

(1994) 06 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 18 of 1991

M/s. Faridabad Rubber Soles Private Limited (in Liqn)	APPELLANT
Vs	
S.L. Chopra and another	RESPONDENT

Date of Decision : 03-06-1994

Acts Referred:

Companies Act, 1913 — Section 235
Companies Act, 1956 — Section 454, 541, 542, 543

Citation : AIR 1995 P&H 180 : (2001) 103 CompCas 975 : (1994) 108 PLR 78

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : Amit Singh Sethi, for the Appellant; A.C. Jain, for the Respondent

Judgement

1. This petition under Sections 541, 542 and 543 of the Companies Act, 1956 (hereinafter referred to as "the Act") has been filed by the official liquidator with a prayer that this Court should examine into the conduct of the respondents who ate the ex-Directors of M/s. Faridabad Rubber Soles Private Limited (now in liquidation and for short, "the Company") and compel them to repay or restore the monies and properties of the Company by way of compensation as, according to him, they had misapplied, retained, or became liable or accountable for the monies and properties of the Company by reason of their acts of misfeasance or breach of trust in relation to the Company.

2. On a creditor's petition filed in Feb. 1985 (C.P. 10 of 1985) the Company was ordered to be wound up on Oct. 16, 1986 and the official liquidator attached to this Court was appointed as its liquidator. Respondent No. 1 was the Managing Director of the Company at the time of its winding up and respondent 2 had left the country and could not be served in the present petition the proceedings against her were allowed to be separated to be continued as and when the liquidator could procure her presence Consequently, the present proceedings are being taken only against respondent No. 1.

3. In pursuance of the orders passed by this Court in C.P. No. 23 of 1987,

respondent I filed the statement of affairs of the Company u/s 454 of the Act on May 23, 1988. In the said statement a sum of Rs. 10,97,872.21 ps. was shown as due to the Company from different parties with whom the Company had trade relations. Similarly another sum of Rs. 57,146.18 ps. was also shown due to the Company by way of loans and advances made by it to different parties. Both these amounts were shown to be due to the Company as on July 12, 1982. The only allegation made in the petition is that respondent I as Managing Director of the Company acted negligently and did not take any steps to recover these amounts from the parties from whom they were due and thereby he caused loss to the Company to the extent of the amounts due. It is further alleged by the official liquidator that by the time he took over the Company these amounts had become barred by time and could not, therefore, be recovered. According to the petitioner, the inaction of the respondent amounted to an act of misfeasance or breach of trust on his part in relation to the Company and that he and respondent No. 21 were liable to compensate the Company. The prayer made is that a decree be passed against respondent No. 1 to the extent of the amount which he failed to recover for the Company together with interest.

4. Respondent No. 1 has filed a written statement controverting the allegations made by the official liquidator. The fact that the amount of Rs. 10,97,872.21 ps. was due to the company from various debtors and another sum of Rs. 57,146.18 ps. was due to it as loans and advances made to various parties has not been denied. It is averred that the Company was floated by the respondents on July 23, 1976 and there were the two Directors. Respondent No. 2 is stated to be the daughter-in-law of one Shri M.L. Manchanda who at the relevant time was a Director of the State Bank of Patiala. The Company availed of various financial facilities including bill discounting limit from the Bank to the extent of Rs. 5 lac and it continued with its business smoothly till Feb./March, 1982. The respondent has further stated that both the Directors had furnished their personal guarantees to the Bank. It was sometime in the year 1982 that a consignment of goods valuing more than Rs. 4 lacs was sent to one of its customers to Patna which was not accepted and the documents sent through the Bank were not retired. Large amounts of money became due to the Bank and Shri M.L. Manchanda started pressurizing respondent No. 1 release the personal guarantee of respondent No. 2. Respondent 1 is stated to have agreed to this release but the local branch of the State Bank of Patiala, Faridabad put its foot down and did not permit respondent No. 2 to get herself released from the liability. It is further stated that Shri M.L. Manchanda was then no longer with the Bank and the relations of the Company with the Bank became strained. In terms of the loan agreements, the State Bank of Patiala, Faridabad is said to have locked the Company premises on July 17/1982 and according to the respondent, this was illegal as the Bank had not obtained orders from any competent Court. The books of account and the records were also inside the factory premises at Faridabad and remained locked in the custody of the Bank. The respondent has also averred that in spite of the requests made, the Bank did not allow access to the

books and records and other properties of the Company. The Bank filed a suit in the year 1983 against the Company and the guarantors for the recovery of the amount due to it and the said suit was transferred to the file of this Court after the Company was ordered to be wound up and is pending up by the respondent is that since he did not have access to the books of the Company he was not in a position to initiate any proceedings for the recovery of the amounts due to the Company. After the suit was transferred, this Court directed the Bank open to lock of the Company premises on 1-11-1987 and hand over to the official liquidator whatever books of account and records were lying in the premises. It is not disputed that it was in pursuance of directions that the books and records of the Company were delivered to the official liquidator on 1-11-1987 and 11-11-1987.

5. From the pleadings of the parties, the following issues were framed.--

1. Whether a joint petition under Sections 541, 542 and 543 of the Companies Act is maintainable OPP

2. Whether the petition is within limitation? OPP

3. Whether respondent No. f is liable under Sections 541, 542 and 543 of the Companies Act? OPP

4. Whether the State Bank of Patiala is a necessary party? OPR

5. Relief.

6. Learned counsel for the petitioner has confined his attack only under the provisions of Section 543 of the Act and claims made by the official liquidator under the other two sections were given up.

7. The contention that has been advanced before me on behalf of the official liquidator is that since the respondent who was the Managing Director of the Company did not take any steps on behalf of the Company to recover the amounts of Rs. 10,97,872.21 ps. and Rs. 57,146.18 ps. which were due from different parties and allowed the same to become barred by time, his negligence and inaction amounts to misfeasance on his part within the meaning of Section 543 of the Act and he is, therefore, liable to compensate the Company for these amounts. I find no merit in this contention. The official liquidator has not alleged any fraud or dishonesty on the part of the Directors in not recovering the amounts for the Company. As per the statement account filed by the respondent the aforesaid amounts were due to the Company from different parties but the Directors including the respondent took no steps to recover the same and the recovery of the amounts had become barred by time by the time the liquidator took over. The question that arises is whether the mere fact that a few debts due to the company had been allowed to become barred by time amounts to misfeasance on the part of the Directors. The matter is not res-integra. A similar matter arose before Falshaw, J. in *The Kaithal Grain and Bullion Exchange Lt., Katihal (in liquidation) v. Lachman Das* (1954) 56 PLR 486 where the learned Judge relying

on the observations of Jessel, M.R. in re: Forest of Dean Coal Mining Company (1878) 10 Ch D 450 held that mere inaction on the part of the Director to recover the amount does not amount to misfeasance within the provisions of the Act. The learned Judge in that case was dealing with the provisions of Section 235 of the Companies Act, 1913 which are similar to that of Section 543 of the Act. Moreover, in the instant case, the Company premises were looked by the State Bank of Patiala on July 17, 1982 and the books and the records of the Company were inside. The respondent had no access to them. It was in Nov. 1987 that this Court directed the Bank to open to the lock. and hand over the books to the official liquidator. It was at that time that the statement of affairs could be filed by the respondent. During all this period the ex-Directors had no access to the books and could not, therefore, initiate action for necessary of amounts due to the Company. In these circumstances, I do not consider that any action is called for against the respondent. The petition is accordingly dismissed with no order as to costs.

8. Petition dismissed.