(1999) 12 P&H CK 0060

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 56 of 1995 in Company Petition No. 57 of 1994

Haryana Drugs and Pharmaceuticals Ltd. (In Liquidation) APPELLANT

Vs

K. Singhal and others RESPONDENT

Date of Decision : 21-12-1999

Acts Referred:
COMPANIES ACT, 1956 — Section 454, 456, 468, 477

Citation : (2001) 104 CompCas 338

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : Rajesh Garg, for the Appellant; S.K. Sud, Deepak Thapar and Anand Chhibber, for the Respondent

Judgement

V.S. Aggarwal, J.—M/s. Haryana Drugs and Pharmaceuticals Ltd. (in liquidation) was ordered to be wound up by this court on 6.1.1995. The Official Liquidator attached to this court was appointed as liquidator of the company.

2. The present complaint had been filed by the Official Liquidator under sub-section (5) to section 454 of the Companies Act, 1956 (for short, ''the Act'') read with rule 125 of the Companies (Court) Rules, 1959. It had been asserted that the intimation of winding up order was received on 18.1.1995. The copies of the formal winding up order were received on 20.3.1995. The Official Liquidator along with an official ''of his office visited the office of the Registrar of Companies, Delhi and Haryana, for inspection of the records of the company. He also visited the factory premises of the company at Jind, Rohtak Road Anoopgarh. There were no ex-directors of the company present, and, therefore, the inventory of machinery and books was not made. Even the office of the company maintained at A-301, Ansal Chamber I, Bhikaji Cama Place, New Delhi, was lying locked. In terms of the provisions of section 454 of the Act, it was mandatory on the part of the ex-directors to make out and submit to the Official Liquidator a statement as to the affairs of the company in the prescribed form. None of the respondent accused has submitted statement of affairs despite

registered notices. The Official Liquidator asserts that the respondent accused are knowingly and deliberately flouting and violating the provisions of section 454 of the Act. They have not prayed for any time to be extended for furnishing the said statement. Hence, the present complaint.

3. Respondent No. 1 (K. Singhal) and respondent No. 2 (Ajay Singhal) have been declared to be proclaimed offenders.

4. The other respondents had been examined with respect to the allegations against them. Rajiv Singla stated that he was never the director of the company in liquidation, and, thus, the question of filing of statement of affairs by him did not arise. Bhagwan Dass respondent on the contrary on being questioned by the court had stated that he did not have in his possession any books of accounts, papers or the property of the company. He was not advised by anyone to file the statement of affairs. Dr. J. P. Manocha on being questioned by this court without oath also made a similar statement that he did not have any books of accounts or papers with him of the company. He had written to this effect to the Official Liquidator. He resigned as a director of the company on 13.9.1994. He was not aware if his resignation had been accepted or not. In this process, his defence was also that he did not have the books of accounts with him. Shatish Chandra Gupta also stated without oath that he did not have in his possession any paper, record or notes belonging to the company.

5. In order to show that without just and sufficient ground, the respondents have failed to do the needful, Shri D. C. Kwatra, Official Liquidator attached to this court, appeared as CW1. He stated that the respondents were directors of the company. They did not file statement of affairs till date. There was no reasonable excuse for not filing the statement of affairs. He was cross-examined and thereupon, he added that so far as he remembered, no inventory was prepared at the time of taking possession of the company. He further stated that application for recovery of record was filed before the Company Court. He was not aware if any consent for becoming the director of the company was given by Rajiv Singhal. He added that at the time of taking possession of the factory and records, no inventory was prepared. The respondent accused J. P. Manocha appeared as RW1. He stated that at one time, he was director of the company in liquidation; but he did not have any equity share of the company. He was not responsible for the conduct and day to day business of the company. Bhagwan Dass, respondent accused, also made a similar statement that he had never received any amount from the company. He had never attended the meeting of the company. He used to sign in English. Rajiv Singla, RW3, was working as a company secretary of the said company. He stated that he was never the director, of the company. He never participated in the proceedings of the company.

6. On behalf of the respondent accused, it was urged that in the facts the ingredients of the relevant provisions of the Act are not being satisfied and, therefore the respondent accused are entitled to be acquitted. Sub-sections (5)

and (5A) to section 454 of the Act read as under :

"(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one hundred rupees for every day during which the default continues, or with both.

(5A) The court by which the winding up order is made or the provisional liquidator is appointed, may take cognizance of an offence under sub-section, (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure, 1898 (5 of 1898) for the trial of summons cases by Magistrates."

7. A perusal of the same shows that while the directors are under a duty to file the statement of affairs before the Official Liquidator where the company is directs to, be wound up, still, if any person, without reasonable excuse, makes a default, he can be punished with imprisonment for a term which may extend to two years or with fine which may extend to one hundred rupees for every day during which the default continues or with both. Sub-section (5A) to section 454 of the Act prescribes the procedure for summons case. The important ingredient of sub-section (5) to section 454 of the Act is : if there is a reasonable excuse, in that event, persons concerned cannot be held guilty. In this regard, reference can well be made to the decision of the Delhi High Court in the case of Official Liquidator, R.S. Motors (P) Ltd. v. Jagjit Singh Sawhney and another (1974) 44 Comp Cas 381 (Del). A complaint was filed u/s 454 (4) and (5A) of the Act. The defence was, and the evidence indicated, that a number of account books and some of the records of the company had been seized by the police. The other records were with the Official Liquidator. It was held that, therefore, statement of affairs could not be filed. There was just and sufficient ground. The accused were acquitted. Delhi High Court while dealing with as to what would be ''reasonable excuse'' held as under :

"What is a reasonable excuse ? I would think that any excuse that would reasonably suggest that the accused could not comply with the provisions of law, is a ''reasonable excuse''. If the books of the company were in a state of disorder and a number of records and files were with the police, it would be most difficult for the accused persons to prepare a statement of affairs. The law does not impose an impossible liability on the directors ...".

8. Similarly, in the case of K. S. Mathura Dass v. State of Punjab and another (1977) 47 Comp Cas 467 (P&H), a complaint had been filed under sub-section (5) to section 454 of the Act. The reply had been that the records had been lost and the company had no property, cash or bank balance. It was held that this did not amount to an admission and there should be positive evidence to show that without reasonable excuse the statement of affairs had not been furnished.

9. Delhi High Court again in the case of C.R.E. Wood Company (P) Ltd. v. Sardar Iqbal Singh (1984) Punj LR 124, was dealing with sub-section (5) to section 454

of the Act. It was held that merely because a person is director of the company will not make him liable u/s 454(5) of the Act. The court has to see that there was a default, but also that it was without reasonable excuse. The record was completely spoiled and, therefore, it was concluded that the concerned persons were liable to be acquitted because there was reasonable excuse for not filing the statement of affairs.

10. Reverting back to the facts of the case, it is not in controversy that earlier, the Official Liquidator had filed a petition under sections 456, 468 and 477 of the Act. It had been contested. On 31.7.1997, this court in Company Petition No. 59 of 1995 had passed the following order :

"M/s. Haryana Drugs and Pharmaceuticals Ltd. (now in liquidation) was ordered to be wound up by this court on 6.1.1995 in Company Petition No. 7 of 1994 and the official liquidator was appointed its liquidator. He has now files the present petition under sections 456, 468 and 477 of the Companies Act, 1956, with a prayer that the respondents be summoned and directed to hand over possession of the assets, properties, books of accounts and records of the company to the Official Liquidator.

In response to the notices issued to the [respondents], respondents 4 and 6 have filed an affidavit stating that they are not in possession of any of the books of accounts or assets of the company. Respondents 3 and 2 while appearing in C.P. 56 of 1995 made statements that they are not in possession of any of the assets or books of accounts of the company and that they have no concern with them. In view of the affidavit and the statements made by respondents 2 to 4 and 6, the petition qua them is dismissed.

Respondents 1 and 5 have not appeared inspite of service. They are ordered to be proceeded against ex parte.

After hearing learned counsel for the petitioner and having gone through the petition, I am satisfied that respondents 4 and 5 were the directors of the company and they are directed to hand over the assets, property, books of accounts and records of the company to the Official Liquidator at the earliest/but not later han two months from today."

11. It is abundantly clear that only respondent Nos. 1 and 5, who are proclaimed offenders, were held liable for handing over the assets, property, books of accounts and records of the company to the Official Liquidator. The present respondents were not held liable.

12. Correlated with the same fact is the evidence on the record. Almost all other respondents say that they have no concern with the company so far as furnishing of relevant statement is concerned. The evidence on the record also does not indicate that they could be held so responsible. They were not in possession of the assets, account books and records of the company. As per evidence and earlier adjudication, it must follow that there was just and reasonable excuse for

these respondents in not furnishing the statement of affairs.

13. Accordingly, but for the two respondents, namely, respondents No. 1 and 5, who are proclaimed offenders, other respondents are acquitted.