
(2012) 10 DEL CK 0158
In the Delhi High Court
Case No : Co. App. No. 76 of 2012

Neeraj Gupta

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Companies Act, 1956 — Section 454, 454(2)(a)

Citation : (2012) 10 DEL CK 0158

Hon'ble Judges : Rajiv Sahai Endlaw, J; D. Murugesan, J

Bench : Division Bench

Advocate : Vibhu Bakhru with Ms. Chitra Sharma, for the Appellant; Kanwal Chaudhary, for Official Liquidator, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The appellant is aggrieved from the order dated 17 July, 2012 of the learned Company Judge dismissing (with

costs of Rs. 25,000/-) Co. Application No. 2188/2011 preferred by the appellant seeking his discharge from criminal prosecution against him in

terms of Section 454 of the Companies Act, 1956. Notice of the appeal was issued and the senior counsel for the appellant as well as the counsel

for the Official Liquidator have been heard. The appellant sought discharge pleading that he had resigned as Director of the Company in liquidation

on 25th March, 2001; that the petition for winding up was presented on 8th October, 2002 and the order of appointment of the Provisional

Liquidator was made on 3 April, 2003 and the winding up ordered on 11th August, 2004.

2. It appears that there was a dispute about the date of resignation of the appellant and the learned Company Judge called for the records from the

Office of the Registrar of Companies and which disclosed that Form 32 qua the

resignation of the appellant as Director was uploaded only on 3 March, 2003.

3. However even if the appellant is deemed to have resigned on 3 March, 2003, it was still before the appointment of Provisional Liquidator on 3

April, 2003. It appears to have been the contention of the appellant before the learned Company Judge that he was thus not liable for filing the

Statement of Affairs. The learned Company Judge however negated the said contention observing ""That apart, in terms of Section 454(2)(a) a

past officer is also liable to file his Statement of Affairs"".

4. We had during the hearing invited the attention of the counsels to the recent dicta dated 13th July, 2012 of the Division Bench of this Court in

Co. Appeal No. 44/2012 titled Ashwani Suri Vs. M/s Ganga Automobiles Ltd. (in Liquidation), holding that u/s 454, the duty to submit the

Statement of Affairs is cast on two categories of persons; the first category consists of only those persons who are officers of the Company on the

date of appointment of Provisional Liquidator or on the date of winding up order; the second category of persons comprises of those who ""have

been"" the officers of the Company; the duty to submit and verify Statement of Affairs is automatically cast on the first category and is not

dependent on any direction of the Court or a notice from the Official Liquidator but in case of second category of persons, the obligation to submit

and verify the statement arises only when there is a direction of the Court or when the Official Liquidator issues notice requiring them to submit and

verify the statement.

5. We have thus enquired from the counsel for the Official Liquidator as to whether there is any order of the learned Company Judge, of a date

prior to the initiation of prosecution of the appellant, directing the appellant to file the Statement of Affairs, in as much as the appellant falls in the

second category aforesaid and the learned Company Judge, in the impugned order, has proceeded on the premise that the liability of the second

category of persons to file Statement of Affairs is automatic, as of the first category of persons and which is contrary to the dicta aforesaid of the

Division Bench.

6. The counsel for the Official Liquidator seeks time to file an affidavit on the aforesaid aspect.

7. We are however of the opinion that no purpose will be served in keeping this appeal pending and in conducting the inquiry aforesaid in terms of

Ashwani Suri supra in this appeal, when the same has not been undertaken by the learned Company Judge. Even otherwise it is felt that it will be

more expedient for such inquiry to be held by the learned Company Judge. We accordingly set aside the order dated 17th July, 2012 impugned in

this appeal and remit Co. Application No. 2188/2011 (dismissed vide impugned order) for consideration afresh by the learned Company Judge in

accordance with law and particularly the judgment in Ashwani Suri.

No costs.