(1978) 08 RAJ CK 0003

In the Rajasthan High Court

Case No : Company Miscellaneous Application No. 43 of 1971 in Company Petition No. 9/10 of 1966

Official Liquidator, Golcha Properties P. Ltd. (In Liquidation) APPELLANT

Vs

P.C. Dhadda and Others RESPONDENT

Date of Decision : 11-08-1978

Acts Referred:
Companies Act, 1956 — Section 2(30), 446, 458A, 538

Citation : (1978) 08 RAJ CK 0003

Hon'ble Judges : P.D. Kudal, J

Bench : Single Bench

Advocate : P.C. Mathur, for the Appellant; C.K. Garg, for the Respondent

Judgement

Kudal, J.—An application under Sections 446 and 538 of the Indian Companies Act, 1956, was filed on 13th October, 1971. Notice of the application was directed to be issued to the non-petitioners. It was contended in the petition that Shri P.C. Dhadda, Shri G.L. Jain, and Shri K.C. Jain were the secretary, chief accountant and cashier, respectively, in the year 1965 of the Golcha Properties (P.) Ltd. It was further contended that by voucher No. 320 dated 25th August, 1965, a sum of Rs. 15,000 was drawn from the Jaipur office of the Golcha Properties (P.) Ltd. for the purpose of sending it to the Delhi office through a messenger. The voucher withdrawing Rs. 15,000 was signed by Shri P.C. Dhadda as secretary and Shri G.L. Jain as chief accountant, and Shri K.C. Jain as cashier prepared this voucher. This amount has been debited in the books of accounts at the Jaipur office of Golcha Properties (P.) Ltd. in the year 1965-66. On an inquiry, it was learnt that this amount had not been received in the Delhi office. Non-petitioner No. 1, Shri P.C. Dhadda, adopted the reply which was filed on behalf of the non-petitioner No. 2, Shri G.L. Jain. Shri Jain raised a number of contentions including that Sections 538 and 458A of the Companies Act, 1956, are ultra vires the provisions of Article 14 of the Constitution of India and, therefore, are likely to be struck down. It was further stated by him that in April, 1965, an aggregate sum of Rs. 20,000 was received in the Delhi office of the company in liquidation through bank from third parties who had remitted the same for and on account on behalf of the head office of the company in liquidation at Jaipur. The Delhi office was in need of certain amount in the month of August, 1965, to settle certain matters. It was further contended that from an inquiry he learnt that on or about 30th April, 1965, Shri S.P. Sharma remitted the said sum of Rs. 20,000 through bank to the Delhi office and the said amount was credited in the books of accounts of the Delhi office to the account of the head office, Jaipur. It was further contended that the sum of Rs. 15,000 was, in fact, sent and received by the Delhi office to pay the same to third parties to honour its commitments.

2. Non-petitioner, Shri K.C. Jain, in his reply stated that he was employed in the company in September, 1964, in the post of assistant accountant and was retrenched by the company in July, 1967. He admitted that the cash voucher No. 320 dated 25th August, 1965, had been prepared by him. The non-petitioner No. 4 has also adopted the reply filed by the non-petitioner No. 2. Non-petitioner No. 5 pleaded no personal knowledge of the transaction whereby Rs. 15,000 were remitted through cash voucher No. 320 dated 25th August, 1965, from the Jaipur office of the Golcha Properties (P.) Ltd. to the Delhi office. Non-petitioner No. 6, Smt. Jatan Kanwar Golcha, adopted the reply filed by the non-petitioner No. 4.

3. Non-petitioner No. 2 then filed an amended reply on 6th December, 1972.

4. On 26th September, 1973, the following points for determination were framed:

" (1) Were respondents Nos. 2 and 3, Shri G.L. Jain and Shri K.C. Jain ''Officers'' (as defined in Section 2 of the Companies Act) of Messrs. Golcha Properties (Private) Ltd. during the relevant period ? (Applicant)

(2) Is the claim within limitation ? (Applicant).

(3) Was the disputed amount of Rs. 15,000 given to Shri S.P. Sharma, Director of Messrs. S. Zoraster & Company (Supplies), Pvt. Ltd., Jaipur ? If so, on which date, by whom and what will be its effect upon the application ? " (non-applicants)

5. On 22nd July, 1974, the following additional issues were framed:

"(1) Whether non-applicants Nos. 1, 2 and 3 have misappropriated and retained the amount of Rs. 15000 ?

(2) Whether non-applicants Nos. 4, 5 and 6 are responsible for the disputed amount ?

(3) Whether the suspense entry of Rs. 20,000 related to remittance of the amount of Rs. 15,000 from Jaipur office to Delhi office ? "

On behalf of the official liquidator the statement of B.M. Singhvi was recorded on 11th November, 1974. The statement of Shri Daulat Ram was recorded on 16th July, 1975.

6. On behalf of the non-petitioners, the statements of Shri P.C. Dhadda and Shri

S.P. Sharma were recorded. On 6th October, 1976, the official liquidator got the statement of Bal Krishna Book recorded in rebuttal.

7. A/W-1, Bastimal Singhvi, has stated that he was appointed as an accountant by the official liquidator in November, 1969. From the accounts of the Golcha Properties Pvt. Ltd. he came to know that a sum of Rs. 15,000 was sent from Jaipur office to Delhi office. This amount was sent on 25th of August, 1965, through a messenger and cash voucher No. 320. The name of the messenger has not been disclosed in the cash voucher or anywhere else. Jaipur office has not received any acknowledgment receipt of the said amount from the Delhi office. The witness further stated that he looked into the accounts of the Delhi office also, but did not find any corresponding entry regarding the receipt of Rs. 15,000 which, according to him, have remained unaccounted for. On being cross-examined, the witness stated that he did look into the accounts pertaining to the item of Rs. 20,000 as pointed out by Shri G.L. Jain. He then searched for a corresponding item of Rs. 20,000 in the Jaipur office ledger, but did not find it. He further stated that he had explained to Shri. G.L. Jain that the amount of Rs. 20,000 was adjusted in the Jaipur office in respect of other items and there was no question of searching the corresponding entry. The witness further stated that the amount of Rs. 15,000 could not be reconciled in the reconciliation statement. He did not make any posting in the ledger of 1965-66. On further cross-examination, the witness stated that he did not remember if there was any suspense account in any of these balance-sheets. There are two entries of Rs. 20,000, each relating to 29th April, 1965, and one entry of Rs. 20,000 relating to 30th April, 1965. All these items are on credit side. They all relate to the head office at Jaipur. All these three items, however, relate to Zoraster company. The official liquidator, at the instance of the respondent No. 2, produced the original and copy of the suspense accounts and they are marked as Ex. D-9 and Ex. D-9 (copy). The witness also stated that the preparation of the trial balance-sheets precedes the preparation of balance-sheets. The balances in the trial balance-sheets for the three offices were not tallying with each other and as such reconciliation statement had to be prepared. The total on the debit and credit sides in those trial balance-sheets did not tally. The witness further stated that the number of the credit note, both Ex. D-2 and Ex. B-5, is the same, i.e., 9. He was of the opinion that these entries related to each other. The witness further stated that reconciliation statements were not given to him. Only trial balance-sheets were given. Trial balances are prepared with the help of the ledger and the cash balances. If debit and credit sides of the trial balances are tallying with each other then there is no, mistake in the ledger. The trial balances from all the three ledgers, that is, Bombay, Delhi and Jaipur, did not tally with each other.

8. PW-2, Daulat Ram, stated that he was the official liquidator from February, 1968, to March, 1971. Golcha Properties (Pvt.) Ltd. were ordered to be wound up by this court on 10th May, 1968. The records of the company pertaining to Jaipur and Delhi offices had been seized prior to the winding up order. He moved an application in the High Court for obtaining records seized by the police and

orders were passed in the month of April-May, 1969. They are Ex. P-5 and Ex. P-6. He had asked Shri B.M. Singhvi to go into the accounts. Shri Singhvi told him that a sum of Rs. 15,000 was debited by the Jaipur office of the company to the Delhi office on 25th August, 1966, vide cash voucher No. 320 but there is no cross entry of the said amount in the Delhi office. On 3rd March, 1970, he addressed letters to Shri P.C. Dhadda and Shri G.L. Jain asking them to explain as to what happened to Rs. 15,000 and also asked the name of the messenger who had taken the money. On being cross-examined the witness stated that he moved for the release of the account books as under the Indian Companies Act the books and records of the company have to be in the custody of the court. The official liquidator could not have functioned without the account books and the record of the company. In May, 1969, the witness came to know that the loan ledgers of Delhi office were incomplete in certain respects. He had directed the manager of the Golcha cinema to find out the list of creditors. The statement of the manager of the Golcha cinema was also recorded. The witness required ledgers, cash books and other subsidiary record vouchers, etc., to know the correct position of the assets and liabilities of the company. The balance-sheets for the year 1965-66 could be ready only in February, 1970. Whenever there is a defalcation the amount of defalcation is to be shown on the assets side. The entries of the defalcation would go on the assets side by the name of the person who is responsible for defalcation. The amount of Rs. 15,000 was shown as a debit entry against the Delhi office in the books of Jaipur office as it was not ascertained as to whether it was defalcation or not. Mr. C.L. Jain visited the office of the official liquidator during the last week of June, 1970, and all the records of the company were placed at his disposal. Though Shri Jain visited the office a number of times, yet he could not explain as to what happened to Rs. 15,000. The witness did not remember if Shri G.L. Jain ever told him that this amount of Rs. 20,000 has to be given credit to Shri S.P. Sharma who had been arranging remittances from Delhi office to Jaipur office, and Rs. 15,000 had to be debited against him, but this much could be said that the above explanation was never given to him by Shri Jain in any of the letters.

9. On behalf of the respondents Shri P.C. Dhadda was examined. He was appointed as secretary of the company in the year 1969. He admits his signature on Ex. 10. By Ex. 10, a sum of Rs. 15,000 was withdrawn from the Jaipur office of the company (in liquidation) and sent to Delhi office through a messenger. The witness further stated that he has no personal knowledge whether Rs. 15,000 was sent to Delhi office or not. The witness did not know what happened to this amount. He further stated that the amount must have been received by the Delhi office. The witness further stated that he had now come to know that this amount of Rs. 15,000 was not entered in the books of account of the Delhi office. He does not know that this amount was not mentioned in the account books of the Delhi office. The Jaipur office never obtained receipts for the money from the messenger. The messenger was not required to bring receipt of the money . from the office to which he had handed over the cash, because he used to confirm the

delivery of the money from the office to which he has sent the money through the messenger. Whatever amount was received at the company was duly entered in the account books, but it was not necessary that all the amounts received were deposited in the bank, as so many cash disbursements were paid out of the cash receipts. The account books of the company were seized by the Delhi police, firstly, on August 5, 1966, at Delhi and next on March 26, 1968, at Jaipur.

10. D.W. 2, Satya Prakash Sharma, stated that he was posted at the Jaipur office. He was supposed to arrange funds whenever they were needed by the company in liquidation both for Jaipur and Delhi offices. He filed a claim against the company in liquidation for a sum of Rs. 5,000. He arranged a sum of Rs. 20,000 for the company in liquidation for the same was needed at the Delhi office of the company in liquidation. He got back Rs. 15,000 out of the said amount. He got it back some time in August, 1965, and the balance of Rs. 5,000 remains to be recovered from the company in liquidation. A suspense account had been opened by him and a sum of Rs. 20,000 had been credited to the same account. This witness was taken as a director in S. Zoraster Supplies Co. Ltd., Dhartidhan, Supreme General and other concerns. All these companies are in Golcha group of companies. He was the general manager of S. Zoraster Supplies Co. from May, 1965, to May, 1966. He used to arrange for money for these companies from others. He arranged in the month of April, 1965, Rs. 20,000 each for Jaipur and Delhi offices. He does not remember the names of the parties from whom the arrangement was made. They were temporary loans and as such no receipts were passed. Other telegraphic transfers were also arranged, but he does not remember their particulars. He does not know whether these amounts were entered in his name in the Delhi office account books. Out of the entire amount arranged only a sum of Rs. 5,000 remained to be paid. The loans were repaid directly or through him. Even if the Delhi office asked him the names of the parties from whom the amounts were arranged, he would have told them that it was their duty to maintain the accounts in the manner they liked. Though no account was maintained by the witness for the amounts arranged by him, yet he could remember those amounts on the tips of his fingers. It is incorrect to say that these Rs. 20,000 were not arranged by him. He used to arrange for loans and the question of his name being in those entries does not arise. At the time of payment of Rs. 15,000 he was at Delhi. The payment was made after his pressing for two days. He does not remember the names of the persons who were present at the time of payment in the office at Delhi, but the payment was made in the presence of the Golcha cinema staff. The party concerned who received Rs. 15,000 belonged to Jaipur. He does not remember the names of persons from whom he arranged for hand loans at Jaipur.

11. D.W. 3, Bal Krishna Book, stated that he is a chartered accountant and is looking after the accounts work of M/s. Golcha Properties (P.) Ltd. The registered office of M/s. Golcha Properties (P.) Ltd. was at Jaipur and branch offices were at Bombay and Delhi. There is no corresponding entry dated 25th August, 1965, which finds place at page 126 of the ledger of the head office of 1965-66 in the

ledger of Delhi office. This, in the ledger, is for Rs. 15,000 and it is marked Ex. ''X''. This entry speaks of cash having been sent through a messenger. On cross-examination, this witness stated that he was working in the office of the official liquidator for Golcha Properties (P.) Ltd. since 1972. He was asked a number of times to look into the account books of Golcha Properties (P.) Ltd. for a period anterior to the passing of the winding-up order. On being cross-examined, he stated that he had not checked the accounts of the company in liquidation for the period prior to May, 1968. He had no occasion to look into the balance-sheets for the years 1965-66, 1966-67 and 1967-68 of the company in liquidation. He looked into the account books in order to find out if there was any co-relationship between the entry marked ''X'' and the entries of Rs. 20,000 already marked. He did not look into the corresponding entry of Rs. 20,000 in the suspense account. The entry of Rs. 20,000 has been posted from the entry, Ex. D-13, which finds place in the journal at page 249 of the Delhi office for the year 1965-66. He could not know the co-relationship between the entry of Rs. 15,000 and the entry of Rs. 20,000. He further stated that the entries, B-2, B-3, and B-4, have no bearing, to the entry ''X'' because the details of these entries are different.

Issue No. 1 :

"Officer" has been defined in Sub-section (30) of Section 2 of the Companies Act. "Officer" includes any director, managing agent, secretaries and treasurers, manager or secretary "or any person in accordance with whose directions or instructions the board of directors or any one or more of the directors is or are accustomed to act" and also includes, (a) where the managing agent, the secretaries and treasurers or the secretary is or are a firm, any partner in the firm ; (b) where the managing agent or the secretaries and treasurers is or are a body corporate, any director or manager of the body corporate. The present definition of the word "officer" is wide enough and would include anybody on whose instructions the board or any of the directors of the company is ''accustomed to act. This is designed to counter the trend whereby dummy directors are appointed on boards of companies to implement policies of a dubious nature, while masterminds mainly instrumental in evolving these policies remain in the background. According to Stroud''s Judicial Dictionary "officer" means a person under a contract of service ; a servant of special status holding an appointment to an office which carries with it an authority to give directions to other servants. Shri P.C. Dhadda was the secretary, Shri G.L. Jain, accountant, and Shri K.C. Jain, cashier, in the relevant year 1965, in M/s. Golcha Properties (P.) Ltd. The voucher No. 320 dated 25th August, 1965, was prepared by these persons. Shri P.C. Dhadda signed it as secretary, Shri G.L. Jain signed it as chief accountant and Shri K.C. Jain prepared the same as cashier.

From the above discussion, it is apparent that during the relevant period, non-petitioners Nos. 2 and 3 were the officers of the said company as defined in Sub-section (30) of Section 2 of the Indian Companies Act. Issue No. 2:

Section 458A prescribes exclusion of certain time in computing the periods of limitation. Notwithstanding anything in the Indian Limitation Act, 1908, or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the court, the period from the date of commencement of the winding up of the company to the date on which the winding-up order is made (both inclusive) and a period of one year immediately following the date of the winding-up order shall be excluded. The claim under Sections 446 and 458 of the Companies Act, 1956, was filed on 13th October, 1971. The winding-up order of the company was made on 10th May, 1968. The amount of Rs. 15,000 was drawn, vide cash voucher No. 320 dated 25th August, 1965. Shri B.M. Singhvi reported on February 23, 1970, to the official liquidator that Rs. 20,000 debited by the Jaipur office to the Delhi office on 25th August, 1965, vide voucher No. 320 stating "cash sent with messenger" was neither traceable in the Delhi office books nor in the Bombay office books for the year 1965-66. In view of these circumstances, the claim filed by the official liquidator after excluding the time as provided u/s 458A of the Companies Act is within time.

Issue No 3 :

DW-2, Shri Satya Prakash Sharma, has stated that he was the general manager of M/s. S. Zoraster & Co. (P.) Ltd. He was posted at Jaipur and he was supposed to arrange funds whatever needed for the affairs of the company in liquidation. He has filed a claim against the company in liquidation for a sum of Rs. 5,000. He stated that he had arranged a sum of Rs. 20,000 for the company in liquidation as the same was needed in the Delhi office of the company. He got back Rs. 15,000 out of that amount. For the balance a claim has been filed. A suspense account was opened in which these Rs. 20,000 have been credited. At the time when this transaction took place he was not a director in M/s. S. Zoraster & Co. (P.) Ltd. He worked as general manager from May, 1955, to May, 1966. He has further stated that it is difficult to recall after the lapse of ten years from whom this amount was arranged. He does not remember the names of the parties from whom arrangement for money was made. He did so for three times. In each time, the amount arranged was Rs. 20,000. He cannot say when he received back the amount of other loans of Rs. 20,000. The amount of Rs. 20,000 was arranged at Jaipur. He filed the claim on the date on which he was examined as a witness. He did not give his name while remitting those loans because of Income Tax involvement. At the time of payment of Rs. 15,000 he was at Delhi. He had gone to Delhi just to realise the amount. The payment was made after his pressing for two days. The parties went to Delhi when they came to know that the witness was at Delhi. Sometimes the hand-loans were arranged from Delhi. It is for the benefit of the company that these payments were being made at Delhi. The party concerned who received Rs. 15,000 belonged to Jaipur.

From the above statement, it is abundantly clear that a sum of Rs. 15,000 was debited from the Jaipur office to the Delhi office. It is also an admitted position that there is no entry in the Delhi office regarding this amount of Rs. 15,000. The name of the messenger has not been disclosed. The witness has stated that a suspense account was opened with regard to the amounts he had arranged as hand-loans. The suspense account was opened for the first time in 1971. The company had come under liquidation on 10th May, 1968. The auditor, Shri Book, and the accountant, Shri Singhvi, have not been able to correlate this amount of Rs. 15,000 to the suspense account of Rs. 20,000. In his statement, Shri S.P. Sharma has also not succeeded in establishing that the suspense account of Rs. 20,000 related to Rs. 15,000 which he had sent from Jaipur office. The other difficult position is that the party from whom this hand-loan of Rs. 20,000 was arranged belonged to Jaipur. The amount of Rs. 15,000 which was drawn from the Jaipur office had to be paid to this party. The amount is sent to Delhi office where it is not entered and this amount is said to have been paid at Delhi to the party from whom this hand-loan was arranged. If the party really belonged to Jaipur, then there was no question of sending the amount to Delhi and making the payment there. The payment could have been easily made at Jaipur. It could have avoided the unnecessary expenses and inconveniences to the staff which must have been caused by sending the amount from Jaipur to Delhi. Even if for argument''s sake the plea which the non-petitioner has taken were to be taken into consideration then the person who received Rs. 15,000 at Delhi has not been produced as a witness. In view of all these circumstances, there is only one irresistible conclusion and that is that the amount of Rs. 15,000 sent from the Jaipur office to the Delhi office was not credited and remained unaccounted for. Shri S.P. Sharma has tried to take the responsibility on himself, but that does not in any way absolve the non-petitioners of their responsibility in the discharge of their duties. Issue is accordingly decided. Additional issue No. 1

12. The evidence of the parties has been discussed and a finding is on record that the amount of Rs. 15,000 does not find any cross-entry in the Delhi office. The non-applicants Nos. 1, 2 and 3 cannot be absolved of their responsibility. After having drawn the amount they did not take care to see that the amount is got credited at the Delhi office or is accounted for. It is difficult to hold that the amount was misappropriated, but there is ample evidence on the record to show that the amount has not been accounted for. The non-petitioners Nos. 1, 2 and 3 cannot be absolved of their responsibility for the amount of Rs. 15,000, which was drawn from the Jaipur office vide voucher No. 320 which was either signed by them or got prepared by them.

Additional issue No. 2

13. The non-applicants Nos. 4, 5 and 6, for the purpose of this claim, cannot stand absolved as they are bound by the action of their secretary, chief accountant and the cashier. As has been held in issue No. 1 that the non-applicants 1, 2 and 3 cannot be absolved of their responsibility, it is on this account alone that the responsibility of the non-applicants Nos. 4, 5 and 6 equally arises. As directors of the company they had to see that the amount

which has been withdrawn from the Jaipur office is duly credited at the Delhi office.

Additional issue No. 3

14. The suspense entry of Rs. 20,000 could not be correlated to the remittance of Rs. 15,000 from the Jaipur office to the Delhi office. As a matter of fact, voucher No. 320 shows that the amount of Rs. 15,000 has been drawn from the Jaipur office and has not been credited in the Delhi office. The accountant and the auditor have failed to find out any co-relation between the suspense amount of Rs. 20,000 with that of Rs. 15,000. From the evidence of Shri S.P. Sharma and Shri P.C. Dhadda such a co-relationship between Rs. 15,000 drawn from the Jaipur office and the suspense amount of Rs. 20,000 could not be established. In view of these circumstances, no other conclusion can be drawn except this that there is no co-relationship between this amount of Rs. 15,000 drawn from the Jaipur office and the suspense amount of Rs. 20,000.

15. For the reasons stated above, the claim filed by the official liquidator is accordingly decreed against the non-applicants Nos. 1 to 6 with costs. The non-applicants would be liable to pay interest at the rate of 6% from 25th August, 1965, till the date of realisation of the amount.