
(2009) 02 P&H CK 0180
In the Punjab And Haryana At Chandigarh

Northland Sugar Complex Ltd. (In Liquidation)	APPELLANT
Vs	
Sansar Chand Maini and Others	RESPONDENT

Date of Decision : 19-02-2009

Acts Referred:

COMPANIES ACT, 1956 — Section 2, 454, 457, 529A, 530
Drugs and Cosmetics Act, 1940 — Section 34
Industrial Development Bank of India Act, 1964 — Section 30A
Negotiable Instruments Act, 1881 (NI) — Section 138, 141
Penal Code, 1860 (IPC) — Section 182
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 31
State Financial Corporations Act, 1951 — Section 27, 32A, 41A

Citation : (2009) 150 CompCas 834 : (2009) 155 PLR 658 : (2010) 103 SCL 211

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.

(I) Scope:

1. In the above bunch of cases, the issue is the extent of power of the company court to give directions to the official liquidator in matters where there is a perceived deliberate non-compliance of the duty to provide the statement of affairs of the company-in-liquidation. The actions are invariably thwarted by taking objections that the directors to whom notices had been sent are not any longer in the management of the affairs of the company and that they are not liable for being prosecuted for alleged non-compliance of the duty to furnish the statement of affairs. The objections come through : (i) persons claiming to be ex-directors ; (ii) persons who claim to have retired from the office of director of the company more than one year prior to the "relevant date" ; (iii) persons whose names do not find a place in Form No. 32 ; and (iv) nominee directors of financial institutions, who are not acquainted with the day-to-day activities of the company and who enjoy certain immunities under specific enactments.

2. The list is not exhaustive but illustrative of some of the applications finding

instances of persons falling in the above category.

3. The point to be resolved is not so much a matter of an academic exercise but an attempt to lay down specific guidelines for the official liquidator to follow before resorting to action u/s 454(5) and (5A) of the Companies Act, 1956. It is made clear that the specific details contained in each and every one of the cases which are pending are not addressed in this order but in terms of the guidelines passed hereunder, the actions will follow.

(II) The relevant provisions:

4. Section 454 of the Companies Act reads as under:

454(1). Where the court has made a winding up order or appointed the official liquidator as provisional liquidator, unless the court in its discretion otherwise orders, there shall be made out and submitted to the official liquidator a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely:

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and negotiable securities, if any, held by the company ;

(b) its debts and liabilities ;

(c) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts ; and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given ;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof ;

(e) such further or other information as may be prescribed, or as the official liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company; or by such of the persons hereinafter in this sub-section mentioned, as the official liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say persons:

(a) who are or have been officers of the company ;

(b) who have taken part in the formation of the company at any time within one year before the relevant date ;

(c) who are in the employment of the company, or have been in the employment of the company, within the said year, and are, in the opinion of the official liquidator, capable of giving the information required ;

(d) who are or have been within the said year officers of or in the employment of, a company which is, or within the said year was an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time not exceeding three months from that date as the official liquidator or the Court may, for special reasons, appoint.

(4) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall, be paid by the official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.

(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).

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence u/s 182 of the Indian Penal Code (45 of 1860) ; and shall, on the application of the official liquidator, be punishable accordingly.

(8) In this section, the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of this appointment and in a case where no such appointment is made, the date of the winding up order.

5. The duty to submit statement of affairs to be made to the official liquidator shall follow within 21 days from the date when an order of winding up is made or an official liquidator is appointed as a provisional liquidator. The details to be contained in the statement of affairs are set out under Clauses (a) to (e) of Section 454(1) of the Companies Act. Section 454(2) sets out the formality of how the statement shall be submitted and verified by the directors and by the person who on the "relevant date" was the manager, secretary or other chief officer of the company. The section also enables the official liquidator, subject to the directions of the court, to submit and verify statements who are or have been officers of the company, who have taken part in the formation of the

company at any time within one year before the "relevant date" or who are or have been in the employment of the company within the said year and who are capable of giving information required or who are or have been the officers of the company or in its employment during the period to which the statement relates. Sub-section (5) is the penal section which states that if any person without reasonable excuse makes default in complying with any of the requirements shall be punishable in the manner set down under the section. Sub-section (5A) which was introduced by Act 65 of 1960 enables the company court to take cognisance of an offence u/s 5 upon receiving a complaint of facts constituting such an offence.

6. u/s 454(8) the expression "relevant date" means the date in a case where a provisional liquidator is appointed, the date of his appointment and in a case where no such appointment is made on the date of winding up order. The reference to sub-section assumes significance that it is not every person who holds the office as director that would be liable and the crucial date would always be whether during the relevant date the person holds such office to make him liable giving the statement of affairs.

(III) Raison d'etre for statement of affairs of company in liquidation:

7. The starting point for the activities of the official liquidator in collecting the statement of affairs from the director assumes enormous significance from the fact that the details that are enumerated alone provide the basis for securing all the assets of the company and carry out the duties under Sections 529A and 530 of the Companies Act. The director of the company is compelled to make a co-operative effort to make possible the satisfaction of the claim of several persons. Having regard to the significance of this primary duty, the law casts the duty of preparation of statement of affairs on the pain of criminal prosecution and for incarceration and fine, if the duty is not discharged. Since it is a criminal process that is issued u/s 454(5A), as is wont in every criminal prosecution, the initial burden shall always be on the prosecuting agency that the director who is bound to prepare the statement of affairs has failed to do without reasonable excuse. The bulk of the case law on this subject had always been on the degree of burden of proof that is cast on the prosecuting agency and when the burden could be said to be discharged, what would amount to be reasonable excuse for non-submission that could be a ground for immunity, to what extent do special legislation empowering the appointment of directors by nomination enjoy any privileged status, etc.

8. The decision in *Official Liquidator v. Ganesh Narain R. Podar* [1991] 70 Comp Cas 588 (Raj), while detailing with the respective duties of the official liquidator and the directors sets out at page 597 as follows:

It cannot be disputed that, unless the statement of affairs of the company in liquidation is filed, it is not possible to facilitate the winding up proceedings and it is not possible to know the assets and liabilities of the company. It is not possible

to know as to who are the creditors of the company, debtors of the company and, in such a case, it is not possible to file claims against the debtors within the prescribed period of limitation.

(IV) The rival contentions:

(i) Classes of directors:

9. The instances brought out on behalf of the categories of directors seeking exculpation of the charge of derelict to the following circumstances:

(i) Persons whose names do not find a place in Form No. 32 filed even one year before the date of winding up.

(ii) Nominee directors of financial institutions which had lent moneys to the company and which were interested in ensuring that the amounts were not misspent.

(iii) Person who did not regularly attend to the meetings of the company and who by consecutive absence obtained vacation of their offices as such directors by operation of law.

(iv) Persons who had ceased to be directors but by the lapse of the company the information relating to the cessation of offices was not communicated to the Registrar of Companies and consequently the Registrar of Companies required to be maintained were not duly updated.

(ii) Balancing of interests the legislative intent:

10. The provisions really advert to the balancing of interest of two persons at the two ends of a tether, of a liquidator that represents the whole body of creditors and all other persons interested in the liquidation of the company and the directors of the company who are perforce to participate in the exercise and divulge information. The conflict is many a time real, for, the person who has long since ceased to be a director cannot be compelled to give a statement of affairs when he had not known what the affairs of the company were. Since the section imposes serious penal consequences, the attempt is always of the person who has the relevant details but who does not want to divulge information to plead that he has ceased to be the director of the company either on the relevant date or he does not fulfil any of the descriptions of the persons on whom the duty is cast.

(V) Definition of "director" is wide and inclusive:

11. The definition of a "director" contained u/s 2(13) of the Companies Act which is an inclusive definition reads : "Director includes any person occupying the position of director, by whatever name called". It is an elastic term that does not classify the person's liability by the tag that he has, but by the position that he occupies.

12. Learned Counsel appearing on behalf of the official liquidator, points out to

the expression of "any persons without reasonable excuse", occurring u/s 454(5) of the Companies Act in the context of the liability for submission and verification of the statement of affairs by "one or more of the persons who are at the relevant date the directors and by the person who is at that date, the manager, secretary or chief officer, of company or by such of the persons" occurring u/s 454(2) and urges that the Act makes no distinction between various classes of directors. To him the expression is of a director that "includes any person enjoying the position of the director by whatever name called". To him, Section 2(13) is a complete answer to counsel arguing for dropping of proceedings against the so called ex-directors or nominee directors. The provisions, according to him, shall be interpreted for the purpose for which it is enacted and points out to the decision of the hon"ble Supreme Court in Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others, , which sets out in paragraph 38 that the court shall apply a purposive interpretation to what the law intends to do. The decision is rendered by the hon"ble Supreme Court in the context of transfer of proceedings pending before any court to the Debts Recovery Tribunal that was required to be done u/s 31 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. He would use this to say that the purpose of collection of the statement of affairs being the predominant duty that has relevance up to the disbursal shall obtain an elastic interpretation that would include all classes of persons who are acquainted with the affairs of the company.

13. There have been decisions on nominee directors and ex-directors who have been excluded from the liability for prosecution u/s 454(5A) and they can all be seen to be made in particular factual references to situations when some classes of persons were found to be not involved in the affairs of the company during the relevant date. The expression "relevant date" occurring u/s 454(8) is the date when the provisional liquidator is appointed, the date of his appointment and in the cases where no such appointment is made, the date of winding up. The duty is cast on persons : (a) who are or have been officers of the company ; (b) who have taken part in the formation of the company at any time within one year before the relevant date ; (c) who are in the employment of the company, or have been in the employment of the company within the said period, and are, in the opinion of the official liquidator, capable of giving the information required; and (d) who are or have been within the said year officers of, or in the employment of a company which is, or within the said year was, an officer of the company to which the statement relates. The period of one year has again a value of obvious significance that only such persons who were associated with the affairs of the company, which is before the relevant date, could be answerable for submission of the statement of affairs and against whom proceedings u/s 454(5A) of the Act would become possible.

14. In Rama Fibres Ltd. (in liquidation) v. G.R. Hada [2000] 4 Comp LJ 226 (P & H), it was held that the expression director in Section 2(13) of the Companies Act made no distinction between a nominee director or other directors by simply asserting that he was a nominee director would not absolve the concerned

person from liability. The said decision however directed stopping of the proceedings against some nominee directors who had retired prior to the relevant date on a factual consideration that a person who was not a director could not be proceeded with u/s 454(5). *S.K. Sharma and Another Vs. Registrar of Companies*, , dealt with the issue of immunity against prosecution of directors nominated by financial institutions by virtue of the operation of Section 41A of the State Financial Corporations Act, 1951. The court reasoned that such persons were not concerned with the day-to-day business of the accused company much less had any knowledge regarding the receipt of deposits and issuance of cheques. The summoning order and subsequent proceedings, conducted on the basis of complaint in question issued u/s 58A of the Companies Act, were directed to be dropped. In *Haryana Electro Steel Ltd. (In Liquidation) Vs. Jagdish Gupta and Others*, , the court had found an ex-director who had resigned much before the winding up order had no obligation as ex-director to file any statement of affairs. In *State of Haryana v. Brij Lal Mittal* [1998] 93 Comp Cas 329 (SC) : [1998] 3 Comp LJ 1 the court ruled in a case of prosecution u/s 34(1) of the Drugs and Cosmetics Act, 1940, that a bald statement in the complaint that the accused were directors of the company with no other material to show that they could be vicariously liable as persons in charge of the company and also as persons responsible to the company for the conduct of its business, the prosecution against such directors were liable to be quashed. *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another*, , dealt with issues of relevant averments in the complaint for offences under Sections 138 and 141 of the Negotiable Instruments Act, 1881, when it said that it was necessary to avert that, at the time, when the offence was committed, the person accused was in charge of, and responsible for the conduct of the business of the company.

15. I may point out that the reference to the decisions relating to the prosecution of directors under Drugs and Cosmetics Act or under the Negotiable Instruments Act, 1881, or for some other offences under the Companies Act itself are irrelevant for purpose of consideration of the issues to prosecution for failure to submit and verify the statement of affairs. The language employed under other enactments and as regards references under other provisions of the Companies Act are wholly different and the decisions cited in that regard by counsel for the applicants have no relevance at all.

16. In *Global Drugs P. Ltd. (in liquidation) v. M. Venkatanarayana* [2008] 141 Comp Cas 935, the Andhra Pradesh High Court ruled that the directors not falling under the category of persons falling within Clauses (a) to (d) of Section 454(2) and who cannot file the statement of affairs cannot be subject to any issue of show-cause notice. The Andhra Pradesh High Court was dealing with the cases of winding up order that was passed on May 4, 2005 and there was evidence to show that some of the persons against whom notices have been issued had ceased to be directors with effect from 2001, itself.

17. Learned Counsel for the official liquidator refers also to decisions of various

courts where even ex-directors have been found to be liable for prosecution. *Kothari (Madras) Ltd. Vs. Myleaf Tobacco Development Co. Pvt. Ltd. and Another*, where the court said that ex-directors cannot disclaim liability on the ground that they were only nominee directors. It interpreted the expression subject to the directions of the court occurring in Sub-section (2) of Section 454 to mean that the law imposed an obligation on the persons mentioned u/s 454(2) to submit the statement of affairs and they cannot succeed on the bald plea that they have ceased to hold office more than one year prior to the date of winding up. The director cannot also plead that he was only a nominal director. The Act does not provide for a nominal director. All directors of a company stand on the same footing and their duties, responsibilities and obligations are unanimously controlled by the provisions in the Act as well as in the articles of association of the company concerned.

18. *Karnataka State Financial Corporation Vs. N. Narasimahaiah and Others*, was a decision of the hon"ble Supreme Court while laying down the principles of interpretation in the context of interpreting the term guarantee occurring under the State Financial Corporation and stated in paragraph 36 as follows (page 190 of 143 Comp Cas):

While interpreting the provisions of a statute, the court employs different principles or canons. To interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. Attempt on the part of the court while interpreting the provisions of a statute should, therefore, be to pose a question as to why one provision has been amended and the other was not ? Why one terminology has been used while inserting a statutory provision and a different clause in another? It is well-known that *casus omissus* cannot be supplied.

19. The decision was cited by counsel for the official liquidator to bring home the point that if Section 454 was read as a whole, it would admit of no ambiguity that any person who answered the description u/s 454(2) Clauses (a) to (d) shall be liable to be prosecuted. The court, while issuing summons, may take cognisance of the offence under Sub-section (5), if he fails to give without reasonable excuse the statement of affairs of the company in the prescribed form verified by an affidavit and containing the details set forth u/s 454(1) within 21 days from the relevant date or such time as the official liquidator or the court may appoint as laid down u/s 454(3), he shall become liable.

(VI) Meaning of "subject to supervision of court":

20. Learned Counsel for the various applicants also make reference to the : fact that if any proceedings are taken u/s 454(5) and (5A), that can be done only after express permission from the court. This interpretation is made in the context of what is stated in Section 454(2) that the official liquidator's demand against the director to submit and verify the statement shall be, "subject to the directions of the court". This expression is sought to be interpreted to him that

without such express directions, the official liquidator shall have no power to either require the persons to furnish the statement of affairs or take proceedings for their alleged failure to submit the same.

21. In *Altos India Ltd. v. Dadan Bhai* [2001] 2 PLR 461, this Court dealt with the inter play of Section 454(2) to (8) and had ruled that the communication of the official liquidator could be made only with the prior approval/direction of the court. Adverting to Rule 125 of the Companies (Court) Rules, 1959, the court said that the official liquidator must apply to a company court for order to direct any person who in his opinion is liable to furnish the statement of affairs u/s 454. Without any application by the official liquidator under Rule 125 or a notice by the court in terms of Rule 126 the proceedings against a director could not be made at all. It also dealt with the effect of the lack of pleading by the prosecution in respect of absence of "reasonable excuse" that an applicant-accused who had not submitted the statement of affairs, the case cannot be prosecuted. This decision could probably be seen as a one-off dispensation of giving a meaning to the expression "direction of the court" occurring u/s 454(2) as meaning "prior sanction of the court". Such an interpretation probably does not accord with the scheme of the Act itself for wherever such a previous sanction was necessary, the Companies Act makes specific provision for obtaining the sanction. The obvious immediate illustration could be a reference to Section 457 itself which, while detailing the powers of the official liquidator, refers to the sanction of the court to do certain acts. Without such sanction none of the activities detailed in Clauses (a) to (e) could be done by him.

22. It is one thing to refer to the "directions of the court" but another to require previous sanction. The "directions of the court" means no more than the fact that all the functions of the official liquidator shall be subject to directions either way; by the court. The expression "subject to the approval" was explained succinctly in a judgment of the Full Bench of the Assam High Court in *U. G. Koring Singh Lyngdoh v. Executive Committee, District Council, U. K.J. Hills District* AIR 1971 A & N 129. The reference of the Full Bench was in relation to an election dispute and while interpreting the expression "subject to the approval" occurring under a local enactment/it said that it would be an appointment that is valid and effective untill disapproved by the authority which had to give an approval, which in that case was a district council. As a point of stare decisis, a decision of another High Court has no binding nature except of persuasive value. The decision in *Altos India Ltd.* (supra), by this Court is by a learned single judge, which has placed a construction on an aspect of the Companies Act, which does not in my humble view, accord with the proper interpretation. The reference to the Full Bench decision is not as a binding precedent but decision which has a persuasive value and which accords with the interpretation that ought to be adopted. I am of the humble view that the expression "subject to the direction of the court" occurring in Section 454(2) of the Companies Act does not mean "prior approval" and the official liquidator need not obtain any sanction from the company court before lodging a complaint for an offence u/s 454(5) of the Act. I, therefore, reject the

contention of counsel for the various applicants that previous permission of the court is necessary.

(VII) "Without reasonable excuse" and burden of proof:

23. The question of "without reasonable excuse" is invariably a matter of evidence. There could be instances where a person who is no longer connected with the company and who had ceased to be associated with the affairs of the company could be prosecuted on the basis of mere failure to furnish the statement of affairs and the issue of process u/s 454(5A) cannot be thwarted even at the threshold that the person was not in anyway connected with the affairs of the company by reference to the entries in Form No. 32 or his own letters of resignation from the company even before the relevant date.

24. The Full Bench of the Delhi High Court in *Security and Finance P. Ltd., In re* [1974] 44 Comp Cas 499 answered the reference to the expression of reasonable excuse and the extent of burden that was cast on the prosecuting agency. While answering the reference, the Full Bench said that if the prosecution showed that the statement as required u/s 454(1) had not been filed within the prescribed time and no extension had been granted and that further the facility for preparation of statement was available, the same would, if accepted by the court shift the onus on the accused to satisfy the court that in spite of these circumstances, he had a reasonable cause for making the default. This decision is to show that the burden which is cast on the official liquidator would be taken as discharged, the moment the director did not comply with the notice requiring furnishing of the statement of affairs within the prescribed time. The Full Bench did not leave the case without stating that the point of reasonable excuse would be decided on its own facts and it was not possible to state at the threshold whether the onus had been discharged or not. A decision in the matter of *Samsung Acrycot Ltd. (in liquidation) v. Tarlochan Singh*, in C. P. No. 211 of 2002 decided by this Court on July 26, 2007 and another decision in *Sandal Chit Fund and Financiers P. Ltd. v. Narinder Kumar Sharma* [1991] 2 PLR 679, are cases where this Court held on proof of fact that the ex-director could not be prosecuted in view of his proof of cessation of office prior to the relevant date.

25. *C.R.E. Wood Co. P. Ltd. (in liquidation) v. Sardar Iqbal Singh* [1984] 86 PLR 124 : [1986] 59 Comp Cas 978, was a decision of the Delhi High Court that explained the initial burden on the official liquidator to establish that the person against whom prosecution was sought u/s 454(5) ought to hold the status of a director on the date of the winding up, which could be done either by the production of company's record or by summoning an official of the Registrar of Companies with the record of his office.

26. A decision in *Pawanta Sahib Cement Works (P.) Ltd. (In Liquidation) Vs. Anil Saini and Others*, , dealt with the expression of "without reasonable cause". The court accepted the fact that the books of the company had been lost and an FIR had been lodged with the police as affording such reasonable cause to be

exculpated from criminal prosecution.

(VIII) Immunity under specific enactments-extent of:

27. The effect of immunity granted under certain legislation will have also to be understood in its proper light. The immunity for instance provided u/s 41A of the State Financial Corporations Act, 1951, reads as follows:

41A. Protection of action taken by persons appointed u/s 27 or Section 32A.-No suit, prosecution or other legal proceedings shall lie against any person appointed as director, administrator, managing agent or manager by the Financial Corporation in pursuance of Section 27 or Section 32A for anything which is in good faith done or intended to be done by him as such director, administrator, managing agent or manager.

28. It can be easily seen that the reference is only for acts done in good faith and it is a general indemnity of all types of situations. Learned Counsel for the official liquidator also contended that the expression is only for acts done and not for any omission. According to him, the non-submission of the statement of affairs is an act of omission which, if it is not specifically expected by reference to the said Act, the immunity u/s 41A itself will not be attracted. He points out that Legislature always employs an expression "omission" as either actionable, or defines "act" itself as including an "omission". For instance, u/s 30A of the Industrial Development Bank of India Act, 1964, the provisions for liability of a director makes specific reference to any act or omission made in good faith in the expression of the following words:

(a) hold office during the pleasure of the Development Bank and may be removed or substituted by any person by order in writing of the Development Bank ;

(b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto ;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement.

(emphasis supplied)

29. A Stock and Co. (in liquidation) v. Dilip Kumar Chakraborty [1996] 87 Comp Cas 139 was a decision of the Calcutta High Court, while examining the question of any immunity to a nominee director under Industrial Reconstruction Bank of India Act, 1984, said that acts in good faith shall be proved only at the time of trial and cannot be assumed. A decision of the Gujarat High Court in Official Liquidator, Trimurthy Agro-Chemical Ltd. (in liquidation) v. Niranjan Jayantilal Tolia [1984] 56 Comp Cas 380, was with reference to a director who did not attend the meetings of the board for more than three years prior to winding up of the court. The High Court cautioned that existence of liability to file a

statement is not wholly dependent on the proof of "reasonable excuse" and the excuse must be such as may appear to be probable in the factual circumstances of the case to a prudent and not a gullible person. Again, a decision of the Madras High Court in J. Sethuraman Vs. V. Thiruvengadathan, Inspecting Assistant Commissioner of Income Tax, , ruled that a liability or otherwise on a complaint against a nominee director for certain offences under the Income Tax Act, 1961, could be only a matter of evidence at the trial and the mere status of a person as a nominee director could not afford a ground to quash the complaint at the threshold.

(IX) The disposition in this case:

30. On a consideration of all the decisions, all the cases pending before this Court shall be decided in the light of the following principles:

(i) The date of winding up or the order of appointment of provisional liquidator shall first be ascertained.

(ii) Any person who shall answer the description of a director coming within the definition of Section 2(13) of the Companies Act and the classes of persons as detailed u/s 454(2), Clauses (a) to (d), shall be answerable to give the statement of affairs of the company.

(iii) Production of copy of resignation letter or entries in Form No. 32 shall not be conclusive evidence of whether a person was a director or not at the relevant time. It would be a matter of proof of fact that the official liquidator shall consider before lodging a complaint and at times, may itself be a subject of adjudication at the trial.

(iv) The liability of such director shall be within 21 days from the relevant date or within such time not exceeding three months from the date as the official liquidator or the court may grant for special reasons. The action of the official liquidator shall be merely subject to the directions of the court and will require no prior sanction to initiate action.

(v) If there is a default on the part of the person liable to give the statement of affairs under the above circumstances within time, the official liquidator is entitled to assume that there is no reasonable excuse and by making express statement that there was no reasonable excuse to make such default, he could make a complaint to the court for action for the offence u/s 454(5) by resorting to the provisions of Section 454(5A).

31. All the applications connected with the petition filed at the instance of the several decisions claiming to be directors in their various categories shall be dealt with in the light of what is stated above.