

(2005) 09 AHC CK 0076

In the Allahabad High Court

Case No : Misc. Application No. 53219 of 2002 in Company Petition No. 58 of 1997

In Re: Parasrampuriah Trading and Finance Ltd.

Date of Decision : 23-09-2005

Acts Referred:

Companies Act, 1956 — Section 198, 209A, 211, 227, 269

Citation : (2006) 131 CompCas 834 : (2006) 70 SCL 342

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Rajnath Shukla, for the Appellant; Navin Sinha, for the Respondent

Judgement

Sunil Ambwani, J.—Heard Sri Rajnath Shukla, learned Counsel for the official liquidator and Sri Navin Sinha, senior advocate for the respondents-ex-directors of the company (in liquidation).

2. This is an application under Sections 542 and 543 of the Companies Act, 1956 (in short "the Act"), by the official liquidator against the ex-directors of M/s. Parasrampuriah Trading and Finance Ltd. (in liquidation), namely, Shri Gopal Pandey, Sri Vishnu Kant Misra, Smt. Chandra Kala Parasram Puria and Shri Sudhir Kumar Parasram Puria, arrayed as respondents, accused of committing misfeasance and conducting the business of the company in a manner as it was a private company and to have retained the advances received by them, within five years of the winding up of the company defrauding creditors and causing severe losses to the company.

3. On a creditor's winding up petition in Company Petition No. 58 of 1997 by M/s. GTC Industries Ltd., M/s. Parasrampuriah Trading and Finance Ltd. (in liquidation) was wound up on March 25, 1998 G.T.C. Industries Ltd. v. Parasrampuriah Trading and Finance (P.) Ltd. [2001] 104 Comp Cas 368 (All). The ex-directors of the company filed the "statement of affairs" u/s 454 of the Act showing huge losses.

4. In the year 1994, the company was subjected to an inspection by the Central

Government u/s 209A of the Companies Act, 1956. The Deputy Director (Inspection) in the Regional Directorate, NR, Department of Company Affairs, Ministry of Law, Justice and Company Affairs, vide his letter dated December 19, 2001, requested the official liquidator, annexing therewith copy of the inspection report with the findings against the ex-directors to be guilty of violating Sections 43A, 227, 269/390/198, 211, 292, 295, 299/301 and 372 of the Companies Act, 1956, to take action against them and to file an application for misfeasance and misappropriation of funds against the ex-directors. The official liquidator in pursuance of the letter, has filed the present company petition under Sections 542 and 543 of the Companies Act against the ex-directors of the companies.

5. Sri Navin Sinha, learned senior advocate for the respondents has made a preliminary objection to the maintainability of the application. He submits that the allegations are not supported with the necessary particulars and details given in the application, filed by the official liquidator. The allegations, if established will also amount to criminal liability which the respondents may have to face in the event of its success. It is contended by him that the application filed by the official liquidator does not contain necessary particulars and ingredients which may make out the charges against the ex-directors. He submits that the reliance upon the report of the Central Government of the year 1995 cannot substitute the lack of necessary pleadings in the application charging the ex-directors with misfeasance and misappropriation.

6. Sri Navin Sinha has relied upon The Official Liquidator Vs. Raghawa Desikachar and Others, , in which it was held in para. 7 as follows (page 142) :

7. The above proceedings clearly show that no opportunity was given to respondents Nos. 1 to 4 because proceedings of January 12, 1958, show that as soon as written statement was filed on December 30, 1957, the District Judge fixed the case for argument. The proceedings of July 7, 1958, further show that Mr. Amin had brought to the notice of the official liquidator that he should be supplied with materials on which the official liquidator would rely for the alleged malfeasance on the part of his clients, but no materials were furnished by the official liquidator. Accordingly on the second hearing after the aforesaid application, a petition for submitting fresh evidence and for cross-examining respondent No. 5 was made but it was rejected. The show-cause notice was given by the official liquidator on the basis of the public examination of respondents Nos. 1 to 4. It is only in answer to the show-cause notice that respondents Nos. 1 to 4 could lead evidence and cross-examine respondent No. 5. It may be mentioned that misfeasance action against the directors is a serious charge. It is a charge of misconduct or misappropriation or breach of trust. For this reason the application should contain a detailed narration of the specific acts of commission and omission on the part of each director quantifying the loss to the company arising out of such acts or omissions. The burden of proving misfeasance or non-feasance rests on the official liquidator. The official liquidator, it may be mentioned, merely relied upon the evidence recorded in public

examination of the directors and on a few documents tendered in evidence. At the stage of public examination there was no charge of misfeasance against the directors and they were not in a position to know what would be the grounds that would be alleged against them for recovering any amounts, for the loss said to have been caused to the company by reason of such misfeasance. The application made by the official liquidator did not give sufficient particulars which, in our view, it should have. Once a show-cause notice was given to respondents Nos. 1 to 4 the official liquidator did not lead any evidence nor rely upon any other documents, nor did respondent No. 5 who was instrumental in initiating the misfeasance case against respondents Nos. 1 to 4 lead any evidence. In our view, there was no justification whatsoever for the District Court to reject the evidence which the respondents had intended to lead or to disallow the production of documents other than those already produced, and for that reason the High Court rightly ordered that additional evidence be recorded in this case.

7. Section 542 of the Act imposes liability of fraudulent conduct of business by the ex-directors found in the course of winding up the company (in liquidation). The official liquidator or the creditor or contributory may file an application on which the court may declare that the persons who were knowingly parties to the conduct of the business in the manner to defraud creditors or for any fraudulent purpose shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company. Section 543 of the Act gives the power to court to assess damages against the delinquent directors. These powers can be exercised when it is found in the course of winding up the petition that any past or present directors, managers, liquidators or officers had misapplied or retained or have become liable or accountable for any money or property of the company; or have been guilty of any misfeasance or breach of trust in relation to the company.

8. The Central Government in its statutory exercise of powers u/s 209A of the Companies Act carried out the inspections in the year 1994. These powers have been conceded by the statutes to the Central Government, for inspection of accounts of the company. The company was running into losses. There were may allegations of misfeasance and misappropriation of company funds, against the ex-directors. The report of the Deputy Director (Inspections) or Regional Director (NR) of the Department of Company Affairs provides the details of the inspections made between October 31, 1994, to November 30, 1994, for the period between March 31, 1990, to March 31, 1994. The Assistant Inspecting Officer, after its report of re-inspections concluded as follows :

Conclusion :

The inspection has revealed that the directors have treated the company as their own establishment and have not been honouring the corporate personality. The funds of the company have been used by the directors for their personal gains and withdrawal of the funds have been made even without approval of the board

of directors, general meeting or the Central Government as required under the Act.

Serious departures from the compliance of provisions of the Act are there while preparing the balance-sheets. Auditors have not cared even for the converted status of the company and have audited balance-sheet of private limited company even after conversion on October 1, 1985.

The misuse of funds by the directors and their relatives to the tune of such extent which is three/four also be considered as sufficient and just and fair for petition u/s 433/439 also. It may be supported by the facts that agency of the company with GTC Industries has now come to an end and company has no proposal for diversification or adoption of new business.

The specific contraventions of the Act have already been discussed in paras, above. However, the facts remains that the company is a closely held company of the Parasrampur family members. The inspection of group companies as suggested at para. 5.1 may also be considered.

9. The report is in three parts. Part A of the report consists of preliminaries with regard to inspections which includes the main objects of the company, its capital structure and shareholding pattern, financial position and working results, and thereafter the report proceeds with the contravention of the Companies Act, 1956 and the accounting policies.

10. The company with authorised capital of Rs. 2,50,000 was running into losses and thereby the reserves and surpluses were reduced from Rs. 3,46,838 in the year March 31, 1992, to Rs. 3,40,385 and Rs. 1,95,300 in the year March 31, 1993 and March 31, 1994, respectively. The fixed assets, investments and also current assets were also reduced substantially. The turn-over of the company in last three years was Rs. 1286.46 lakhs in the year 1992, Rs. 826.11 lakhs, in 1993 and Rs. 350 lakhs in the year 1994 and despite several adjustments/sale of instrument/fixed assets, etc., the losses could not be reduced. There was no chances of improvement in the working results as the sole business of the company was to act as sole selling agent of M/s. GTC Industries Ltd. for cigarettes.

11. Reporting contraventions of Sections 295 and 292 of the Companies Act, 1956, it was observed in the inspections that the promoter directors namely, Shri Sudhir Kumar Parasrampur and Smt. Parwati Parasrampur and their relatives were maintaining their personal accounts in the books of the company which reveal several transactions in the nature of loans. They were withdrawing and depositing huge amount from/with the company and the company was making payment on their behalf to third parties by way of debiting to their personal accounts. Details of these retention of the amounts are given in para. 5(iii) of the report. This gives the amount of period of retention of Sri S.K. Parasrampur during the financial year March 31, 1993 and March 31, 1994, to about Rs. 2,09,645.02 in the year ending March 31, 1992 and Rs. 5,94,672.08 in the year

ending March 31, 1994. In the same year Parwati Parasrampuriah retained Rs. 5,24,740.68 with her for whole year during the year March 31, 1993. Similarly, the relatives of these directors also withdrew funds of the company. The company paid interest on the loans taken from the directors but charged no interest on the amounts advances/lent to the directors. The inspecting officer suggested that inspections be also made u/s 209A of the Act in connection with the other group concerns detailed in the report.

12. Para. 5.2 of the report details the contravention of Section 372 of the Companies Act. The company made investment of Rs. 4,500 as on March 31, 1993 in Kanpur Cigarettes Ltd., Rs. 20,400 in Kalpana Mercantile Ltd. and Rs. 24,000 in Vishwa Jyoti Marketing Ltd. Similarly, it traded in shares of Nath Mercantile Ltd. and invested Rs. 2,205, Rs. 10,300 in shares of Ambar Mercantile Ltd. during the year March 31, 1991, and investment of Rs. 10,000 in shares of SBI during the year ending March 31, 1994. In the year 1994 certain investment like shares of Kalpana Mercantile Vishwa Jyoti Marketing Pvt. Ltd., Nath Mercantile Ltd. and Ambar Mercantile Ltd. were sold by the company.

13. The company failed to make the statutory entry of the investment with Registrar within seven days. In para. 5.3 the contravention with regard to Section 299/301 of the Companies Act was recorded. It was also found that in para. 5.4 of the companies contravened Section 43A of the Companies Act inasmuch as during the year ending June 30, 1983, June 30, 1984, and June 30, 1985, the turnover was Rs. 6,64,483, Rs. 1,23,27,937 and Rs. 2,16,36,263 respectively. This turnover attracted the provisions of Section 43A of the Companies Act and that the company became public limited company with effect from October 1, 1995, but the management and auditors of the company treated the company as a private company till the year 1998-1999 and up to November 27, 1999, the date on which ROC changed the certificate of incorporation.

14. All these and other statutory violations and withholding of large amount of money without interest amounts to misfeasance within the meaning of Sections 542 and 543 of the Companies Act, 1956. The business of the company with turnover in crores of rupees was run and managed by a private company, the amounts were advanced to the directors without interest and/or retained by them for long periods, the investments were made and shares were sold without seeking approval of the board of directors. The company ultimately went into severe losses and was wound up by this Court.

15. The findings in the inspections supported by the accounts of the company annexed to the application prima facie amounts to violation of Section 542/543 of the Companies Act, 1956. I am, therefore, in the opinion that the preliminary objections do not have any force and rejected the same.

16. The respondents ex-directors are thus charged as follows :

1. That you, Sri Gopal Pandey, Sri Vishnu Kant Misra, Smt. Chandra Kala Parasrampuriah and Shri Sudhir Kumar Parasram Puria, ex-directors of M/s.

Parasram Puria Trading and Finance Ltd. (in liquidation) (wound up on March 25, 1998) made investments of the amounts detailed in para. 5.2 of the report of the Asst. Inspecting Officer dated July 31, 1995, appointed by the Central Government u/s 209A of the Companies Act, 1956, in Kanpur Cigarettes Ltd., Kalpana Mercantile Ltd., Vishwa Jyoti Marketing Pvt. Ltd., Nath Mercantile Ltd. and Ambar Mercantile Ltd. in the shares of State Bank of India during the year March 31, 1994 in violation of Section 371(1) and Section 372(6), (7) of the Companies Act, 1956 and failed to make statutory entries within seven days of the investment u/s 372(6) and (7) and thereby conducted the business of the companies in a manner prejudicial to the interest of the shareholders and creditors, violating the provisions of Sections 542 and 543 of the Companies Act, 1956, punishable u/s 542(3) of the Companies Act, 1956.

2. That you, Sri Gopal Pandey, Sri Vishnu Kant Misra, Smt. Chan-dra Kala Parasram puria and Shri Sudhir Kumar Parasram Puria, ex-directors of M/s. Parasram Puria Trading and Finance Ltd. (in liquidation) having registered the turnover of the company during the financial years June 30, 1983, Rs. 6,64,483.00, June 30, 1984, of Rs. 1,23,27,937 and June 30, 1985, of Rs. 2,16,36,263 the average of the three consecutive financial years exceeded Rs. 1 crore and attracted Section 43A of the Companies Act, 1956, failed to inform the ROC within three months of the date when the company became a public company which information was given to the Registrar of Companies only on April 30, 1990 and thereby continued to treat the company as a private company till date in violation of Sections 295, 211, 269, 227 and 43A of the Companies Act, 1956 and thus committed offence under Sections 542 and 543 of the Companies Act punishable u/s 542(3) of the Companies Act.

3. That you, Sri Gopal Pandey, Sri Vishnu Kant Misra, Smt. Chan-dra Kala Parasrampurua and Shri Sudhir Kumar Parasram Puria, ex directors of M/s. Parasrampurua Trading and Finance Ltd. (in liquidation) took loans from the company from time to time in your own names and in the names of your relatives and friends without disclosing the maximum amount due from the directors in the balance-sheet, without any interest and failed to repay the same which is so found in paras. 5.1, 5.4 and 5.7 of the Assistant Inspecting Officer's report dated July 31, 1995, appointed by the Central Government u/s 209A of the Companies Act, up to the year 1993-1994 and thereafter certified that the company has not granted any loans to the parties listed in the registration of contract u/s 301 and thereby confirming that the auditors were not given the information and explanation which was necessary for the purpose of the audit and thus could not discharge their duties as auditors, have contravened the provisions of Sections 292, 295 and 227 of the Companies Act, 1956 and thereby committed offence u/s 542(3) of the Companies Act.

17. List this matter on November 21, 2005, for recording evidence to be led by the official liquidator. In the meantime, the respondents ex-directors may if they so like file their reply to the charges.