

IN THE COURT OF APPEAL
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Okanda Finance [PVT] Ltd
No.22/1-A, Vaidya Road
Dehiwela

Petitioner

C.A. [WRIT] APPLICATION
NO.93/08

VS

1. The Commissioner General of Inland Revenue
Department of Inland Revenue
Inland Revenue Building
Sir Chittampalam A.Gardiner Mawatha
Colombo 02.
2. R.P.S.Liyanage
Assessor, Withholding Tax (On Interest) Unit
Department of Inland Revenue
Inland Revenue Building
Sir Chittampalam A.Gardiner Mawatha
Colombo 02.
3. Ms.G.E.A.P.Samarasinghe
Assessor, Withholding Tax (On Interest) Unit
Department of Inland Revenue
Inland Revenue Building
Sir Chittampalam A.Gardiner Mawatha
Colombo 02.
4. U.D.Nishantha Jayaweera
Assessor, Withholding Tax (On Interest) Unit
Department of Inland Revenue
Inland Revenue Building
Sir Chittampalam A.Gardiner Mawatha
Colombo 02.
5. Mrs.Gnana Sumanasekara
Deputy Commissioner
Withholding Tax (On Interest) Unit
Department of Inland Revenue
Inland Revenue Building
Sir Chittampalam A.Gardiner Mawatha
Colombo 02.

Respondents

BEFORE : **K.T.CHITRASIRI, J**
L.T.B.DEHIDENIYA, J

COUNSEL : Faisz Musthapha P.C. with Thusani Machado
for the Petitioner
Janak de Silva, D.S.G. for the Respondents

ARGUED ON : 27.05.2015

**WRITTEN
SUBMISSIONS
FILED ON** : 28.02.2012 by the Petitioner
11.05.2015 by the Respondents

DECIDED ON : **21. 07.2015**

CHITRASIRI, J.

Petitioner Company filed this application seeking inter alia to have a mandate in the nature of writs of certiorari and mandamus to prevent the respondents from proceeding with the recovery of taxes due, in terms of the provisions contained in the Inland Revenue Act No.10 of 2006 as amended. It is alleged that the petitioner company has defaulted the tax payable under the said Act, in respect of the years 2002/2003, 2003/2004, 2004/2005, 2005/2006 and 2006/ 2007. Respondents in their objections have denied the averments contained in the petition and have sought for a dismissal of this application for the reasons morefully described in paragraph 25 of their objections dated 19.08.2008.

When the matter was taken up for argument, learned DSG took up a preliminary objection and it reads as follows:

“It is admitted that there is a winding up order made in relation to the petitioner company by the Commercial High Court on its application. Therefore, in terms of Section 279 (1) read with Section 290 and 292 (1) of the Companies Act No.7 of 2007, the Petitioner has no status to maintain this application.”

On that date, both Counsel invited Court to make an order on the said objection raised by the learned DSG, upon considering the written submissions filed by both the parties. Hence, I will look at the written submissions filed by them in order to make an order on the aforesaid preliminary objection.

Section 279 (1) of the Companies Act No.7 of 2007 reads thus:

“When a winding-up order has been made, or a provisional liquidator has been appointed, subject to the provisions of sub-section (2), no action or proceeding shall be proceeded with or commenced against the company except by leave of the court, and subject to such terms as the court may impose.”

Sub-section (2) referred to in the above sub-section (1) relates to execution proceedings of a decree and therefore it has no relevance to the issue at hand.

Plain reading of the aforementioned statutory provision in law **makes it necessary to obtain leave of the Court to proceed with an action or proceeding, if a winding up order has been made or a provisional liquidator has been appointed in respect of a company against which an action is pending or is to be filed.** Admittedly, a winding up order has been made on

29.06.2010 in respect of the petitioner company by the High Court of the Western Province Holden in Colombo [exercising civil jurisdiction]. Indeed, Liquidators namely, P.E.A.Jayawickrema and G.J.David have been appointed as the Liquidators of the company by the said order of the High Court. Therefore, the law requires to obtain leave of that High Court to file or to proceed with any action against the company sought to be wound up.

Probably, upon considering this position, Liquidators have already made an application to the said High Court under Section 292 (1) (a) of the Companies Act to obtain leave of that Court to intervene to this case. Learned High Court Judge has declined to allow the said application stating that the High Court has no power to make an order for the liquidators to intervene as a party to the action pending in the Court of Appeal.

Be that as it may, the issue here is to determine whether the petitioner company could proceed with this action in view of the liquidation order made in respect of the petitioner company. As mentioned before, Section 279 (1) of the Companies Act No.7 of 2007 is very clear on this point. In that section, it is clearly stated that no action or proceeding shall proceed against the company in respect of which a winding up order has been made except by leave of the court. I do not find any ambiguity in this section.

This particular section is similar to Section 264 that was in existence under the repealed Companies Act No.17 of 1982. The law referred to in this particular

provision in law had been discussed in many cases including that of **East West Research & Design (Pvt) Ltd v. G.Weerakoon, Commissioner of Labour [(1993) 1 SLR 191]** and **T.K.Fastener Lanka (Pvt) Ltd v. Seylan Bank Ltd. [(2002) 2 SRI LR 155]**. In those decisions, the Court of Appeal has discussed even the rationale behind the law mentioned in Section 279 (1) of the Companies Act.

It is important to note that the business of a company comes to a standstill when a winding up order is made. Board of Directors of such a company then ceases to function. Then the liquidators take over the management and the control of the company. Basically their duty is to distribute the assets of the company. Such a distribution of assets are to be made according to law and it should take place in the manner stipulated in law. As such, a company under liquidation cannot perform or act on its own. In this instance, application by the liquidators to intervene into this case has also been refused. Therefore, it is clear that the petitioner company in this instance is not entitled in law to proceed with this action in view of Section 279 (1) of the Company Act No.7 of 2007.

Moreover, Section 290 of the Companies Act also stipulates that the liquidator or the provisional liquidator shall take into his control, of the property and things in action, to which the company is entitled to when a winding up order has been made. Furthermore, under Section 292 (1) of the Companies Act the liquidator in a winding up by the Court shall have the power to bring or to defend any action or other legal proceedings in the name and/or on behalf of the company. Those two provisions in the Companies Act also show that the

liquidators are the persons in authority to take over the control of all matters on behalf of a company under liquidation and therefore the company cannot proceed with an action under its registered name. In the circumstances, it is clear that the law does not allow the petitioner company to proceed with this action.

In the submissions filed on behalf of the petitioner company, it is stated that the liquidators of the company had been appointed long before the alleged wrongful decision of the respondents and therefore the law referred to in Section 279 (1) of the Companies Act is not applicable to this instance. However, the said Section 279 (1) of the Companies Act clearly show that no action shall be proceeded with when a winding order has been made irrespective of the date on which the liquidation order has been made. Therefore, I am not inclined to accept the contention of the learned President's Counsel for the petitioner company. In the circumstances, it is my opinion that the petitioner company is not entitled to proceed with this action in view of Section 279 (1) of the Company Act No.7 of 2007.

For the aforesaid reasons, this application is dismissed with costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B.DEHIDENIYA, J

I agree

JUDGE OF THE COURT OF APPEAL