
(2018) 04 RAJ CK 0093

In the Rajasthan High Court

Case No : Company Application No. 149 of 2003

Official Liquidator @APPELLANT@Hash Shri Lokesh Kumar Singh & Ors.

Date of Decision : 09-04-2018

Acts Referred:

Companies Act, 1956 — Section 454, 454(1), 454(3), 454(5)
Code of Criminal Procedure, 1973 — Section 313
Companies (Court) Rules, 1959 — Rule 9, 30, 124, 130

Citation : (2018) 04 RAJ CK 0093

Hon'ble Judges : SANJEEV PRAKASH SHARMA, J

Bench : Single Bench

Advocate : K. J. Metha, Gaurav Sharma, Amol Shinde, Anil Yadav, Sandeep Taneja

Final Decision : Dismissed

Judgement

1.Â Instant Company Application under Section 454 of the Companies Act, 1956 (hereinafter referred as the "Act of 1956") read with Rule 9

of the Companies (Court) Rules, 1959 (hereinafter referred as the "Rules of 1959") has been preferred by the Official Liquidator with the

following prayer: "Therefore, by submitting this application it is humbly prayed that the application be kindly accepted and the respondents who are

the ExDirectors of the Company in liquidation may kindly be summoned and be tried and punished as provided under Section 454 of the Companies

Act, 1956. Any other order or direction deemed fit and proper by Hon'ble Court in the facts and circumstances of the case be also passed in

favour of the applicant."

2.Â It is stated in the Company Application that vide order dated 13/04/2001 passed by the High Court in SB Company Petition No.31/2000, M/s. Lok

Vikas Finance Corporation Limited (hereinafter referred to as "Company in liquidation") was ordered to be wound up and the Official Liquidator

(hereinafter referred as OL) attached to High Court was appointed as Liquidator of the Company in liquidation with a direction to him to take charge of the properties and assets of the company in liquidation. It was further stated that as per records of the Registrar of Companies, Rajasthan, Jaipur the respondents were Directors of the Company in liquidation on the date of winding up order dated 13/04/2001.

3. The OL, as per provisions of Section 454 of the Act of 1956 read with Rule 124 of the Rules of 1959, issued statutory notices to the respondents-

Ex-Directors of the Company in liquidation for filing the statement of affairs with the OL as required under Section 454(1) of the Act of 1956 by

registered A.D. pre-paid post vide Notice No.LVFC/1/218222 dated 14/05/2001 on their available addresses noted from the office of Registrar of

Companies, Rajasthan, Jaipur. 4. The notices sent by the OL on 14/05/2001 were served upon all the respondents-Ex-Directors of the Company in

liquidation except respondents No.3 & 4 (Mrs. Mradul Singh and Mr. Tika Ram Yadav) and notices sent to both Mrs. Mradul Singh and Mr. Tika

Ram Yadav were received back undelivered with the remarks that **ckj ckj tkus ij izkIrdkZ feyr ugha] okfil and edku cUn gS pyk x;k ?kj ij ugha

jgrk**

5. The statement of affairs of the Company in liquidation were mainly looked after by respondent no.1-Mr. Lokesh Kumar Singh who was the

Chief Officer of the Company being its Managing Director. Notices had been duly served upon him for filing the statement of affairs. While statement

of respondent no.1 was recorded by the OL under Rule 130 of the Rules of 1959, he stated that he will furnish the statement of affairs on record

being made available to him for inspection. The record was reported to be lying in the building of Head Office of the Company in liquidation at Lok

Vias Bhawan, 3-F-1, Shivanand Marg, Malviya Nagar, Jaipur which was at that time locked by Lok Vias Urban Cooperative Bank and further locked

by the OL while taking custody of the assets in compliance of the winding up order passed by the High Court on 13/04/2001.

6. By an order dated 24/01/2003 passed in Company Application No.31/2000 the High Court directed removal of locks from the entry gate of the

building so as to provide separate entries to the Bank and the OL to the respective portions under their possession.

7.Â In order to provide inspection of records to the respondent no.1-Ex-Managing Director of the Company in liquidation for the purpose of preparing statement of affairs, the OL fixed the date and time of 24/02/2003 and 25/02/2003 and asked respondent no.1 to intimate the name and address of his Chartered Accountant whom he wants to depute for inspection of books of accounts. He was asked to give names of assistants of the Chartered Accountant also.

8.Â On 24/02/2003 the OL removed his lock from the main entrance of the building Lok Vikas Bhawan situated at 3-F-1, Shivanand Marg, Malviya Nagar, Jaipur in presence of the respondent no.1 and the officials of the Lok Vias Urban Cooperative Bank Ltd. The inner locks of the channel gates of entrances of First, Second and Third floors could not be removed as the officials of the said Bank and the respondent no.1 denied having keys of the inner locks on the said gates. 9. The respondent No.1, vide letter dated 25/02/2003, informed the OL that the condition of the office premises is not suitable for working as entire office and record is covered by dust and dirt. It was also informed that he had made some negotiations with some Chartered Accountants for doing necessary work for preparation of statement of affairs and that in view of the size of the work, the said work will consume a continuous working of 6-7 months by Chartered Accountant in association with 5-6 members of staff. However, the respondent no.1 did not intimate the name of the Chartered Accountant and assistant staff members. The respondent No.1 further stated that washing and cleaning expenses of the office were estimated to Rs.10,000/- to Rs.12,000/- and the accounting expenses were estimated to Rs.55,000/- to Rs.60,000/- per month for continuous working for 6-7 months and required the OL to arrangeÂ the said expenses out of the assets of the company in liquidation.

10.Â In the circumstances, learned counsel for the OL submits that the respondents in the present case, without any reasonable excuse made, have defaulted in submitting the statement of affairs relating to Company in liquidation and have further committed default in complying with any of the requirements of Section 454 of the Companies Act, 1956 and are as such liable to be punished .

11.Â In reply to the company application, the respondents denied the allegations and submitted that the delay was on the part of the OL who did not

intimate of the sanction or rejection of the estimated amount which was required to be paid for the purpose of preparation of the statement of affairs. It

has been further contended by the respondents that the building, where the records of the company in liquidation were stored, had been kept under a

lock by the Registrar, Cooperative Societies whereupon another lock had been placed by the OL himself. It is only consequent to the orders of the

High Court that the locks were removed by the Registrar, Cooperative Societies whereafter the work of inspection of the records could be started.

Thereafter, when the respondent no.1 had submitted its estimate of expenses, the same had neither been sanctioned nor rejected by the OL himself till

date. It has been further contended that the delay cannot be attributed to the respondent no.1 how there is lack of willingness on his part. The reasons

and circumstances for default in complying with the filing of statement of affairs were beyond control of the respondent no.1. However, the

respondent no.1 has been actively and aggressively pursuing the work of preparation of statement of affairs in accordance with directions of the

Court. In this manner, the respondents have denied the allegations made in the company application.

12. The respondents did not plead guilty and therefore, they were subjected to summary trial. Statements of OL were recorded wherein he has

reiterated submissions as noted above and thereafter the statements under Section 313 Cr.P.C. were also recorded of all the accused-respondents

who denied the allegations levelled against them. The respondent No.1 also recorded his statement as PW-1 and was also cross-examined. He has

very specifically stated that the record was lying at the Lok Vikas Bhawan under lock and key and the Bank was having possession of the said keys

of the locks. A look at Exhibit-P-5 i.e. the statement made under Section 130 of the Companies (Court) Rules, 1959 of Lokesh Kumar Singh shows

that he has mentioned about the locks being put at the registered office of the Company i.e. Lok Vikas Bhawan of Registrar of Cooperative Societies,

Rajasthan. The Urban Cooperative Bank has attached the registered office of the building of the Company for realization of its duties which were

amounting to Rs.1.65 crore. The building was mortgaged to the Bank. It is also stated by him that the record, which is lying in the Bank can be handed

over to the OL after opening of the locks. The statement of Hari Shankar Sharma under Rule 30 of the Companies (Court) Rules, 1959 was produced

as Exhibit-P-6 and the letter written to the OL dated 28/05/2001 produced as Exhibit-P-7. On behalf of the accused-respondents, as many as 19

documents were exhibited as Exhibit-D-1 to D-19 which relate to the letters issued by the OL with regard to preparation of statement of affairs and

the replies sent by the Directors. Copies of the letters as Exhibits, marked above, are mainly placed to show that the accused-Directors had been

informing the OL about the keys of the locks of the building being in possession of the Cooperative Bank and not with them.

13.Â Learned counsel for the respondents has relied upon Exhibit-D-18, which is a letter written by the then OL wherein he has informed the

respondents that the matter has been discussed with the representatives of the Bank on 23/10/2003 in the office of the OL and it had been decided to

open the lock of the basement of the premises on 29/10/2003 with further request to the respondents to remain present on that day. Thus, it is

submitted by learned counsel for the respondents-accused that the respondents-accused were prevented from submitting the statement of affairs of

the Company within time prescribed under Section 454(3) of the Act of 1956 and therefore, they were not liable to be punished in terms of Section

454(5) of the Act of 1956 as they had a reasonable excuse in making default in complying with the requirement of Section 454 of the Act of 1956.

14.Â After going through the submissions of OL and the statements recorded as well as the statements of the accused and the cross-examination,

this Court finds that the submissions made by the accused-respondents are duly supported by documents and this Court is satisfied that the

respondents-accused were prevented from submitting statement of affairs on account of the documents lying in lock and key under the possession of

the Cooperative Bank which had taken over the properties of the Company in liquidation and the OL recognizes this fact in his statements made on

oath that it is after the attempts made by the OL that the locks could be opened and the record was made available. It is also seen that the Court has

passed earlier orders whereby in recognized that the respondents could not file statement of affairs on account of supervening circumstances which

have been noted herein above.

15.Â Thus, this Court is satisfied that the circumstances beyond the control of the respondents prevented them from filing the statement of affairs

within the time provided under Section 454 of the Act of 1956 and this Court does not find them guilty of having committed offence, as they had a

reasonable excuse, within the meaning of Section 454(5) of the Act of 1956 and are therefore, acquitted of the charges levelled against them.

16.Â The Company application is accordingly dismissed.