

(2018) 04 RAJ CK 0026
In the Rajasthan High Court
Case No : Company Application No. 2 of 2003

Official Liquidator @APPELLANT@Hash Shri Rakesh Srivastava And Ors

Date of Decision : 23-04-2018

Acts Referred:

Companies Act 1956 — Section 433, 439, 454, 454(1), 454(3), 454(5)
Companies (Court) Rules, 1957 — Section 124, 130

Citation : (2018) 04 RAJ CK 0026

Hon'ble Judges : SANJEEV PRAKASH SHARMA, J

Bench : Single Bench

Advocate : Gaurav Sharma, U.S. Patole, V.L. Mathur

Final Decision : Dismissed

Judgement

1. This application moved by the Official Liquidator under Section 454 of the Companies Act 1956 on account of the failure of the respondents-

directors of the company in liquidation, in not submitting the statement of affairs as required under Section 454 (1) of the Companies Act, 1956

(hereinafter referred to as "the Act of 1956").

2. The brief facts needs to be noted are that the company in liquidation namely M/s Rajasthan Commercial and Industrial Finance (India) Limited was

incorporated on 08.11.1985. The winding up order was passed by this Court on 03.11.1989 in company petition No.20/1988 and the official liquidator

was appointed from the date of winding up order. It is an admitted position that the respondents are Ex-directors of the company who were required

to file statement of affairs of the company as per Section 454(3) within time or such extended time as mentioned therein. It is also admitted position

that statement of affairs was not filed.

3. Learned counsel for the official liquidator submits that on 04.11.1989, the OL took possession of the registered office. There were about 28 to 32

branches of the company yet records were supplied to OL's office only to 5 branches. On 05.12.1989, the notice was sent under Section 454 read

with Rule 124 of the Rules to the ex-directors for submitting the statement of affairs. On the said notice, reply was received from the respondent No.1

stating that he has resigned long back while respondent No.2 and 3 submitted their replies stating that due to their illness the statement of affairs

cannot be filed. Company application No.11/1992 was also filed for dispensing with the requirement of filing statement of accounts as the entire

record was with the official liquidator and further it was alternatively prayed to appoint chartered accountant for preparation of statement of affairs.

As has come on record on 11.12.1992, this Court appointed Shri R.M. Khandelwal, the chartered accountant to prepare statement of affairs. He

submitted the statement of accounts and affairs on 31.12.1987 instead of upto the date of winding up i.e. 03.11.1989. The statement of affairs

submitted by Mr. R.M. Khandelwal does not contain the address of the branches, summary debtors and secured creditors, etc. Letter, therefore, was

sent by the official liquidator to remove defects. The respondent Nos.2 and 3 were directed to provide the record subsequent to year 1987 but the said

record was not made available. Ultimately, this Court while disposing of the application No.11/1992 vide its order dt.24.01.2003 give liberty to the

official liquidator to move application under Section 454. Accordingly, the present application has been filed.

4. The official liquidator admits that respondent Nos.2 and 3 handed over the record but the same was not completed and only related to five branches

instead of 28 to 32 branches. Thus, it is stated that the respondents have committed the offence within the meaning of Section 454 and they are liable

to be punished. The reply has been filed to the application where it has been stated that when the company in liquidation was promoted by Late Shri

Vijay Kumar Kaushl, who was the husband of the respondent No.3 and the business of the company in liquidation was flourished through his life time.

On 04.01.1988, Shri Vijay Kumar Kaushal suddenly expired in a road accident and the respondent Nos.2 and 3 were appointed as directors in a

meeting up of the shareholders whereafter an inventory of the articles in company was prepared. The respondents have stated that they had become

Directors only for the purpose of making payment to the creditors of the company and to complete the unfinished work of late Shri Vijay Kumar

Kaushal so that money belonging to the customers of the company may be repaid to them. They even made efforts to keep continuing the business of the company but the bankers of the company namely SBBJ did not allow the respondents to operate the accounts and to withdraw the money therefrom and the money could not be rotated and at the same time the managers of the various branches of the company did not cooperate. Whereafter a resolution was passed for compulsory winding up of the said company under Section 433/439 of the Act of 1956 and the petition was filed for winding up, before this Court on 07.10.1988, and this Court vide its order dt.03.11.1989 directed that the company to be wound up. It is stated that they have worked only for the period from 8th January, 1988 to 07.10.1988 and they were not having completed record of the company as the same was known only to Shri Vijay Kumar Kaushal who had expired. After passing of the order dated 03.11.1989, on 04.11.1989, the official liquidator had put his lock and seal on the registered office of the company and the respondents were required to give statement under Rule 130 of the Companies (Court) Rules, 1957. The work of preparing inventory was conducted by official liquidator and his officials. It is stated that filing of statement of affairs was purely a technical and accounting work and was expensive and the respondents were unable to bear cost for the same and therefore requested this Court for dispensing with the same. They had earlier contacted one Shri S.C. Bapna and associates, chartered accountants but demanded the Rs.60,000/- as remuneration for preparation of the statement of affairs which could not be borne by the respondents. This Court vide its order dated 11.12.1992, on request appointed Shri R.M. Khandelwal to prepare the statement of affairs for fees of Rs.35,000/- whereafter Shri R.M. Khandelwal, signed the statement of affairs on 29.09.1993 and file the same before the official liquidator on 06.10.1993. The respondents have submitted that they do not possess legal acumen nor they have any of the records available with them of the company. It is also further stated that on 08.08.1996, the respondent No.2 prepared a list of records and submitted the books of accounts with documents which were available with them to the official liquidator.

5. In the circumstances, it is stated that the unforeseen circumstances were created due to non-incorporation of the Bank and the employees of the

company which became difficult for the petitioner and for the respondents to manage its affairs and they, therefore, had submitted petition for winding up, the strength of Special Resolution passed in Extra-ordinary General Meeting (EGM) on 01.10.1988. The delay in filing the statement of affairs in terms of Section 454 is on account of bonafide reasons and circumstances as stated above.

6. On 29.10.2004, the plea of respondent Nos.2 and 3 was recorded and they pleaded not guilty whereafter the official liquidator presented himself before the Dy. Registrar (Judicial) alongwith an affidavit and he was cross examined. Affidavits of official liquidator was filed but cross examination of the concerned official liquidator could not take place. In the meanwhile, new official liquidator was appointed who also submitted his affidavit.

Ultimately, R.C. Meena, the O.L. was examined in Court and he has admitted that officials of the O.L. had taken possession of the company in

liquidation on 04.11.1989 and the statement of affairs was submitted on 06.10.1993 after due signatures of the respondents by Shri R.M. Khandelwal

who was chartered accountant appointed by this Court. It is his submission that R.M. Khandelwal only submitted statement of affairs upto 31st

December 1987 and not upto to the date of winding up. Whereafter the statement of Kusum Sinha and D.D. Sinha were recorded.

7. Section 454 of the Act of 1956 provides that the Directors, Ex-directors are require to submit statement of affairs of the company in prescribed

form verified by an affidavit and containing numbers as mentioned therein. As per Section 454(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.

8. As per Section 454(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 .

9. In the present case, if we look into the statements which have been recorded as well as the submissions made, all the respondents, it is apparent

that the respondents had reasonable consensus for the default in completing rest

of the section. While they have released that they have had continued to submit statement of affairs, they have moved application before this Court to point out their difficulty in submitting of the statement of affairs within time, this Court in the case of O/L M/S Sudarshan Cements & Multiprojects Limited (In Liquidation) Versus Shri K.C. Taparia & Ors. (S.B.

Company Application No.145/2010), decided on 19.09.2017, has held as under:-

“(7) Section 454 of the Act of 1956 casts an obligation inter alia on the Directors of the Company to file a statement of affairs within 21 days or

within such extended time and extending three months from that date or as the Official Liquidator or Court may with special reasons grant. Non filing

of statement of affairs is punishable with imprisonment for a term of 2 years or with a fine which may extend to Rs. 1,000/- for everyday during which

the default continues or with both. Section 454(5) of the Act of 1956 however, mentions that the timely filing should be without reasonable excuse.

From the statements and submissions which have come on record, I find that the Official Liquidator has allowed respondents to collect the record for

the purpose of submission of statement of affairs belatedly as admittedly respondents did not have the record to their access. They had thus a

reasonable excuse for not furnishing the statement of affairs. In the absence of records, it would be impossible for them to submit statement of affairs.

I, therefore, find the prosecution has failed to prove that failure of the respondents to submit statement of affairs was without reasonable

excuse.”

10. The offence is a continuing offence and culminates only upon the submission of statement of affairs, is held by this court in the case of Official

Liquidator Versus Ravindra Kumar Saxena reported in 2014(4) RLW 2985 (Raj.). Further, the penalty being of a willful nature, would apply only

when the offence committed is deliberate and willful upon knowing the submissions as above, I am satisfied that there is no deliberate and willful

attempt of the respondents in not submitting statement of affairs within time and as noted above from the facts it is apparent that the respondent-

directors were prevented reasonable from doing so.

11. In the circumstances, I do not find it a fit case to proceed further under Section 454(5) against the respondents as they are acquitted of the charge

as required by the official liquidator.

12. The company application stands dismissed.