
(1980) 01 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 220 of 1976

Official Liquidator, Khosla Fans (India) P. Ltd. (In Liquidation)	APPELLANT
Vs	
Ramesh Khosla and Others	RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:

Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1913 — Section 171
Companies Act, 1956 — Section 10, 2(11), 446, 454(5A), 478

Citation : (1983) 53 CompCas 858

Hon'ble Judges : M.R. Sharma, J;Bhopinder Singh Dhillon, J

Bench : Division Bench

Advocate : J.S. Narang, for the Appellant; Bhagirath Dass and S.K. Hirajee, for the Respondent

Judgement

Bhopinder Singh Dhillon, J.—Khosla Fans India (Private) Limited was ordered to be wound up by this court. The official liquidator attached to this court filed a complaint against the respondents under Sections 538, 478 read with Section 446 of the Companies Act, 1956 (hereinafter referred to as "the Act") and read with Section 9 of the Companies (Court) Rules, 1959 (hereinafter referred to as "the Rules"), inter alia, alleging that the respondents being officers of the liquidated company failed to deliver to the liquidator, as desired by him, all the movable and immovable property of the company, which was in their custody and control, which in law they were enjoined upon to deliver after the company was ordered to be wound up. It has been alleged that the respondents have intentionally not handed over the records and books of the company and thus have violated the provisions of Section 538 of the Act, An objection has been taken on behalf of the respondents that this court has no jurisdiction to try the complaint and in fact the complaint should have been filed before the Judicial Magistrate 1st Class, This matter came up before me sitting singly and I referred the same to a larger Bench for the reasons recorded in the reference order. This is how the question whether this court has the jurisdiction to try the complaint

filed by the official liquidator against the respondents has been placed before us.

2. With a view to appreciate the respective contentions raised by the learned counsel for the parties, the relevant provisions of the Act may be referred to. Section 2(11) of the Act is as follows :

" 2(11) " the Court " means,--

(a) with respect to any matter relating to a company (other than any offence against this Act), the court having jurisdiction under this Act with respect to that matter relating to that company, as provided in section 10;

(b) with respect to any offence against this Act, the court of a Magistrate of the First Class, or, as the case may be, a Presidency Magistrate, having jurisdiction to try such offence ; "

3. Section 10 of the Act reads as under :

" 10. Jurisdiction of Courts.--(1) The court having jurisdiction under this Act shall be-

(a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of Sub-section (2); and

(b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.

(2) The Central Government may, by notification in the Official Gazette and subject to such restrictions, limitations and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction conferred by this Act upon the court, not being the jurisdiction conferred-

(a) in respect of companies generally, by Sections 237, 391, 394, 395 and 397 to 407, both inclusive ;

(b) in respect of companies with a paid-up share capital of not less than one lakh of rupees, by Part VII (Sections 425 to 560) and the other provisions of this Act relating to the winding-up of companies.

(3) For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding-up."

4. Section 446 of the Act is as follows :

" 446. Suits stayed on winding-up order.-- (i) When a winding-up order has been made or the Official Liquidator has been appointed as provisional liquidator, no

suit or other legal proceeding shall be commenced, or if pending at the date of the winding-up order, shall be proceeded with, against the company, except by leave of the court and subject to such terms as, the court may impose.

(2) The court which is winding-up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company ;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made u/s 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact which may relate to or arise in course of the winding-up of the company ; whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding-up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.

(3) Any suit or proceeding by or against the company which is pending in any court other than that in which the winding-up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that court.

(4) Nothing in Sub-section (1) or Sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."

5. The relevant portion of Section 454(5A) is reproduced hereunder :

"(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, for the trial of summons cases by Magistrates."

6. Reference may also be made to the provisions of Sections 162, 165, 210, 293A, 299 and 300 to 304 of the Act, wherein provisions have been made for prosecuting the company and its office-bearers for the violations enumerated in the said sections. It may be observed that the complaint for prosecuting the company or its office-bearers for a violation of the above-mentioned sections has to be filed by the Registrar of Companies. There are certain other offences, as provided in Sections 538, 539, 540, 541, 542, 543 and 545, which offences are supposed to have been committed during the pendency or after the finalisation, of the winding-up proceedings before the High Court and the prosecution for the commission of the said offences has to be at the instance of the official liquidator appointed by the High Court.

7. It has been vehemently contended by Mr. Narang, the learned counsel for the official liquidator, that the jurisdiction vested in this court under the provisions of Section 446(2) of the Act is wide enough to exercise jurisdiction to entertain or dispose of any suit or proceeding by or against the company. It has been contended that the words "any suit or proceeding by or against the company " are wide enough to include the criminal proceedings launched by way of complaint at the instance of the official liquidator. On the other hand, it has been contended by Mr. Bhagirath Dass, learned counsel for the respondents, that the provisions of Section 446(2) of the Act do not vest any special jurisdiction in this court to entertain or dispose of complaints which are filed for the violation of the provisions and for the offences committed under the Act. It may be observed that for deciding the question in issue, we have to give meaning to all the relevant provisions of the Act, including Sections 2(11), 10, 446 and 454(5A) of the Act. The said provisions have to be interpreted keeping in view the scheme of the Act and the main object for which the Act was enacted. It is no doubt true that with respect to any matter relating to a company, other than any offence against the Act, jurisdiction under the Act has been vested in this court u/s 10 of the Act, whereas jurisdiction with respect to any offence against the Act has been vested in the Magistrate, 1st Class, but the fact remains that the provision of Section 446 is a special provision, which has vested the High Court with jurisdiction to entertain or dispose of any suit or proceeding by or against the company. The prosecution sought to be launched by the official liquidator on behalf of the company is certainly a proceeding by the company against the acts of the office-bearers. It has been vehemently contended by Mr. Bhagirath Dass, learned counsel for the respondents, that "any proceeding" would not include criminal proceedings and for this he relies on a Full Bench decision of the Lahore High Court in *Smt. Shakuntala v. Peoples' Bank of Northern India Ltd.* [1941] 11 Comp Cas 309 (Lah); AIR 1941 Lah 392. This judgment, in our opinion, is not of much help for determining the present question. In that case, the Full Bench held that the expression "legal proceeding" used in Section 171 of the 1913 Act, which provision is analogous to the provisions of Section 446 of the Act, means a proceeding in the court of first instance, analogous to a suit, initiated by means of a petition similar to a plaint. It was held that the said proceeding does not include proceedings taken in the course of the suit, nor proceedings arising from the suit and continued in a higher court, like an appeal from an interlocutory or final order passed in the suit. It would thus be seen that the question whether "any proceeding" would include the criminal proceedings also was not examined at all. The Federal Court in *Governor-General in Council v. Shiromani Sugar Mills Ltd.* [1946] 16 Comp Cas 71 (FC), while disagreeing with the observations of the Full Bench of the Lahore High Court in *Smt. Shakuntala's* case [1941] 11 Comp Cas 309 (Lah), observed that the expression "other legal proceedings" u/s 171 of the old Act, need not and, therefore, should not, be confined to original proceedings in a court of first instance analogous to a suit initiated by means of a petition similar to a plaint.

8. Mr. Bhagirath Dass, learned counsel for the respondents, has relied on a decision of their Lordships of the Supreme Court in *S.V. Kondaskar, Official Liquidator and Liquidator of the Colaba Land and Mills Co. Ltd. Vs. V.M. Deshpande, Income Tax Officer, Companies Circle I(8), Bombay and Another*, to contend that the provisions of Section 446(2) would not clothe this court with jurisdiction if otherwise, it had no jurisdiction. We are unable to agree with this contention. The decision in *S.V. Kondaskar's* case, nowhere lays down this proposition of law. On the other hand, their Lordships of the Supreme Court, in fact, held that the expression "other legal proceedings" in Sub-section (1) of Section 446 of the Act and the expression "legal proceedings" as provided in Sub-section (2) of Section 446 of the Act have the same sense and "proceedings" in both sub-sections must be such as can appropriately be dealt with by the winding-up court. It was held that the I.T. Act is a complete code and it is particularly so with respect to the assessment and reassessment of Income Tax. Merely because, after the amount of tax payable by an assessee has been determined or quantified, its realisation from a company in liquidation is governed by the Act it does not mean that the assessment proceedings for computing the amount of tax must be held to be such other legal proceeding as can be started or continued only with the leave of the liquidation court u/s 446 of the Act. The ratio of the judgment is that the provisions of the I.T. Act are a complete code by themselves for determining the Income Tax payable by an assessee and thus the proceedings before the I.T. authorities under the said Act cannot be held to be proceedings as included in the "legal proceeding" as provided under Sub-section (2) of Section 446 of the Act. Their Lordships observed that the said words would include all proceedings where the court has jurisdiction to try the same. As already observed, the jurisdiction to try causes with respect to any matter relating to the company vests in the High Court. The scheme of the Act would suggest that the provisions of Sub-section (2) of Section 446 of the Act have been enacted to clothe the High Court with wide jurisdiction to entertain and dispose of any suit or proceeding by or against the company when a winding-up order has been passed. It is, therefore, not correct to contend that this provision would not clothe this court with the jurisdiction to try criminal proceedings if it so chooses. It may be observed that it is the discretion of this court to transfer or allow the institution of the said proceedings, but to say that the court has no jurisdiction would be going against the provisions of Section 446 of the Act, which is a special provision vesting jurisdiction in the High Court in connection with any suit or proceeding by or against the company, Mr. Bhagirath Dass has relied on a decision of the Delhi High Court in *Official Liquidator R.C. Abrol & Co. (P.) Ltd. v. R.C. Abrol* [1977] 47 Comp Cas 537. This authority does support the view as propounded by the learned counsel for the respondents, but we are respectfully not in agreement with the view taken therein. It has been observed by the learned single judge in *R.C. Abrol's* case that if the provisions of Section 446(2) of the Act were to be interpreted so widely as to include criminal proceedings, the provisions of Section 454(5A) of the Act would become redundant. This argument, in our view, is not

correct. The objects and reasons why the Legislature amended Section 454 and enacted Sub-section (5A) of the Act are as follows :

"...It has been the complaint of Official Liquidators that the statement of affairs is not filed in spite of repeated reminders and warnings, and if filed at all, is filed only after considerable delay. The penal provision is hardly ever enforced, apparently because a complaint has to be made by the Official Liquidator to the criminal court, and this involves delay. Much of the delay in winding up is caused by the statement of affairs of the company not being filed in time to enable the Official Liquidator to take the necessary action. It would facilitate his work and speed up the winding-up of companies, if the power to punish the officers of the company, who default in filing the statement of affairs, is vested in the winding-up court instead of in the ordinary criminal courts. The winding-up court, which in most cases will be the High Court, will be in a better position to judge the degree and nature of the default of the officers concerned and meet out appropriate punishment where necessary. The fear that the winding-up court would take immediately cognizance of any delay and deal adequately with those in default would by itself do much to ensure prompt filing of the statement of affairs. Section 454 of the Act should, therefore, be amended, vesting the power of punishment under the section in the winding-up court."

9. The provisions of Sub-sections (1) to (4) of Section 454 of the Act are procedural, non-compliance of which is an offence under Sub-section (5). Sub-section (5A) of the Act was enacted by the Legislature to give special jurisdiction to the High Court for the reasons enumerated above. Provisions of Section 446(2) of the Act are general in character and deal with the vesting of jurisdiction to entertain or dispose of any suit or proceeding by or against the company. The provisions of Section 454(5A) of the Act are special in nature, in addition to the jurisdiction vested in the High Court under the provisions of Sub-section (2) of Section 446 of the Act, which are general in nature. This aspect of the case has been overlooked in K.C. Abrol's case [1977] 47 Comp Cas 537 (Del). It was, however, observed in that case that the High Court could take cognizance of the offence only u/s 194 of the Code of Criminal Procedure, 1898. It may be observed that the provisions of Section 194 of the old Code have been deleted in the Code of Criminal Procedure, 1973. There is no provision analogous to the provisions of Section 194 of the old Code. That being the position, the inherent powers of the High Court as enshrined in Section 482 of the Code of Criminal Procedure can be resorted to in proper cases with a view to secure the ends of justice. It is no doubt true that under the provisions of Section 194 of the old Code, it was provided that the High Court could take cognizance of any offence upon a commitment made to it, but the said provisions having been deleted in the new Code, the impediment of commitment proceedings, before the High Court could take cognizance of the offence, has also been removed. It, of course, goes without saying that the High Court will exercise its power of transferring the case to its original jurisdiction in appropriate cases with a view to secure the ends of justice. Therefore, it is not correct to hold that the High Court

in no case can exercise its original jurisdiction in criminal cases.

10. Mr. Bhagirath Dass has relied upon a Full Bench decision of the Allahabad High Court in *Harish Chandra Vs. Kavindra Narain Sinha and Others*, . This judgment is of no help to the learned counsel. *Harish Chandra's* case was not a case of the winding-up of a company, wherein, in the course of inquiry, the judge came to the conclusion that an offence had been committed. The matter was not pending before the High Court at any stage. The Full Bench considered the effect of Section 194(1) of the old Code and came to the conclusion that the application made for transferring the case, which was pending before the file of the Magistrate, was misconceived. The argument that the view that the High Court has no jurisdiction to try the case could not be substantiated as Section 194(1) of the old Code authorised the High Court to take cognizance of any offence upon a commitment being made, was repelled by observing that the High Court could take cognizance only when the case was committed to it and not otherwise. As already observed, the provisions of Section 194 of the old Code have been deleted in the new Code and thus in proper cases the inherent power of the High Court would be available to take cognizance of the offences by the High Court.

11. As already observed, there are offences against the Act in which the official liquidator has to launch the prosecution proceedings. In appropriate cases, the High Court may exercise jurisdiction in entertaining or transferring the said proceedings to do complete justice between the parties, especially when the company has been ordered to be wound up. In such cases, the winding-up court may be the only appropriate court which could determine the disputes more appropriately. It, of course, goes without saying that if the jurisdiction had not been vested in the High Court under Sub-section (2) of Section 446 of the Act, in that case, in view of the provisions of Section 2(11) read with Section 10 of the Act, it had to be held that all the offences under the Act had to be tried by the Magistrate and not by any other court, but a special provision has been enacted in the background of the scheme of the Act to clothe the High Court with jurisdiction to entertain and dispose of any suit or proceeding by or against the company.

12. Reference may also be made to the provisions of Rule 9 of the Companies (Court) Rules, 1959, wherein it has been provided that nothing in the Rules shall be deemed to limit or otherwise affect the inherent powers of the court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. This rule also saves the inherent power of the court to pass appropriate orders which may be necessary for the ends of justice or to prevent the abuse of the process of the court.

13. We are, therefore, inclined to hold that the High Court can exercise jurisdiction in suits and proceedings, including criminal proceedings in appropriate cases, by or against the company. The question of law referred to this Bench is answered accordingly and the case may now be listed before a learned single judge for appropriate orders.