegality was committed by the respondent Bank in freezing the account of the petitioner no. 1-LLP held with the said Bank.

Hence, there is no scope for intervention in the present writ petition.

Accordingly, WPO/292/2023 is dismissed on contest, without any order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

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