

(2013) 07 DEL CK 0474

Delhi High Court

Case No: CO. App. 42 of 2013

Shri Bal Kishan Saini

APPELLANT

Vs

M/s. Devred India Ltd. and
Others

RESPONDENT

Date of Decision: July 12, 2013

Acts Referred:

- Companies Act, 1956 - Section 433(f)

Hon'ble Judges: Reva Khetrapal, J; Pratibha Rani, J

Bench: Division Bench

Advocate: U.C. Bhandari, for the Appellant; Ashish Makhija, Advocate for Official Liquidator and Mr. S.K. Chaudhary, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Reva Khetrapal, J.

The present Appeal is directed against the order dated 16.5.2013 passed by the learned Company Judge in CP No. 200/07 for investigation of the matter by the Serious Fraud Investigation Office (for short "SFIO"). The brief facts leading to the filing of the present Appeal are that in July, 2007 a winding up petition u/s 433(f) of the Companies Act, 1956 in respect of the Company M/s. Devred India Pvt. Ltd. presently under liquidation was filed by the Respondent No. 2 in his capacity as Director and 50% shareholder of the Company. The said winding up petition was admitted by the Company Judge vide order dated 6.12.2010. The Official Liquidator attached to the Court was appointed as provisional Official Liquidator. By the same order, the Company Court appointed Mr. Anil Bagai, Chartered Accountant to assist the Official Liquidator and audit the accounts of the Company. The Respondent No. 2 and the Appellant were directed to file statement of affairs with the Official Liquidator within 21 days and to furnish details of all bank accounts of the Company

within the aforesaid period. The Respondent Company was finally wound up vide order dated 17.5.2012 after considering all the facts and circumstances set out in the petition, including allegations and counter-allegations inter se the parties.

2. Subsequently to the passing of the winding-up order, on the directions of the Company Court, the Official Liquidator submitted status report No. 532/2012, which was disposed of vide order dated 1.10.2012 directing the O.L. to file a fresh status report. On the fixed date, the O.L. filed status report No. 165/2013, which was again disposed of by directing the O.L. to file a fresh status report. The third status report bearing No. 420/2013 was then filed by the Official Liquidator along with an application seeking directions of the Hon'ble Company Judge to refer the case to SFIO.

3. It may usefully be noted at this juncture that the Chartered Accountant appointed by the Company Court also submitted his report dated 29.12.2012 before the Official Liquidator. By an order passed in CA No. 464/2013, the Company Court directed the Official Liquidator to issue notice to the Company's ex-Accountant and to examine him under Rule 130 of the Companies (Court) Rules, 1959 and accordingly the statement of Mr. Mangal Sen, ex-Accountant was recorded by the Official Liquidator on 3rd May, 2013. To be further noted at this juncture that the statements of the ex-Directors of the Company, viz. the Appellant and the Respondent No. 2 had already been recorded by the Official Liquidator under Rule 130 of the Company Court Rules. On consideration of the entire material passed on record, the impugned order was passed.

4. The sole contention of the Appellant's counsel is that neither the reports of the Official Liquidator nor the report of the Chartered Accountant appointed by the Court nor the statements recorded before the Official Liquidator warrant the passing of the impugned order. We are not inclined to agree for the reason that had this been so the Official Liquidator would not have been directed to file status reports one after the other and three status reports would not have been filed by the Official Liquidator. Further, a cursory look at the order shows that the order has been passed after considering not only the reports filed by the Official Liquidator from time to time, being status report Nos. 532/2012, 165/2013 and 420/2013, but other material on record including the statements recorded by the Official Liquidator of the ex-Directors of the Company and the ex-Accountant of the Company as well as the report filed by the Chartered Accountant appointed by the Company Court. It is further borne out from the order itself that certain clarifications were sought by the Court from the ex-Accountant of the Company with regard to the accounts and for the aforesaid purpose the statements of the former Directors were shown to him and ultimately in view of the allegations and counter-allegations by the former Directors against each other as well as Mr. Sen (the ex-Accountant of the Company), the O.L. sought to have the entire matter investigated by the SFIO leading to the passing of the impugned order. Paragraph 2

of the order, which is apposite, for the sake of ready reference, is reproduced hereunder:-

2. Having heard the submissions of learned counsel for the Applicant, Respondent No. 2 and the OL, this Court is also satisfied that in view of the serious allegations and counter allegations made by the former Directors against each other as well as against the CA, it is necessary that the entire matter is investigated thoroughly by the SFIO.

In the facts and circumstances adumbrated above, we do not find any infirmity or perversity in the impugned order. The Appeal is devoid of merit and is accordingly dismissed.