

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF MARCH 2012

BEFORE

THE HON'BLE MR. JUSTICE A.S. BOPANNA

COMPANY APPLICATION NO. 971/2005

IN

COMPANY PETITION NO.112/1994

Between :

Official Liquidator of
The Mandya National Paper Mills Limited
(in Liquidation), attached to
High Court of Karnataka
IV Floor, D & F Wing
Kendriya Sadan, Koramangala
Bangalore - 560 034.

... Applicant

(By Sri K.S. Mahadevan & Sri V Jayaram, Advs.)

And :

1. Sri S.K. Sengupta
No.202/4A, N.S.C. Bose Road
Flat 1/3, "Madhumita"
Bansdroni, Kolkata-700 047.
2. Sri R Anantharamu
No.675, "Srikanta Krupa"
Cinema Tent Road
Yelwala Post, Mysore.
3. Sri D. Nagaraja
No.1175/1, "Rukmini nilaya"
Balakrishna Rao Road
Chamarajapuram
Mysore- 570 004.

... Respondents

(By Sri T Suryanarayana, Adv. for
M/s. King & Partridge, Advs. for R1-3)

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This Company Application is filed by the counsel for the applicant under Section 543 of the Companies Act, 1956 and Rule 9 and 260 of the Companies (Court) Rules, 1959, praying to appoint a Chartered Accountant from the approved panel to investigate into the affairs of the company with the books and records available in the Office of the Official Liquidator.

This application coming on for arguments, this day, the Court made the following:

ORDER

The instant application is filed by the Official Liquidator under Section 543(1) of the Companies Act, 1956 R/w Rule 9 and 260 of the Companies (Court) Rules, 1959. The application is filed on behalf of the company in liquidation against the erstwhile Directors of the said Company, alleging misfeasance and in that context to direct respondent Nos. 1 and 3 to jointly or severally pay the company in liquidation a sum of Rs.33,63,19,000/- along with interest.

2. Heard the learned counsel for the parties and perused the application papers.

3. The company in liquidation was ordered to be wound up by this Court vide its order dated 20.10.2000 passed in Co.P.112/94. Thereafter, the erstwhile Directors

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have filed their statement of affairs. In the enclosures to the statement of affairs, the realisable fixed assets is indicated at Rs.43,57,00,000/-. Subsequently, in the process of winding up, OLR No.13/2001 was filed before this Court seeking leave of this Court for valuation of the fixed assets of the company in liquidation. Accordingly, the valuer M/s Jayasurya and Associates were appointed as the Chartered Accountants to value the property. The valuation made by the valuer appointed by this Court indicated the value of the fixed assets at Rs.9,41,81,000/-. In that view, the Official Liquidator having noticed the difference of Rs.33,63,00,000/- between the value of the realisable assets indicated in the statement of affairs and the valuation made by the valuer appointed by this Court, was of the view that the erstwhile Directors viz., the respondents herein have mis-utilised the said value to their benefit. Therefore, the instant application has been filed alleging misfeasance by the erstwhile Directors of the company in liquidation.



4. The respondents on being notified have filed their objection statement. It is contended that the realisable assets which were indicated in the statement of affairs was based on a valuation report dated 31.05.1997 given by M/s S.R. Batliboi and Company, Chartered Accountants. It is their contention that the book value of the said assets was only Rs.8,00,17,000/- as on the date of the winding up. It is their further case that the realisable value indicated would not be the actual value and the actual value in any event has been determined by the valuer appointed by this Court itself at Rs.9,41,81,000/- and a sum of Rs.1,38,00,000/- being the value of the immovable properties has to be excluded since the same has not been sold and if that value is kept in view, the same would match the valuation for the purpose of book value made by the respondents themselves when they were functioning. Therefore, the allegations made in the application about the difference in the value is unsustainable. Hence, it is contended that the application is liable to be rejected.

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5. In the light of the rival contentions, the matter was set down for evidence. One Sri Vasanth Kumar, working as Assistant in the Office of the Official Liquidator was examined and his affidavit was tendered by way of evidence and he was treated as P.W.1. The documents at Exhs.P1 to P3 were marked. The said witness was also cross-examined. On behalf of the respondents, one Sri S.K. Sengupta, the erstwhile Managing Director was examined as R.W.1, who also submitted his affidavit evidence and marked the documents at Exhs.R1 and R2. The said witness was also cross-examined. In the light of the evidence tendered by the parties, it is necessary to examine as to whether the contention put forth in the application is required to be accepted by this Court and as to whether the respondents should be held guilty of misfeasance and the amount should be ordered to be realised from them.

6. In this regard, the oral evidence need not be referred to in detail since the entire valuation is based on

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the documents, which have been marked in evidence. The statement of affairs filed by the respondents has been marked as Ex.P1 to point out that in the said document, the value of the fixed assets has been indicated at Rs.43,57,00,000/-. The order dated 17.04.2003 passed in C.A.348/2003 is marked at Ex.P2 to indicate that the value ultimately realised from the fixed assets including the immovable property is in a sum of Rs.8,33,26,000/-. Though the valuation report of Sri H.S. Seshagiri is marked at Ex.P3, the same relates to the immovable property and in the instant case, the relevant document to be taken note as Ex.P3 would be the valuation of M/s Jayasurya and Associates, which is produced at Annexure-A along with the application, the same is accordingly taken note of.

7. A perusal of the said documents in the background of the oral evidence stated by the witnesses, no doubt, indicates that the statement of affairs would show that the value of the fixed assets as declared by the

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Directors was in a sum of Rs.43,57,00,000/-. However, to ascertain the correctness of the same, the evidence tendered by the respondents and the documents relied on also requires to be noticed. In this regard, the valuation report dated 31.05.1997 made by M/s Batliboi and Company has been marked as Ex.R1. A specific reference to the details furnished in the said report as indicated in Section III would show the realisable value and reserve price of all the assets as at 31.05.1997. In this regard, the book value as well as the realisable value as on the said date has been indicated. A perusal of the same would indicate that the value has been indicated with regard to the fixed assets in a sum of Rs.41,56,00,000/- and for the same assets as on that day, the book value has been indicated as at Rs.13,59,45,198/-. This by itself and on the face it would indicate that the book value as on that day was much lower than indicated in the very report of the M/s Batliboi and Company.

8. Keeping this in view, the document at Ex.R2 needs to be perused. The said document is the balance

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sheet drawn up by M/s Hariharan Narayan and Company, Chartered Accountants on 20.10.2000 i.e., the date of the winding up order. In the said document, the value of the fixed assets has been indicated as Rs.8,00,17,000/-. If the said valuation made as on the date of the winding up order with regard to the value of the property is kept in view, the valuation made by the valuer appointed by this Court, M/s H. Jayasurya and Associates based on which the instant application is filed would indicate that the value is shown at Rs.10,82,84,000/-. From the said amount, if the value of the immovable property is excluded, the value of the fixed assets would be in a sum of Rs.9,41,81,000/-. No doubt there is a marginal variation in the value as assessed by the valuer appointed by this Court after the date of winding up and the value indicated in the balance sheet as on the date of winding up. However, what is to be noticed is that ultimately, the fixed assets which were sold in auction as permitted by this Court, the value fetched is in a sum of Rs.8,33,26,000/-. The said value in fact is marginally

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higher than the book value which has been indicated by the valuer and reflected in the balance sheet as on the date of winding up order.

9. Therefore, if these aspects are kept in view, the documents would disclose that the actual value of the fixed assets is the one which has been realised in the process of the winding up and as confirmed in the auction permitted by this Court. Insofar as the valuation that has been made, the reference to the cross-examination of P.W.1 would indicate that the only basis on which such valuation is claimed is on the statement of affairs which had been filed and thereafter no independent investigation is made at the end of the Official Liquidator.

10. Therefore, in the background of the above and considering the fact that the entire claim in the instant application is based on the declaration made in the statement of affairs which was on the basis of the realisable value indicated in Ex.R1 and in that regard, if the view taken by this Court in the case of the **Official Liquidator, Bangalore Batteries (P) Ltd. (In**

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Liquidation) -vs- N.S. Gopal (2010) 103 SCL 164 (KAR),

is noticed, it would be clear that the proceedings under Section 543 cannot be initiated merely based on the realisable value of the assets indicated.

11. In the instant case, in any event, the valuation got done by this Court prior to the sale of the fixed assets has been realised and the value is more than the book value which has been indicated in the balance sheet as on the date of winding up. Apart from the same, there is no other pleading or evidence with regard to the misfeasance having been indulged by the erstwhile Directors.

Therefore, the prayer made in the application is liable to be rejected. Accordingly, the application is dismissed.

No costs.

Sd/-
JUDGE

hrp/bms