

(2007) 11 GUJ CK 0045

In the Gujarat High Court

Case No : Criminal Case No. 9 of 2000 in Company Petition No. 18 of 1999

Gujarat Inject Ltd.

APPELLANT

Vs

Yogesh R. Mankodi and Others

RESPONDENT

Date of Decision : 30-11-2007

Acts Referred:

Companies (Court) Rules, 1959 — Rule 127

Companies Act, 1956 — Section 283(1), 454, 454(1), 454(2), 454(3)

Citation : (2008) 142 CompCas 626 : (2008) 70 GLH 1 : (2008) 1 GLH 70

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Amee Yagnik, for the Appellant; Pavan S. Godiawala, for Accused Nos. 2 and 3 and Nanavati and Nanavati for Accused No. 5, for the Respondent

Judgement

K.A. Puj, J.—The official liquidator has filed this criminal complaint u/s 454(5) of the Companies Act, 1956, praying for taking cognizance of default committed by the accused persons u/s 454(5) of the Companies Act, 1956, and issuance of process against the accused persons for trying and punishing them in accordance with the provisions of law. The official liquidator has also sought for the direction to the accused persons to submit forthwith the statement of affairs before him as on the date of winding up order, i.e., January 20, 2000.

2. It is the case of the official liquidator in the complaint that by an order dated January 20, 2000, passed by this Court in Company Petition No. 18 of 1999, the company, namely, M/s. Gujarat Inject Ltd., was ordered to be wound up and he has been appointed as the liquidator of the said company. Accused Nos. 1 to 11 were the directors of the said company as on the relevant date of the winding up order as per the records maintained by the Registrar of Companies, Ahmedabad. As per the provisions of Section 454 of the Companies Act, 1956, the ex-directors of the company were required and legally bound to file with the official liquidator the statement of affairs of the company in liquidation within 21 days from the date of winding up order or such time as may be extended by the

official liquidator or High Court, not exceeding three months. Due notices u/s 454 of the Companies Act, 1956, were issued to accused Nos. 1 to 11 on February 10, 2000 and despite that fact, the accused persons have not filed any statement of affairs with him and hence, they have committed default without any reasonable or lawful excuse. The official liquidator has further stated that the accused persons have also failed to hand over the books of account and records of the company to him. He was, therefore, of the view that the accused persons have wilfully and deliberately neglected to file the statement of affairs with him and thereby they have committed default u/s 454(5) of the Companies Act, 1956. All the accused persons are, therefore, required to be prosecuted.

3. This Court has issued process on September 6, 2000. Vide order dated January 20, 2006, accused Nos. 1 and 4, namely, Shri Yogesh R. Mankodi and Shri Nayankumar T. Vaishnav (wrongly shown as Narayan T. Vaishnav) were discharged as both had expired. Death certificate of accused No. 1 dated January 8, 2004, issued by Vadodara Municipal Corporation was filed on record. Similarly, death certificate of accused No. 4 issued by Municipal Corporation of Greater Bombay has also been filed. Accused No. 7, namely, Nareshchand Jain was also discharged as he resigned from the office of the director with effect from October 21, 1997, and the erstwhile management had filed Form No. 32 with the Registrar of Companies, Gujarat on December 15, 1997. The company was directed to be wound up on January 20, 2000, whereas accused No. 7 had resigned much before the date of the winding up order. Thereafter, accused No. 6, namely, Hrishikesh S. Jana was also discharged vide order dated June 19, 2006. He has expired and his death certificate issued by Ahmedabad Municipal Corporation on March 3, 2006, was filed before the court. It is also submitted before the court that accused No. 10, namely, Shri Chandulal P. Shah has also expired. However, his death certificate is not brought on record. So far as accused Nos. 8, 9 and 11 are concerned, they were nominee directors. The real contesting parties are, therefore, accused Nos. 2, 3 and 5.

4. An affidavit is filed by accused No. 5 on January 10, 2006. It is stated therein that he was not directly linked with the day-to-day management of the company. Prior to June 1997, the affairs of the company were managed by late Shri Yogesh R. Mankodi who was Founder-Chairman and managing director of the company. He expired on June 13, 1997 and thereafter, the affairs of the company were managed by Ms. Dwipa Mankodi, daughter of late Shri Yogesh R. Mankodi who was named as joint managing director earlier. It is further stated that Mrs. Ila Mankodi, wife of late Shri Yogesh Mankodi, thereafter also joined the board during the year 1998-99 and the directors' report for the year 1998-99 was signed by her on behalf of the board of directors. It is, therefore, submitted that right from the inception of the company till the date of winding up order, the affairs of the company were managed by Mankodi family and all the records including the books of account and the minute book of the board of directors as well as the minute book of the general meeting were in their custody. He was attending to the board meeting as and when sufficient notice was given to him. It

is further stated that late Shri Yogesh Mankodi was the chairman of Samasta Nagar Co-operative Bank Ltd., Mumbai and had obtained loan facilities from the said bank. Hence, his relations with late Shri Yogesh Mankodi were strained and since early 1990, he did not attend the board meeting. Even on April 27, 1997, he handed over his resignation to late Shri Yogesh Mankodi, but no action was taken thereon by him. It is further stated in the affidavit that he was not in a position to submit the statement of affairs required u/s 454 of the Companies Act, 1956, within the stipulated period, due to the circumstances beyond his control and prayed for condonation for non-filing of the statement of affairs.

5. Accused No. 2, i.e., Ilaben Y. Mankodi has filed her affidavit on January 17, 2006. She has submitted that statement of affairs duly signed by her and late Shri N.T. Vaishnav was filed with the official liquidator somewhere in the month of December, 2002. The company in liquidation was duly run and managed by her husband and was substantially assisted by late Shri N.T. Vaishnav who was a qualified chartered accountant. After the demise of her husband, Shri Vaishnav was entrusted with the substantial charge of management of the company as she was a housewife and a non-executive director. It is further stated that the company was sick and has got itself registered with the Board for Industrial and Financial Reconstruction and ultimately on January 20, 2000, the company was ordered to be wound up by this Court on the basis of the opinion forwarded by the Board for Industrial and Financial Reconstruction. Except late Shri N.T. Vaishnav, no other directors were active after the death of Shri Y.N. Mankodi.

6. An affidavit was filed by accused No. 3, namely, Dwipaben Y. Mankodi. She has inter alia stated in the affidavit that she has already resigned from the post of director on December 15, 1998, i.e., before the relevant date. She was not aware as to whether Form No. 32 had been filed by the erstwhile management of the company in liquidation or not but the official liquidator was duly informed by her that she has already resigned from the post of director. She has not attended to a single board meeting after her resignation and, therefore, even by virtue of provision of Section 283(1)(g) of the Companies Act, 1956, she was deemed to have vacated her office of directorship. She has further stated that the statement of affairs was already filed and hence, the criminal proceedings against her are required to be dropped.

7. Accused No. 5 has filed his further affidavit on June 28, 2006, clarifying the position that two of the directors at the relevant date have already filed statement of affairs as required under Sub-section (1) of Section 454 of the Companies Act, 1956 and hence, other directors have been deemed to have been relieved from the obligation to file the statement of affairs. If any queries in respect of the statement of affairs are raised by the official liquidator, only the directors who have got the statement of affairs prepared with professional assistance, would be in a position to give proper explanation. He has, therefore, requested the court in the said affidavit to relieve him from the obligation of submitting a reply as directed by the court vide its earlier order. He has also

reiterated his prayer for discharge in the said affidavit.

8. Accused No. 2 has also filed another affidavit dated August 28, 2006. It is inter alia stated therein that after filing of the statement of affairs, no queries have been received by her till February 15, 2006. The queries which were raised were also answered. Since the ex-directors have fulfilled the formalities of filing the statement of affairs, they are required to be discharged from the criminal proceedings. The queries would be independently solved but the ex-directors are required to be exonerated from the criminal proceedings.

9. Similarly, accused No. 3 has also filed further affidavit dated August 28, 2006 and reiterated more or less the same contentions as were raised by accused No. 2.

10. After filing the complaint, the official liquidator has for the first time, filed his report before the court on September 13, 2006. He has stated in his report that on going through the affidavits filed by accused Nos. 2, 3 and 5, it was found that they have attempted to shift the liability on others taking a defence that either they were not directors of the company on the relevant date or they were not actually involved in the management of the affairs of the company or they were not able to complete the requirements of Section 454 of the Companies Act, 1956, due to non-availability of records after lapse of time, etc. The official liquidator has further stated in his report that accused Nos. 2 and 3 are the persons of the family of promoters of the company and, therefore, they were in the know of all the facts and affairs of the company. They could not raise hands by saying that either records were not available with them or they have resigned as directors or they were not aware about the affairs of the company or it was not possible to complete the requirements after a lapse of 6 years. After committing an offence, it could not be a defence to plead during the pendency of the trial that now it is not possible for them to make the default good for want of records or informations or they require help or assistance. It is further stated by him in the report that the statement of affairs is a most important, basic and fundamental document for the official liquidator to proceed for liquidation of the company. It is, therefore, the bounden duty of the directors of the company to submit to the official liquidator all the information, facts, data and details in a systematic manner and format as prescribed in Form No. 57 under Rule 127 of the Companies (Court) Rules, 1959, so as to enable him to commence liquidation proceedings of the company in accordance with law. In the absence of statement of affairs, it cannot be expected from the official liquidator to hunt for information, data and details of the affairs of the company to proceed with the liquidation. It is, therefore, stated that the ex-directors of the company cannot be absolved from their statutory liability of filing a factual, complete and proper statement of affairs within the statutory time limit.

11. In response to the above report of the official liquidator, a further affidavit is filed by accused No. 5. While denying the facts and the averments made in the report of the official liquidator, accused No. 5 has reiterated in his affidavit that

the statement of affairs filed contains full and accurate account of the company's affairs and the same is in accordance with law. The same was duly affirmed by late Shri N.T. Vaishnav who himself was a chartered accountant.

12. The official liquidator thereafter filed further report on March 5, 2007, wherein it is stated that the following details were not furnished by accused Nos. 2, 3 and 5.

I. The complete addresses of trade debtors are not furnished.

II. The complete names and addresses of loanees and advances have not been furnished.

III. The complete addresses of branches of banks and number and nature of accounts, in which bank balance of Rs. 4,45,183 is lying, is not furnished.

IV. The revised statement of affairs is not supported by an affidavit of the accused director and concurrence affidavit of other accused.

13. The queries raised by the official liquidator in his report of March 2007 were duly replied by accused No. 2 vide her letter dated June 22, 2007, a copy of which is placed on record. She has inter alia stated in the said reply that all the bank accounts mentioned in the statement of affairs were collection accounts for the purpose of depositing sale proceeds. They were opened in places where the company had marketing activities except for the account with the Bank of India, Raopura branch, the Dena Bank, Alkapuri branch and the Punjab National Bank, Shiyapura branch all at Vadodara, where these were the current accounts. She has also stated that the addresses of the banks and debtors/loanees have been mentioned with the details available as per the records. She has also stated that she has tried her level best to satisfy all the queries raised by the official liquidator and observe due compliance of the statutory provisions.

14. In the above background of the matter, heard Mr. Pavan Godiawala, learned advocate appearing for accused Nos. 2 and 3 and Mr. V.K. Bhatt, learned advocate appearing for Nanavati and Nanavati for accused No. 5, Ms. Amee Yagnik and Mr. Mrugesh Jani, learned advocates appearing for the official liquidator. Perused the complaint, all the affidavits filed by the accused and the reports of the official liquidator and considered the relevant statutory provisions. The court is of the view that looking to the peculiar facts of this case, it is not worthwhile to continue these proceedings any further as substantial compliance of the provisions have been made by the accused. Accused No. 1 who was the main promoter and chairman of the company expired on June 13, 1997 and all efforts to revive the company failed. There is no dispute about the fact that after winding up order passed by this Court on January 20, 2000, statement of affairs was filed on January 20, 2001. The same was prepared by late Shri N.T. Vaishnav, accused No. 4 who was himself a chartered accountant. The queries on the statement of affairs filed on January 20, 2001, were received from the office of the official liquidator in February, 2006. By this time, at least three accused

persons have expired. The remaining accused persons, more particularly, accused Nos. 2 and 3 with the help from professionals have tried their best to cover maximum information with the records available with them and filed revised statement of affairs. One should not lose sight of the fact that after 12 years of closure of the company and death of the main promoter as well as professionals associated with the company, wherein all the staff including senior officials having left not only the company but also the place where the company is situated, it was very difficult for accused Nos. 2 and 3 or even accused No. 5 to furnish all these informations. The court, therefore, is of the view that whatever compliance was made by the accused persons till this date is considered to be sufficient compliance and they are not to be burdened with any further agonies by continuing these criminal proceedings against them.

15. This however does not mean that the accused persons are allowed to go completely scot free. Even as per the say of the accused persons, the statement of affairs was filed on January 20, 2001, i.e., after a period of one year from the date of the winding up order. Section 454(3) of the Companies Act, 1956, casts an obligation on the persons mentioned in Section 454(2) to submit a statement of affairs within 21 days from the relevant date or even such extended time not exceeding three months from the date as the official liquidator or the court may, for special reasons, appoint. Sub-section (8) of Section 454 states that the expression, "the relevant date" means in a case where a provisional liquidator is appointed, the date of his appointment and in a case where no such appointment is made, the date of the winding up order. The official liquidator has proceeded all throughout on the footing that the accused persons have committed default in filing statement of affairs within 21 days from the date of winding up order, i.e., January 20, 2000. In the notice issued by the official liquidator as well as in the complaint, he has mentioned the said date for the purpose of counting the period of default. It is, therefore, believed that the accused persons have committed default in filing statement of affairs at least for the period of 11 months and 9 days. It is true that Sub-section (5) of Section 454 makes a provision for penalty and sentence which states that if any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to Rs. 1,000 for every day during which the default continues, or with both. Since the court has come to the conclusion that this is not a case where a view can be taken that the default was committed without reasonable excuse.

16. Hence, there is no question of awarding any sentence. Even when the court is satisfied that there is a reasonable excuse, the court takes a lenient view while awarding the fine. The court, therefore, holds that interest of justice would better be served if accused Nos. 2, 3 and 5 are punished with a fine of Rs. 5,000 each for late filing of the statement of affairs. Accordingly, accused Nos. 2, 3 and 5 are punished with a fine of Rs. 5000 each. The amount of fine shall be deposited with the official liquidator within four weeks from today.

17. Subject to the aforesaid finding and observation, all other accused who are alive and were on the board of the company in liquidation merely as nominee directors and against whom, the court has not found anything adverse, are exonerated. This criminal case is accordingly disposed of.