
(1983) 10 DEL CK 0020

In the Delhi High Court

Case No : Criminal Appeal No. 1 of 1981

C.R.E. Wood Company Pvt. Ltd.

APPELLANT

Vs

Sardar Iqbal Singh and Another

RESPONDENT

Date of Decision : 25-10-1983

Acts Referred:

Citation : (1986) 59 CompCas 978 : (1984) 25 DLT 391

Hon'ble Judges : D.R. Khanna, J

Bench : Single Bench

Advocate : Nand Kishore, Anoop Singh and D.K. Kapur, for the Appellant;

Judgement

D.R. Khanna, J.

(1) This is a complaint u/s 455(5) of the Companies Act 1956 by the Official Liquidator representing the C.R.E. Wood Co. Pvt. Ltd. now in liquidation, against Iqbal Singh and Ranjit Singh. The allegations are that these persons being the directors of the said company did not file the statement of affairs and Therefore have committed offence u/s 454(5) of the Act.

(2) C.R.E. Wood Co. Pvt. Ltd. was ordered to be wound up on 6-4-1977 on a petition moved by the Dena Bank Ltd., claiming to be the creditor. u/s 454(3) of the Companies Act, its statement of affairs should have been submitted within 21 days of the making of the winding up order by one or more of the persons who were at that time the directors, manager, secretary or chief officer of the company. That period of 21 days could be extended to a maximum period of three months on the ground of special reasons. No statement of affairs however was filed within the period prescribed nor any extension obtained. A notice dated 10-11-1980 was as well served by the Official Liquidator on the two accused to show-cause why prosecution should not be initiated against them for their failure to file the statement of affairs. There was no response. The present complaint was then filed on 15-1-1981. During its pendency, Iqbal Singh accused No. 1 filed a statement of affairs on 11-5-1982. This was on the basis of what the

Chartered Accountants of the company had compiled.

(3) The substances of allegations against the accused was put to them by the Court during the course of the trial on 13th November 1981 and it was to the effect that they as directors of the company in liquidation though obliged to file the statement of affairs u/s 454 of the Companies Act failed to do so. Both of them denied that they were directors of the company at the time when the order of winding up was made, and Therefore disowned their responsibility to file the statement of affairs. Ranjit Singh altogether denied that he had anything to do with the company while Iqbal Singh stated that he was only a technical director and was permanently residing at Simla and had no records available and Therefore did not know anything.

(4) From the side of the Official Liquidator Public Witness . 1 P. Chandra, Assistant Official Liquidator appeared as witness. The accused on their part put themselves in the witness box and gave statements on oath.

(5) The crucial question to be considered is whether at the time when the winding up order of the company was made, the two accused were its directors. In this regard I find that there is no evidence to show that they actually were. The record of the company has not been produced as according to a report dated 13-9-1977 vide Ex. P 2 submitted by the Official Liquidator in the Court shows that the same had been completely spoiled when it had been removed on the open terrace by the landlord who had obtained an eviction order against the company and its managing director B.N. Bhardwaj. The eviction order was said to be of 7-2-1975 and the possession obtained through Bailiff of the court on 11-2-1975. The Official Liquidator Therefore could not show from the company's record that the two accused were directors. The only other course open was to have examined an official of the office of Registrar of companies with record to ascertain if these persons were shown there as directors at the time of the winding up order. This too has not been done. In the circumstances the complaint is liable to be dismissed and the two accused acquitted on the short ground that their status as directors on the date of winding up order has remained unsubstantiated.

(6) So far as Ranjit Singh is concerned, it is not shown that he was ever elected as director or had given his consent in writing as required by Section 264 of the Companies Act. He is said to be the son of Kehar Singh, an ex-director who had died on 15-7-1983. However his that status as son could not confer directorship on him unless he had been so selected in terms of the memorandum and articles of association and had given his consent in writing to that effect.

(7) Iqbal Singh of course has stated that he was earlier a technical director, having retired as Chief Engineer of the Punjab State Electricity Board in 1953. He claimed that he had then deposited Rs. 10,000.00 with the company and also purchased shares worth Rs. 12,000.00 . However he added that in July 1974 he sent his resignation from the directorship of the company to B.N. Bhardwaj who

was the managing director and was entirely looking after the affairs of the company. He himself was residing at Simla. He however admitted in cross-examination that he did not send any copy of his resignation to the Registrar of Companies, but denied the suggestion that in the record of the Registrar, he was shown as director up to 1977. According to him, director was elected for a year and if he was not re-elected, he ceased to be director after that year. Reference has been made to Section 283(1)(g) of the Companies Act in order to show that if a director absents himself from three consecutive meetings of the board of directors or from all meetings of the board for a continuous period of three months whichever is longer, without obtaining leave of the absence from the board, his office as director becomes vacant. It has also been pleaded from his side that once he had submitted his resignation, it was for the company to have informed the Registrar of companies of his ceasing to be director.

(8) In my view, the mere fact that Iqbal Singh was director of the company in earlier years would not render him liable u/s 454(5) of the Companies Act unless it is shown that he held the status of director on the date of winding up order. This could be done either by the production of the company's record or by summoning an official of the Registrar of companies with the record of that office. None such has been done and Therefore it is difficult to convict Iqbal Singh for his failure to file the statement of affairs. The onus in this criminal trial must rest on the complainant.

(9) Even otherwise. Section 454(5) of the Companies Act enjoins that a person can be convicted and punished under its provisions if he makes default in complying with the requirements of the Section without reasonable excuse. In other words, the court has not only to be satisfied that there was default but also that it was without reasonable excuse. Now in the present case as noted above the record of the company had been as per admission of the Official Liquidator completely spoiled when it had been left on an open terrace by the landlord, Public Witness 1 P. Chandra, Assistant Official Liquidator further admitted in cross-examination that any statement of affairs prepared on the basis of that record would not have been of any use and that no useful statement of affairs could have been prepared there from. As regards the statement of affairs filed by Iqbal Singh later on 11-5-1982 on the basis of compilation by the Chartered Accountants, he stated that the same was entirely defective and of no use.

(10) The eviction order as observed above was executed on 11-2-1975- The winding up order came more than two years later. The record had thus already been spoiled. In the circumstances the directors had reasonable excuse for not filing the statement of affairs. No conviction Therefore can be made u/s 454(5) of the Companies Act. B.N. Bhardwaj who was the managing director of the company and was said to be looking after its affairs it is stated died in September 1974.

(11) The result Therefore is that the two accused are acquitted and the complaint dismissed;