(1997) 10 RAJ CK 0020

In the Rajasthan High Court

Case No : Company Application No. 1 of 1994 in Company Petition No. 11 of 1985

Official Liquidator, Auto Electricals (India) Pvt. Ltd. APPELLANT

Vs

P.R. Mehta and Others RESPONDENT

Date of Decision : 24-10-1997

Acts Referred:
Companies Act, 1956 — Section 454, 454(5), 454(8), 543

Citation : (1999) 98 CompCas 62

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Advocate : J.K. Singhi, for the Appellant; R.K. Agrawal and G.S. Bafna, for the Respondent

Final Decision : Dismissed

Judgement

N.L. Tibrewal, J.—The official liquidator of the company in liquidation, namely, Auto Electricals (India) Pvt. Ltd., has filed this application u/s 454 of the Companies Act, 1956 (for short "the Act"), with the prayer to suitably punish the non-applicants, who are ex-directors of the company as they have failed to submit the statement as to the affairs of the company in the prescribed form within the stipulated period.

2. The undisputed facts are that non-applicant No. 1, P. R. Mehta, who was the managing director of the company, filed Company Petition No. 11 of 1985 u/s 433 read with Section 439(b) and 439(c) of the Act with a prayer to order winding up of the company and to appoint the official liquidator attached to the court as provisional liquidator of the company. This petition was filed on October 4, 1985. Vide order dated September 18, 1987, the company court appointed the official liquidator as provisional liquidator of the company. Thereafter, vide order dated July 22, 1988, the company was wound ,up and the official liquidator was appointed as liquidator of the company. In the petition the official liquidator has stated that the non-applicants were required to submit statement as to the

affairs of the company within. 21 days from the date of his appointment as provisional liquidator. He has also stated that he gave notice to the non-applicants on his being appointed as the provisional liquidator asking them to file the statement as to the affairs of the company on the prescribed form. D. P. Gupta replied to the above notice on September 26, 1987, wherein he has stated that all papers, documents, records and books of account are in the possession of P. R. Mehta, the managing director of the company. He further stated that though Mr. Mehta, had tendered a letter of resignation as managing director of the company but it was not accepted by the board of directors as he did not render accounts. After receipt of notice of this application, the non-applicant, P. R. Mehta, has taken the plea that on the relevant date, i.e., the date when provisional liquidator was appointed in the present case, he was not a director of the company as he had resigned on October 20, 1982. The plea of other non-applicants is that they were not in possession of the papers, documents and other records of the company as such they were not in a position to submit/file the statement of the affairs of the company. From the record it further transpires that in pursuance of letter dated November 16, 1993, of the official liquidator, the non-applicant, P. R. Mehta, submitted the records of the company which were in his possession to the official liquidator on January 18, 1994. Thereafter, counsel for the non-applicants informed this court that for preparation of the statement as to the affairs of the company the books/records of the company were available with the official liquidator and if any other book or document was in the possession the same shall be submitted to the official liquidator. On November 15, 1996, the non-applicant, P. R. Mehta, filed an application before this court to the effect that no other record, property or assets of the company were in his possession. He also submitted the statement as to affairs of the company on this date which was prepared by him on the basis of the records made available to him by the official liquidator. Similarly the other non-applicants also submitted statement as to affairs of the company after preparing from the records which were made available by the official liquidator.

3. The question, therefore, that calls for consideration is, as to whether, in the facts and circumstances, the non-applicants or any one of them should be punished u/s 454(5) of the Act. Sub-section (5) of Section 454 makes a provision for punishment with imprisonment for a term which may extend to two years or with fine which may extend to Rs. 100 for every day during which default continues or with both, if any person without reasonable excuse makes default in submitting the statement as to affairs of the company. Under Sub-section (2), the statement is required to be submitted within 21 days from the relevant date, which is the date of appointment of the provisional liquidator in the instant case. This date is September 18, 1987.

4. From the language employed in Sub-section (5) it is clear that it is only when it is made out that the default was without reasonable excuse that one can be punished for such default under Sub-section (5) of Section 454. The initial burden of proof that the non-applicants had failed to submit the statement

without reasonable excuse is on the prosecution. It all depends on the facts of each case as to whether the prosecution has discharged this initial burden.

5. In the instant case, as per the report prepared u/s 543 of the Act by the official liquidator and filed in Company Application No. 3 of 1993 the non-applicant, P. R. Mehta, ceased to be a director of the company with effect from October 20, 1982. The liability to submit the statement u/s 454 is on the person, who is director, manager, secretary, chief officer of the company at the relevant date. The relevant date as per Sub-section (8), in a case where the provisional liquidator is appointed is the date of his appointment and in case where no such appointment is made the date of the winding up order is the date. There is no other mateial n record that P.R. Mehta did not cease to be the director of the company with effect from October 20, 1982. There is further material on record to show that on the asking of the official liquidator Shri Mehta had handed over the entire records of the company to the official liquidator on January 18, 1984. Then, he has also filed the statement as to the affairs of the company after making inspection of the record from the office of the official liquidator.

6. So far as other non-applicants are concerned, right from the very inception, the date when they received notice from the official liquidator they intimated him that they were not in a position to prepare and file statement as the papers, documents and records of the company were in the possession of the managing director, P. R. Mehta, who had not handed over the same to them. The records have been submitted to the official liquidator by P. R. Mehta, Thus, undisputedly the records of the company were in the possession of P. R. Mehta and it also appears that some dispute had arisen between P. R. Mehta and other directors on account of non-payment of his remuneration. The winding up petition was also filed by P. R, Mehta. Thereafter, when the record was made available to them for inspection by the office of the official liquidator they submitted the statement. From the materials and evidence on record, thus, it is made out that there was reasonable and sufficient cause for them in not filing the statement.

7. It further transpires that the company at its initial stage failed to operate and after, a few months of its coming into operation, it was closed down and its entire assets were taken in possession by the Punjab National Bank who had advanced loans to the company under hypothecation.

8. Thus, taking into consideration all the facts and circumstances, no case for punishing the non-applicants under Sub-section (5) of Section 454 of the Act is made out. The application is, therefore, dismissed and non-applicants are hereby discharged.

