

(1981) 10 DEL CK 0012

In the Delhi High Court

Case No : Company Petitions No's. 12 and 13 of 1981

**In Re: Beejay Engineers Pvt. Ltd.
 In Re: Satinder Sandhu and others
 In Re: Atlantic Engineering Services P. Ltd
 In Re: Bachan Singh and others**

Date of Decision : 01-10-1981

Acts Referred:

Citation : (1983) 53 CompCas 918

Hon'ble Judges : J.D. Jain, J;D.K. Kapur, J

Bench : Division Bench

Judgement

J.D. Jain, J.—In Company Petition No. 12/81 the petitioners, S/Shri Satinder Sandhu, P. N. Handa, and N. S. Grewal constitute the Board of Directors of M/s. Bee Jay Engineers Pvt. Ltd., at present. They have moved an application under s. 633(2) of the Companies Act (for short "the Act") read with rr. 7 & 9 of the Companies (Court) Rules, 1959, for being relieved/excused from the proceedings which are likely to be launched against them in respect of the alleged contravention of the Employees' Provident Fund Act, Central Excise Act, State Insurance Act, Sales Tax Act and the I.T. Act with reference to tax deducted at source. It is, inter alia, contended by them that the original Board of Directors consisted of S/Shri J. S. Grewal, B. S. Sandhu, Mrs. B. K. Kaur and Mrs. A. K. Sandhu. However, both the ladies resigned from the Board of Directors some time in 1974 and the business of the company was, Therefore, being looked after by the remaining two Directors. They too expired some time in 1980. The present Directors, it is contended, are fresh entrants and two of them, namely, S/ Shri P. N. Handa and N. S. Grewal, have been appointed as Directors by virtue of their technical skill. However, the Registrar of Companies launched prosecution against the company and the present petitioners for committing default/breach of certain provisions as the Act. Apprehending that fresh prosecutions may be launched against them under the aforesaid Acts, they have prayed for relief against liability for breaches and defaults committed by the company under the aforesaid Act.

2. Similar prayer has been made by the petitioners, S/Shri Bachan Singh, P. N.

Handa, C. L. Mehta, A. L. Talwar, S. S. Sandhu, V. S. Grewal, H. S. Sidhu and D. J. S. Sandhu in Company Petition No. 13/81, who constitute the Board of Directors of the Company - M/s. Atlantic Engineering Services Private Ltd. As per averments in the said petition, out of the original Directors, S/Shri J. S. Grewal and B. S. Sandhu, died some time in 1980 while Shri Bachan Singh resigned from directorship in October, 1980. There upon, the present Board of Directors was constituted by co-opting four persons of professional competence and repute. In this case too, the company had to face prosecution launched by the Registrar of Companies under the Companies Act and they are apprehending further prosecution for contravention of the provisions of the above-mentioned Acts.

3. Reliance was placed by the learned counsel for the petitioners in both the cases on a decision of H. L. Anand J. in *Om Parkash Khaitan v. Shree Keshariya Investments Ltd.* [1978] 48 Comp Cas 85 in which under similar circumstances the learned judge had granted relief against prosecution of the applicant, Shri Om Parkash Khaitan, a solicitor, who was appointed as a Director, by virtue of his being its legal adviser, for defaults and breaches committed by the company in relation to its obligations under the Employees' Provident Funds Act, Sales Tax Act, Employees' State Insurances Act, Indian Textiles (Control) Order, Essential Commodities Act and the Companies Act. The learned judge had, inter alia, observed that it was unreasonable to fasten liability on the Directors for defaults and breaches of a company where such directors are either the nominee directors or are appointed by virtue of their special skill or expertise.

4. B. N. Kirpal J. before whom both these Company Petitions were listed, has struck a discordant note in his order of reference saying that he is unable to find any provision under the Companies Act which can possibly justify any such distinction amongst the directors. He has expressed the opinion that "whether a person is a solicitor, an advocate or a businessman, as long as he is a director he is obliged to comply with the provisions of the Companies Act and the cases of all the directors have to be dealt with alike, even in cases where an application u/s 633 is filed". He has also doubted the correctness of the decision of Anand J. and has posed a question as to whether the court, while exercising powers under s. 633 of the Act, has any jurisdiction to grant relief against prosecution under the other Acts. In his view, relief under s. 633 can be granted only from the offences committed under the Companies Act.

5. This reference thus raises two questions of vital importance, namely, (1) Whether the court has jurisdiction to grant relief to an officer of a company as envisaged in s. 633 of the Act against the liability for negligence, default, breach of duty, etc., of the provisions of Acts other than the Act, (2) Whether, while exercising jurisdiction under s. 633 of the Act, the court can justifiably draw any distinction amongst the directors who are on the Board purely by virtue of their technical skill or expertise or because they represent certain special interests and those who are in effective control of the management and affairs of the Company.

6. Question No. 1 :

Section 633 is reproduced hereunder for ready reference :

"(1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the Court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him, either wholly or partly, from his liability on such terms as it may think fit :

Provided that in a criminal proceeding under this sub-section, the Court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a Court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).

(3) No Court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted."

7. Evidently this action is designed to provide protection to the officers of a company against certain kinds of liabilities, its object being to provide against undue hardship and harassment in deserving cases and give relief from liability to persons who though technically guilty of negligence, default, breach of duty, misfeasance or breach of trust are able to convince the conscience of the court that they have acted honestly and reasonably and having regard to the circumstances of the case they ought fairly to be excused from the charge or charges made against them. However, it is noteworthy that protection is sought to be given to an officer of a company, which necessarily implies, that the liability arises on account of negligence, default, breach of duty, misfeasance or breach of trust in relation to the affairs of a company which he is required to conduct honestly and reasonably. Surely, the protection afforded by this section will not extend to and cover acts of misfeasance or breach of trust, etc., which have no connection whatsoever with his status or duties as an officer of a company. All the same, this section cannot be construed to mean that default/offence committed by or proceeding against an officer must be under the Act as such. The expression "any proceeding" occurring in this section is of wide amplitude

and comprehensive enough to include all kinds of proceedings, i.e., civil as well as criminal. There is nothing in the language or the context in which this section is laid to limit, restrict or confine its operation to a liability arising out of negligence, default, breach of duty, misfeasance or breach of trust under the Act alone. In our opinion, protection under this section will be equally available to an officer of a company against liability to be proceeded against for negligence, default, breach of duty, etc., even under other Acts so long as it is with regard to the affairs and functioning of the company. The power under this section is manifestly a power to relieve from liability which in the context means relief from the consequences, namely, fines and penalties that flow from the negligence, default, breach of duty, misfeasance or breach of trust. Of course, the grant of relief is discretionary having regard to the considerations mentioned in the section itself.

8. It is the cardinal rule of construction of statutes that the language used by the legislature must be contoured in its natural and ordinary sense; if the words of the statute are themselves precise and unambiguous than no more can be necessary than to expound those words in their ordinary and natural sense. In other words, where the terms of section are plain, the court should expound it as it stands unless it finds either in the section itself or in another part of the statute anything that will modify or qualify or alter the language. If, however, the plain interpretation leads to some absurdity or some repugnance or some inconsistency with the rest of the statute, the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency but no further. In the instant case, the language of the section is clear and explicit and we must give effect to it whatever may be the consequences. We see no ground for narrowing or limiting the application of the wide words of the section. "Any proceeding" are emphatic words and the same ought not to be constructed in a narrow sense. Hence, we are of the considered view that this section will apply to all legal proceedings, civil, criminal or otherwise, so long as the liability of an officer of a company arises from negligence; default, breach of duty, misfeasance or breach of trust and he can be relieved from such liability on account of his having acted honestly, namely, in good faith and if he has justifiable reason to escape such liability. We may, at the same time, make it abundantly clear that if the provisions of any particular statute under which liability is sought to be fastened on an officer of a company are in any way inconsistent with or have overriding effect over the provisions of this section, the court exercising power under this section will have to take due notice of the same before granting relief from the liability.

9. Curiously enough there is virtually no case-law on this aspect of the matter. As pointed out by the learned single judge, there is no discussion on the point in Om Prakash Khaitan [1978] 48 Comp Cas 85 and H. L. Anand J. seems to have proceeded on the assumption that such a power vests in the court in regard to liability arising out of default and breaches committed by an officer of a company in relation to his obligations under various statutes like "the Employees"

Provident Funds Act, the Sales Tax Act, etc. The only other authority alluded to by the learned council for the petitioner is S. P. Chopra & Co. (Muktsar Electric Supply Co. Ltd., In re) [1966] 36 Comp Cas 144; 1 Cri LJ 214, in which the petitioners were sought to be prosecuted under s. 409 IPC, on the complaint of one Dayavrat. In that case, the petitioner, S. P. Chopra & Co., was appointed voluntary liquidator of the Muktsar Electric Supply Co. Ltd. having its registered office at Lahore. In the return filed by the petitioners with the Registrar of Companies, Punjab, under s. 244 of the Indian Companies Act, 1913, for the year ending 30th September, 1949, in Form No. 58, Rs. 30,000 were shown to have been paid to the Custodian, Enemy Property, Bombay, although Rs. 17,718 had, in fact, been paid to him by cheque and Rs. 11,282 were spent on this account towards expenses. Relief was sought against apprehended claims in respect of negligence, breach of duty, etc., by the petitioners under s. 281(2) of the Indian Companies Act, 1913. On an examination of various decided cases, A. K. Grover J. (as his Lordship then was) held (at p. 157 of 36 Comp Cas) that :

"... the High Court can grant relief under sub-section (2) and that the scope of that sub-section is wide enough to cover criminal prosecution. The word "claim" in sub-section (2) must be construed as having been used in a special sense so as to include also criminal prosecution."

10. Evidently the word "claim" occurring in sub-s. (2) of s. 281 has since been substituted by the words "any proceeding" by Act 65 of 1960 so as to bring it at par with sub-s. (1) and remove the ambiguity, if any, arising out of the correct connotation of the word "claim". For the reasons stated above, we are in complete agreement with the view expressed by Grover J. and we answer this question in the affirmative.

11. Question No. 2 :

Upon its plain language, s. 633 confers discretion on the court to relieve an officer of a company proceeded against for any negligence, default, breach of duty, misfeasance or breach of trust, provided the court finds that the officer has acted honestly and reasonably and also having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused. Thus, for getting relief under this section it must be proved by the person concerned that (1) he acted honestly, (2) that he acted reasonably, and (3) that having regard to all the circumstances of the case, he ought fairly to be excused. "Acting reasonably" means acting in the way in which a man of affairs dealing with his own affairs with reasonable care and circumstances could reasonably be expected to act in such a case. (See Re Duomatic Ltd. [1969] 1 ALL ER 161. The expression "reasonable" means that an act or decision, concurred is or can be supported with good reasons, or at any be one which a reasonable person might reasonably make. Hence, the discretion vesting in the court has to be exercised in favor of the officer concerned when the court is satisfied about the existence of these conditions. Of course, it has to take note of all the attending circumstances of the cases for arriving at a judicious and just

decision. Looking from this angle the learned single judge is right in saying that no distinction can be drawn amongst the directors for fastening liability or granting relief from liability on the consideration that a person is on the Board purely by virtue of his technical skill or because he represents certain special interests and there are other directors who are in effective control of the management and affairs of the company. With respect, we feel that H. L. Anand J., overstated the point in observing (at p. 88 of 48 Comp Cas) that :

"... it is necessary to make a distinction between the directors who are on the board, purely by virtue of their technical skill or because they represent certain special interests and those who are in the effective control of the management and affairs of the company, whether or not they have any financial stakes in it, in determining if relief from liability arising out of the breaches and defaults of the company should be granted or not."

12. The criteria for granting relief having been explicitly laid down in the section itself, no other criteria can be imported into it. Surely, the language of the section does not warrant an interpretation drawing such a distinction. Indeed, Anand J. was fully conscious of this fact when he observed that (p. 89) :

"While there is a strong case for urgent legislative action, both in the matter of widening the frontiers of accountability of a company, both to its board of directors and to the members, as also in relieving the special category of directors from consequences of default and breaches of the company, judicial moderation is necessary in the administration of section 633 of the Act so as to ensure that such categories of directors are not subjected to the harassment of legal proceedings for breaches and defaults so a company, which may at times be rather protracted."

13. While we do find some force in the argument that the circumstance of a person being purely on the Board on account of his special skill or expertise may be a relevant factor in deciding whether he has acted honestly and reasonably in conjunction with other circumstances of the case it is per se no ground for exonerating such a director from liability on account of negligence, breach of duty, misfeasance or breach of trust, etc. He has, like any other director, to satisfy the conscience of the court that he fulfills the criteria to earn relief from liability as laid down in the section, and his being on the Board on account of his expertise or special skill will not in itself be enough to exonerate him from liability; it will be just one of the circumstances to be taken notice of as a factor justifying the reasonableness and honesty of the applicant's actions. Looked at from this angle, the fact of a person being on the board of directors because of his special skill or expert knowledge cannot be said to be a wholly extraneous circumstance having no bearing whatsoever on the point in issue. We are, Therefore, inclined to answer this question accordingly.

14. Both the questions formulated in the reference having been answered, the reference stands disposed of. Both the company petitions are sent back to the

learned company judge for disposal in accordance with law.