

(2014) 04 DEL CK 0026
Delhi High Court
Case No: C.O. App. 73/2013

Ravi Kumar		APPELLANT
	Vs	
Official Liquidator		RESPONDENT

Date of Decision: April 22, 2014

Acts Referred:

- Companies Act, 1956 - Section 433(1)(e), 454
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2014) 5 AD 50

Hon'ble Judges: Sanjiv Khanna, J; G.P. Mittal, J

Bench: Division Bench

Advocate: R.D. Makheeja, Advocate for the Appellant; Rajiv Bahl, Navinder Nath Gautam and Anjali Rajput, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Sanjiv Khanna, J.

Ravi Kumar, Director of M/s Presidium Breweries Pvt. Ltd. (Company, for short) has filed the present intra Court appeal impugning orders dated 15th May, 2013 and 29th August, 2013 passed in Company Petition No. 306/2012 titled Paramvir Singh Vs. Presidium Breweries Pvt. Ltd. Order dated 15th May, 2013 records that earlier on 27th February, 2013, the Managing Director of the company had appeared in person and was directed to file an affidavit stating and mentioning movable and immovable assets and enclosing therewith balance sheets, profit and loss accounts and statements of all bank accounts for the last three years. The company was also restrained from creating any charge, alienating, transferring or parting with possession of any of its movable assets. Order dated 15th May, 2013 records that the said direction has not been complied with and no one was present on the said date to contest the proceedings. Accordingly, the company petition was admitted and the Official Liquidator was appointed as Provisional Liquidator with a direction to take over all assets, books of accounts and records. Citations were directed to be

published and directors of the company were asked to ensure strict compliance of Section 454 of the Companies Act, 1956 (Act, for short) and Rule 130 of the Companies (Court) Rules, 1959. Statement of affairs in the prescribed form was required to be filed within 21 days.

2. On or about 17th June, 2013, the company filed Company Application No. 1053/2013 seeking recall of the order dated 15th May, 2013. In this application, the company contested the winding up claim u/s 433(1)(e) of the Act on merits and had also given the reason why no one was present on behalf of the company when the matter was taken up for hearing on 15th May, 2013. It was stated that the Director of the company was to appear before the Court and ask for some time on 15th May, 2013 to comply with the earlier directions. However, on 14th May, 2013, the said Director had gone to Mohali with an intention to come back and make appearance. On his return journey from Mohali to Delhi, his car broke down and he could not reach the Court in time. At about 2.25 p.m. on 15th May, 2013, when he came to the Court after procuring entry pass, he was informed that the matter had been adjourned to 8th October, 2013. He subsequently read the order dated 15th May, 2013 on the internet and came to know about the winding up order. Before summer vacations, the company had filed an application for recall of the order of the winding up dated 15th May, 2013 vide diary number indicated in paragraph 18, but the said application could not be listed due to office objection and pre vacation rush in the Registry.

3. Initially notice on the said application was issued vide order dated 19th June, 2013 and was renotified vide order dated 5th July, 2013 to 12th August, 2013 and then to 29th August, 2013. On the last date i.e. 29th August, 2013, the application was dismissed primarily on the ground that the Company Court on 17th February, 2013 had directed the Managing Director of the company to file reply as well as an affidavit indicating the movable and immovable assets along with balance sheets, profit and loss accounts and bank statements for the last three years. The said details and the reply were not filed till order dated 15th May, 2013 was passed. It is noticeable that the order dated 29th August, 2013 does not refer to the merits or the contentions raised by the company in respect of the monetary claim, which was elucidated and mentioned in the application. This aspect or merits are being elucidated below.

4. The company in Company Application No. 1053/2013 accepts and admits that they had received Rs. 10,00,000/- by way of two cheques from the respondent, i.e. the petitioner, before the Company Court. They, however, dispute payment of Rs. 20,00,000/- alleged to have been made in cash by the respondent. It is also claimed that the company had made payment of Rs. 3,79,500/- by way of bearer cheques to the respondent at his request. However, along with the application, no details or receipt issued by the respondent towards payment, have been enclosed. It is further claimed that the director of the company had made cash payment of Rs.

6,00,000/-approximately, but again no receipt or proof of payment has been enclosed. The company has admitted that they had issued three cheques of Rs. 5,00,000/- each, which were presented for encashment, but were dishonoured and criminal case u/s 138 of Negotiable Instruments Act has been filed.

5. It is stated that the company is engaged in the business of selling of liquor in Punjab and Haryana. The said liquor was got manufactured by the company under their own brand name, which is registered with the government. Learned counsel for the appellant submits that an affidavit setting out assets both movable and immovable has been filed along with profit and loss account, balance sheet etc. Learned counsel appearing for the Official Liquidator accepts the said factual position. It is also accepted that balance sheets etc. have been filed, but the contents thereof are under dispute by the respondent i.e. the petitioner before the Company Court. However, there were lapses and defaults by the company. Keeping in view the aforesaid facts, we issue the following directions:-

(i) The company or the appellant will deposit in the Court Rs. 9,00,000/- within a period of 30 days. This amount may be released to the respondent i.e. the petitioner, subject to conditions as may be imposed by the Company Court. We have directed payment of Rs. 9,00,000/- as the respondent in the company petition has accepted that he had received payment of Rs. 1,00,000/- by cheque.

(ii) The company court will examine the contention and claim of the respondent that he had made payment of Rs. 20,00,000/- in cash and the claim and contention of the company to the contrary. The Company Court will also examine the claim and contention of the appellant about payment of Rs. 3,79,500/- by bearer cheques and Rs. 6,00,000/- in cash, of which no receipt or document has been filed.

(iii) The company and the appellant are restrained from creating any charge, alienating, transferring or parting with possession of any of the immovable assets of the company. However, they will continue to operate and carry on business, but will file statement of accounts relating to income, receipts as well expenditure, copy of which will be furnished every fortnight to the respondent and the Official Liquidator. The said order/direction is subject to order/direction/modification by the Company Court.

(iv) The orders dated 15th May, 2013 and 29th August, 2013 are partly modified to the extent indicated above. We clarify that direction for admission and appointment of Official Liquidator as Provisional Liquidator is set aside for the present. However, the Company Court in case of failure to deposit Rs. 9,00,000/- or comply with the directions made above or any order/direction by the Company Court can admit the petition and appoint the Official Liquidator as Provisional Liquidator in accordance with law.

6. The company appeal is disposed of. The matter will be listed before the Company Court on 27th May, 2014 for adjudication and compliance of the condition.