

(1975) 01 PAT CK 0015

In the Patna High Court

Case No : Company Application No. 1 of 1970

Official Liquidator, Navarashtra Publishing Co. Ltd. (in liquidation)

APPELLANT

Vs

Ashok Kumar and Another

RESPONDENT

Date of Decision : 04-01-1975

Acts Referred:

Companies Act, 1956 — Section 543, 543(1)

Citation : (1976) 46 CompCas 572

Hon'ble Judges : H.L. Agrawal, J

Bench : Single Bench

Advocate : S.C. Ghose and Rameshwar Prasad No. II, for the Appellant; Rama Kant Verma and Ranjit Chattaha for respondent No. 1 and J.N.P. Verma, for the Respondent

Final Decision : Allowed

Judgement

H.L. Agrawal, J.—This is an application u/s 543(1) of the Companies Act, 1956, on behalf of the official liquidator of Messrs. Navarashtra Publishing Company Ltd. (in liquidation) (hereinafter referred to as " the company ") which was originally filed against three persons, being the erstwhile directors, out of whom one, namely, Ramdas, respondent No. 2, is since dead. According to the case of the official liquidator, respondent No. 1, who was acting as the director-in-charge of the said company, failed to (i) deposit the employees' and employer's share of provident fund contribution with the Provident Fund Commissioner for the period November, 1963, to April, 1966, amounting to Rs. 16,279.62 ; (ii) deposit employees' and employer's share of contribution payable to the Employees' State Insurance Corporation from January 1, 1965, to the date of the winding-up order, namely, a sum of Rs. 3,306.90, under the Employees' State Insurance Act; (iii) account for the sum of Rs. 1,19,862 being the price of the paper in stock which was not handed over to the official liquidator ; and (iv) repay a sum of Rs. 15,000 on account of cost of certain structural materials set up by the company on a piece of land of respondent No. 1 which were removed by him.

According to the case of the official liquidator, the respondents are, therefore, guilty of misfeasance, misapplication of company's fund and various acts of non-feasance and breach of trust in relation to the company and are accountable and bound to repay and restore the money to the company with interest and costs.

2. In order to, appreciate the points arising for my determination, a few relevant facts and circumstances leading to the filing of this application must be stated. The company was registered, inter alia, to carry on the business of printing and publishing a Hindi daily from Patna, namely, the Navarashtra, by the late Sri Devbrat Shastri, father of respondent No. 1 in the year 1947 with an authorised capital of Rs. 7,50,000. According to the evidence that has come on the record, Sri Devbrat Shastri founded the said paper to propagate his political ideas. Shri Shankar Dayal Singh (respondent No. 3), another politician, and Shri Ramdas (deceased respondent No. 2) were the other two directors of the company along with Shri Shastri. The circulation of the paper was quite fair for some time, but on the death of Shri Shastri on January 10, 1962, in a jeep accident, the position of the company started dwindling. Admittedly, respondent No. 1 was taken in as a new director of the company in place of his father on January 12, 1962, and was made the director-in-charge. It is also evident from the record that this respondent No. 1 was a young man of about 19 years only and was still prosecuting his studies in a college. Thereafter the company gradually started suffering losses so much so that in spite of personal contribution by respondent No. 1, its substratum could not be saved and respondent No. 1 himself made an application in this court for its winding-up which was registered as Company Petition No. 5 of 1966. By an order dated the 8th July, 1966, this court directed the aforesaid company to be provisionally wound up and on the 2nd September, 1966, final winding up order was passed and the official liquidator was appointed the liquidator. On making a primary investigation into the affairs of the company, he found out various irregularities in the course of his taking over charge of the books and records. He, accordingly, submitted a report in the winding-up case on November 16, 1966, and this court in the said proceeding appointed Messrs. B. Gupta & Co. as auditors to investigate into the affairs of the company in the light of Section 543 of the Act. The auditors on their investigation submitted a report on January 10, 1968, from which it appeared that the respondents had committed various irregularities just mentioned above. In pursuance of the said report, the official liquidator filed the present application on April 13, 1970, and judge's summons was issued to all the respondents by this court.

3. Respondent No. 1 has filed a counter-affidavit, and according to his case, Shankar Dayal Singh (respondent No. 3) was not eligible to be a director of the company as he did not hold the qualification shares to make him eligible to be a director, and, as a matter of fact, the Registrar of Joint Stock Companies had not accepted him as a director from the very beginning, and as such on the death of his father there was no duly constituted board of directors and he could not be taken as a director as such. The actual management and control was in the hands of the workers of the company engaged in the publication of the

newspaper and the workers who wanted to continue the publication asked him to act as director of the company " though neither he was elected as a director nor he in fact took charge of the office of the director as required in law " and was a mere student at the time who, however, had a desire to perpetuate the name and the political views of his father who had made great sacrifices and in that anxiety allowed the publication to continue and his "name was utilised as director in place of his father."

4. The sum and substance of the plea of respondent No. 1 is not a denial of the charges levelled against the respondents by the official liquidator, but that he was not responsible as such as he was mechanically signing the various documents of the company which was virtually under the control of the workers and one, Uttim Lal, the manager, was running the whole show and had full control of the affairs of the company. According to his further case, respondent No. 2 (Sri Ramdas) had resigned from the office of directorship on the 18th May, 1962, and the other director, Shri Shankar Dayal Singh, was not qualified at all to be a director, and as such none of the respondents had either misapplied or retained or were otherwise liable or accountable for the moneys in question or the property of the company.

5. Respondent No. 3, Shri Shankar Dayal Singh, also filed a one-page show cause denying his liability altogether on the ground that he was never a director of the company and was, therefore, not in any way responsible for the claim of the official liquidator. On the appearance of the two respondents and filing their show cause, the official liquidator made an application u/s 478 of the Act for a direction that the two respondents be examined by this court concerning the affairs of the company.

6. The official liquidator has examined eight witnesses in support of his case. S.D. Thakur (P. W. 1) is an insurance inspector under the Employees' State Insurance Act who came to prove that there was a total dues of Rs. 3,306.90 against the company under the Employees' State Insurance Scheme. As the dues as such under this head are not disputed, it is not necessary to discuss the evidence of this witness. This witness, however, proved certain correspondence (exhibits 1 to 1-e) in this regard made by respondent No. 1 with the Employees' State Insurance Corporation. On the basis of this correspondence, it has been contended on behalf of the petitioner that it was respondent No. 1 who was managing the affairs of the company and had been admitting the liability for the payment from time to time.

7. S.K. Mukherji (P. W. 2) is the accounts officer in the Employees' Provident Fund office. This witness also produced certain documents to show that there was a total dues of Rs. 21,483.17 under the provident fund account of the company. As the liability as such under this account has not been disputed, the evidence of this witness does not call for any discussion.

8. Nandita Sen (P.W. 3) is a partner of Messrs. B. Gupta & Co., chartered

accountants, who was appointed to audit and investigate the accounts of the company in the year 1967, and submitted a report (exhibit 3) thereafter, on the basis of which the official liquidator initiated the misfeasance proceeding. In his cross-examination this witness admitted that " we have mentioned at various places in the report, particularly in respect of the matters of contribution to the provident fund and State Insurance Corporation that we did not have all the necessary papers and as auditors it would not be fair for us to say that there has been misfeasance."

9. So far as the major claim for Rs. 1,19,862 on account of the price of paper not accounted for is concerned, complete records of the company were not handed over and the auditors were handicapped to work out the actual amount on the basis of any precise and definite material. Actually what they, therefore, did was to arrive at the amount in question by proceeding on the basis of the opening stock, the acquisitions, thereafter, the purported consumption of the stock and the resulting balance, which should have been there, but was shown as "nil". The quantity of consumption has been worked out on the basis of the actual deposits in the books of account on account of sale price of the newspapers, and in this way the balance has been struck out. It is clear that the report of the auditors could not be based upon any definite material showing the actual consumption of paper, and P. W. 3 admitted in his cross-examination that it was not possible to say as to what was the actual consumption of paper. However, in order to support the mode of calculation, in the absence of any other relevant material, towards the end of his cross-examination, this witness explained that in the earlier years the consumption had been at 100 per cent. of the sale price on an average, and at this standard, if the real consumption had been at 100% during the relevant period, there should have been a balance of paper in stock of the value of Rs. 1,19,862.

10. P. W. 3 has also proved a letter (exhibit 4) under the signature of respondent No. 1 written on behalf of the company certifying the inventory as at the close of the 30th June, 1962. From the report (exhibit 3) submitted by the auditors, it appears that the company ceased publication of the newspaper in May, 1966, and after that date, the cash book did not record any sale or purchase of newsprint. The stock of paper, however, at the time of handing over charge to the official liquidator on June 30, 1966, was shown to be "nil". Exhibits further says that the sale of newspaper during the last two years fell sharply as compared to the average sale in the previous three years, but the decrease did not reflect in the consumption figure, and that would work out at the rate of 500% of the sales. The chartered accountants have, therefore, concluded that, in the absence of any other explanation, either the sales were suppressed or the stock was misused, that is, the company printed and sold out more newspaper on cash or credit basis for which no account has been shown in the books.

11. Ramdayal Pandey (P. W. 4) was associated with the newspaper and used to write editorial notes and later, on the death of Shri Shastri, he became the chief

editor of the paper. He stated that he had to sever his connection with the paper because salaries were not paid to him at proper time. He further stated that certain amount was deducted from his salary as his share of contribution to the Employees' Provident Fund. This witness also stated that respondent No. 1 was appointed as the director-in-charge by the board of directors of the company on the death of his father and he was at that time of the age of 20-21 years. The most important statement which has been made by this witness is that the stock of paper used to remain with Devbrat Shastri as long as he was alive and, thereafter, with Ashok Kumar (respondent No. 1).

12. Regarding the value of the materials in the structure, P. W. 4 has also given some evidence. He stated that the sheds were on two sides, approximately 200 feet long on one side and 100 feet on the other. Though this witness was cross-examined at great length, no suggestion was given to him as to why he would depose falsely against respondent No. 1. This witness has stated in his evidence, and obviously, that he " had no concern either with the purchase of paper or its distribution for the purpose of printing, or the keeping of the stock thereof, or the sale ", but that by itself, in my opinion, would not discredit or devalue his statement, who happened to occupy a key position in the newspaper, namely, the editor or the chief editor, as to who was in charge of the stock of the newsprint. This witness may not be able to give the exact account of the stock.

13. Public examination of respondents Nos. 1 and 3 was held on the 20th and 23rd December, 1974, respectively, in pursuance of an application filed by the official liquidator. Respondent No. 1 in his evidence stated that he did not devote any time to look after the affairs of the company and did not take any step to examine as to whether the accounts of the company were properly maintained or its stock was properly accounted for and that for the first time in the year 1966 he learnt that the affairs of the company were not running properly. Even after receiving this information, he never attempted to verify the accounts or check up the matter and allowed the things to continue in the same manner. In order to show his detachment or any concern with the affairs of the company, he stated that he might have gone to the office of the press only once or twice in between the period 1962 to 1966, and that also for attending certain telephone calls. He, however, admitted that he was present at the time of handing over the charge of the company to the official liquidator on his appointment as such in the winding-up proceeding, but no stock of paper was handed over and he was informed by Lakshmi Narain and others that paper received by the company for printing the newspaper had disappeared (gayeb ho gaya hai). Respondent No. 1 also used to lend his own money to the company as he wanted to perpetuate the name of his father. He further stated that he used to lend money on the mere asking of Uttim Narain without making any inquiry as to whether the company had the necessary funds with it to meet the expenses or not. He pretended even not to recognise the writings in the books of accounts (exhibits 5 and 6 series) of the company which were maintained by Uttim Narain. With respect to a question put to him regarding the signing of various cheques for drawing moneys from the bank,

returns, letters and other documents, some of which have been brought on the record of this case, respondent No. 1 took a very convenient attitude to state that whatever documents used to be placed before him by Uttim Narain, he used to sign them without applying his mind as Uttim Narain was a great friend of his father for whom he had high regard and in whom he reposed absolute confidence. In his examination by his counsel, he, however, admitted that on the very next day of the death of his father, the workers of the company asked him to look after this company and he " accepted the request of the workers and took over the charge of the company.

14. Respondent No. 1, however, definitely stated that respondent No. 3, Shankar Dayal Singh, was one of the two directors of the company on the death of his father. Respondent No. 3, who was examined as court witness No. 2, however, took a still peculiar attitude in his evidence and stated that he had no concern with the company or its publication. He further stated that he was not a director of the company and had purchased no shares of the company. When confronted in his cross-examination with reference to certain documents having been signed by him as the director of the company as well as certain shares of the company standing in his name, he expressed surprise for the existence of the said documents. According to his evidence, he had no knowledge of this case until December, 1973.

15. Narendra Narain Varma (P. W. 5) was the advertisement manager in the company and stated that the management of the company was conducted under the orders of respondent No. 1 and Uttim Narain was in charge of the accounts of the company and the company had filed a case against him for misappropriation of its money.

16. Kapildeo Prasad (P. W. 6) was the cashier of the company. According to the evidence of P. Ws. 5 and 6, respondent No. 3 was also a director of the company and used to come to the office occasionally and the entire control of the management was in the hands of Uttim Narain. The stock of paper used to be kept in the room occupied by Uttim Narain and he used to supply the required paper to the printing department and also to apply for quota of paper. According to P.W. 6, in order to meet the financial difficulties in regard to the payment of salaries of the staff, money used to be raised by way of loans, and respondent No. 1 and the union of the workers of Navrashtra Press were having disputes with each other several times.

17. To the same effect is the evidence of Raghunath Prasad (P. W. 7), who was the job-in-charge in the company. He has also stated that it was Uttim Narain who used to look after the company and managed its affairs and was also in charge of the newsprint. He, however, stated that the newsprint used to be stored in the godown of the company which was located in the same building, the key of which used to be kept by Uttim Narain. This witness admitted in his cross-examination that disputes arose between the management and the union of the workers of the company, of which Lakshmi Narain was the secretary and

Ramdayal Pandey (P. W. 4) was the editor.

18. Ram Ekbal Singh (P. W. 8) was a technical assistant in the office of the Registrar of Companies who had taken charge of the books and records of the company on behalf of the official liquidator and had made some inventory. There is nothing particular in the evidence of this witness with respect to the charge in question.

19. Respondent No. 1 has examined one witness, namely, Jugeswar Thakur (D. W. 1). According to his evidence, respondent No. 1, who had the requisite number of qualifying shares in the company, was installed as a director in place of his father on his death by the management. At that time respondent No. 1 was a student of 3rd year class in the Patna College. Uttim Narain was the accountant of the company who used to obtain the signatures of respondent No. 1 at his residence. According to D. W. 1, Uttim Narain left the company some time in 1965 and thereafter the union of the employees took charge of the company, including the stores, and that respondent No. 1 had no concern with the affairs of the company except signing the documents.

20. From the evidence that has come on the record of this case, just indicated above, it has to be seen as to whether the prayer of the official liquidator is fit to be granted, either in whole or in part, and the respondents or any of them can be held liable for any act of misfeasance or the like and to refund or repay or account for any property or money of the company.

21. The claim against Shri Shankar Dayal Singh (respondent No. 3) can be conveniently disposed of without much discussion. Allegations of misfeasance, misapplication and breach of trust, etc., are serious allegations. Allegations made before the court, therefore, must be specific and the application by the official liquidator should contain a detailed narration of the specific acts of commission and omission on the part of each director, quantifying the loss to the company arising out of such acts or omissions, and the burden of proving the same rests on the official liquidator. Reliance can be placed in support of this proposition on the case of *The Official Liquidator Vs. Raghawa Desikachar and Others*, . In his application itself, the official liquidator has not made out any specific case against this respondent. Even vaguely, it has not been suggested that this respondent was in any way responsible for the various acts of misfeasance or non-feasance. The entire responsibility has been laid on the shoulders of respondent No. 1, the director-in-charge, and this respondent was arrayed with him simply because he happened to be a director. Although I was not impressed with the testimony of this respondent as court witness No. 2 that he had no concern whatsoever with the company, in view of the overwhelming evidence, oral and documentary, that is of no consequence. I, accordingly, hold that this respondent cannot be held liable to pay any amount to the company and the application against him must fail. In the circumstances of this case, however, I will not make any order for costs to this respondent.

22. Coming to the case of the official liquidator against respondent No. 1. I have already indicated the respective stands of the parties. The contentions of this respondent are these: (i) He was not at all a director of the company, not having been appointed by the board of directors and, therefore, could not be held liable for any account as a director ; (ii) he never looked after the affairs of the company which were in complete control of the accountant, Uttim Narain, or the union of the workers of the company ; he reposed absolute confidence in Uttim Narain, who was a great friend of his father, and used to sign all the documents as a director or director-in-charge without any verification or application of his mind and was, therefore, not responsible in any way for the charges in question ; and (iv) in any event, the official liquidator has not discharged the heavy burden that lay upon him to establish that the acts of misfeasance complained of resulted in actual loss to the company. I shall deal with each of these four pleas of respondent No. 1 separately.

23. So far as the first plea is concerned, in my opinion, it is entirely idle. Apart from the preponderance of evidence of the witnesses examined on behalf of the official liquidator, respondent No. 1 has himself admitted in his evidence that when he was requested by the workers of the press to look after the company on the very next day of the death of his father, he accepted their request and took over the charge of the company. To the same effect is the evidence of Jugeshwar Thakur (D.W. 1), already referred to earlier.

24. The relevant provision of the English Companies Act, making similar provisions for misfeasance, has been very often judicially noticed and relied upon by the Indian High Courts on a number of occasions. It is since settled beyond controversy that where persons had acted as directors, and the holding of the qualification shares (which they never took) was a condition precedent to eligibility, so that they never were directors at all, they had been held guilty of misfeasance in the abstract by acting when they knew or ought to have known that they were not duly elected. That is, the charge under the section is available against directors and officers of the company de facto, who are not such de jure (R. v. Lawson [1905] 1 KB 541). The first point raised on behalf of respondent No. 1 has, therefore, got no substance. In view of the overwhelming evidence on the record that respondent No. 1 assumed charge as the director-in-charge of the company in question and had represented as such to all persons dealing with the company and purported to act accordingly, he cannot be allowed to take shelter under this plea, even assuming that he was not duly elected as a director of the company by the board of directors.

25. The case of the respondent No. 1 is that he was merely a figure-head and it was Uttim Narain who was managing the entire affairs of the company in whom he reposed absolute confidence. Respondent No. 1 has stated in his evidence that he never visited the office of the company nor had any control on its affairs. From the evidence brought on the record which has been already referred to above, I am not prepared to accept this case of respondent No. 1. From the

evidence of two of the witnesses, namely, Ramdayal Pandey (P.W. 4), who occupied the position of the chief editor, and Narendra Narain Varma (P.W. 5), the advertisement manager, it is evident that respondent No. 1 was looking after the affairs of the company. A person who was taken in, according to the undisputed evidence, as a director of the company at the instance of the workers themselves, could not have been so taken as a mere figure-head. Sri Devbrat Shastri was a politician and he founded this newspaper to propagate his political ideas without any ambition of profit making and had a band of loyal workers, of whom Uttim Narain was the head. The attitude of the workers of the company was, therefore, not hostile to respondent No. 1, and according to his own admission, respondent No. 1 took over the management of this company to perpetuate the name and goodwill of his father. If this was the ambition and purpose, it must have been but natural that respondent No. 1 would not allow himself to become a mere tool in the hands of Uttim Narain. In view of his case that he advanced loans to the company from 1963 to June, 1965, amounting to Rs. 12,672.30 and even thereafter went on advancing loan to the company till March, 1966, it is difficult to accept his statement in court that even in that situation he would not take care to look into the affairs of the company to find out as to how the finance of the same was being utilised or managed and would go on putting in his own good money month by month. He has given details of those loans in paragraph 19 of his show cause and the total of those advances comes to about Rs. 24,000. In order to give an impression to the court of keeping himself all the time at a long distance from the management of the company, this respondent went on to say that he did not make any inquiry even after getting information regarding the loss of paper and non-payment of various dues of the provident fund contribution and State Insurance Scheme. Even assuming that this case of respondent No. 1 is acceptable, in my view, this conduct of total inaction on his part is sufficient to hold him liable for misfeasance. In the circumstances referred to above, there was sufficient indication to respondent No. 1 to arouse his suspicion and put him on guard.

26. A director may be justified in relying on the skill, honesty and integrity of the officers of a company and is not bound to give continuous attention to its affairs, but if there are grounds for suspecting the officer, he should be careful in placing blind and complete reliance and trust on that officer thereafter. If he fails to exercise control over such officer even thereafter, then he must be presumed to be acting in complete disregard of his responsibility as a director. I am supported in my view on this point by several decisions of the Indian High Courts, namely, *Popular Bank Ltd. (In liquidation) v. Krishna Kamath* [1963] 1 Comp LJ 169, *In re Supreme Bank of India Ltd. (In liquidation)* [1964] 34 Comp Cas 34 (Mys) and *Rao Sahib V. Subbayya v. C.T. Machayya* [1942] 12 Comp Cas 102 (Mad). In the Madras case, which was a case under the 1913 Companies Act (Section 235), it was held that Section 235 did not, *prima facie*, exclude non-feasance. It would apply to every act of a director, whether of commission or omission, which is a breach of duty to the company in consequence whereof loss results to the

company. It was further held that where a director of a company not only did not exercise that amount of reasonable care which was expected of him as a director in ascertaining the true state of affairs of the company but also wilfully shut his eyes to it until a very late stage, he was guilty of gross negligence which would be misfeasance within the meaning of Section 235. In *re* Supreme Bank of India Ltd. (In liquidation), it has been held that the directors of a company cannot totally abdicate their powers and functions and divest themselves of responsibility for proper management of the company and are bound to keep watch and vigilance over the conduct of business of the company even by the managing director and other officers of the company.

27. Now remains to be considered the last plea of the respondent No. 1. It is well-settled and cannot be disputed that in a proceeding of the nature in question, the onus lies upon the official liquidator to prove by proper material facts, which bring the case within the section, and he has not only to show misfeasance, but also the damage in respect of which the company is to be compensated. In other words, an act of misfeasance by itself which does not result in loss to the company, suffice (sic) any justification of any action against the misfeasor. The liability on a respondent can be fixed only for acts amounting to: (i) misapplication, (ii) retention, (iii) becoming liable or accountable for any money or property of the company, (iv) misfeasance, or (v) breach of trust. Though the words "loss to the company" have not been mentioned in the section, it has to be inferred or proved according to the facts of each case. For the same reason, loss may occur to a company on account of misfeasance on the part of a respondent.

28. Examining the evidence on the record in the background of the above position in law, it has to be seen as to how far the official liquidator has proved the actual loss suffered by the company on account of the claim under the four items of charges. So far as the first two items of the charges are concerned, namely, failure on the part of the company to deposit a sum of Rs. 16,279.62 as employees' and employer's share of provident fund contribution with the Provident Fund Commissioner and Rs. 3,306.90 with the Employees' State Insurance Corporation, there is no evidence on the record that on account of the non-deposit of the aforesaid sums, the company has sustained any loss. Rather, the evidence on the record shows that the contributions of the employees were duly entered in the books of accounts of the company and remained in credit with the company itself. The case of the contesting respondent is that these amounts were notionally deducted from the salaries of the employees concerned as the company was short of funds, and in the same way, was carried to the credit of the provident fund and employees' state insurance accounts. It is not the case of the official liquidator that respondent No. 1 has personally misappropriated, misapplied or retained these amounts. The non-payment of the money under these two accounts, therefore, has simply exposed the company to a demand by the respective authorities concerned, but it did not amount to any loss as such to the company. Respondent No. 1, therefore, cannot be held liable

to repay any amount whatsoever under these two items.

29. Now, I shall take up the third item of claim, namely, for the sum of Rs. 1,19,862, being the value of paper in stock, which was not handed over to the official liquidator. I have already discussed some of the relevant evidence regarding this claim in paragraph 4 of this judgment. The relevant records showing the actual consumption and disbursement of paper which were with the company, were not handed over to the official liquidator by the respondent No. 1 at the time of the handing over of the charge. The official liquidator and the auditors had, therefore, no way out than to work out this account in the manner and process that they have adopted. In view of the evidence available on the record, it has been established that in the earlier years, for which records were handed over, the consumption of paper had been 100 per cent. of the sale price. Accordingly, on the basis of the cash deposits in the books of accounts, on an average, there should have been paper in stock of the value as claimed by the official liquidator. It is not the case of the respondent that there was any consumption of paper on any other account, or paper used to be given on credit sale. Various employees of the company have been examined on behalf of the official liquidator who were working in the company till its end. To none of these witnesses it was even suggested on behalf of this respondent that there was any other use for the paper. Rather, the evidence as has been adduced on behalf of the official liquidator shows that the quota for paper was applied only on the basis of the actual consumption. I, therefore, feel inclined to accept the mode of calculation adopted by the auditors and do not find any apparent error in the procedure adopted by them. I am also not prepared to accept the testimony of respondent No. 1 that the entire matter was left in the hands of Uttim Narain alone and that the stock of paper was kept in the room of Uttim Narain or that Uttim Narain was occupying the room where the stock of paper was stored. The evidence on this question, which has already been discussed earlier, is discrepant. The respondent No. 1 was taken in as the director-in-charge of the company on January 12, 1962. There might have been some justification in his plea that he reposed absolute confidence in Uttim Narain in the beginning, but he started advancing loans to the company from 1963 onwards. The auditors in order to work out this account have started with the opening balance as on July 1, 1964, when two years' time had already passed since the taking over charge of the company as the director-in-charge by respondent No. 1. During the period of these two years, he was expected to have attained a little more maturity and experience, as a long argument was addressed by Mr. Verma on account of the tender age of this respondent, he being only of about 19 years in the year 1962, so much so that he had already started advancing loans to the company a year before than the date of the opening balance in question under compelling circumstances. Even assuming the case of the respondent that he never endeavoured to exercise any control or care to look into the affairs of the company, which fact is not acceptable to me, his passivity after the company started suffering loss is inexcusable and will amount to gross negligence and non-

feasance for which he is equally guilty under this proceeding and liable to the company. The company has definitely suffered a direct loss on account of the disappearance of the stock of paper of the value of Rs. 1,19,862.

30. Even if the company might have printed and sold more newspapers on cash or credit basis, for which no account has been shown in the books of account, in that case also either the cash sales have not been accounted for or the details of debtors have not been shown. For this act or omission as well, the respondent No. 1 is liable or accountable to the company. Considering the case of the parties from every aspect, I feel constrained to hold that respondent No. 1 is liable for the entire claim of the official liquidator under this item, namely, for a sum of Rs. 1,19,862.

31. Now remains for consideration the fourth item of the claim, namely, the cost of structures. According to the case of the petitioner and the evidence on the record, it appears that the company had put certain temporary structures in the shape of shed of corrugated sheets on bamboo and poles on the land of Sri Devbrat Shastri. It is also admitted that the materials were removed by the respondent No. 1 after the company went into liquidation. His plea, however, is that he had to take that step on the failure of the official liquidator to remove the structures. The sheds were constructed at a cost of about Rs. 1,500 soon after the incorporation of the company, as shown in the balance-sheet of the relevant year. The official liquidator, however, has put up a claim of Rs. 15,000 on the ground that the value of the materials multiplied by ten times in the meantime. Respondent No. 1 in his evidence has, however, admitted that he removed only about ten corrugated sheets, 8-10 balas and 100 bricks. Sri Ramdayal Pandey (P.W. 4) has also made some statement regarding the structures in question, and according to his evidence, which has already been referred to above, the size of the structures approximately was 200 feet x 100 feet. The statement of respondent No. 1 that by removing the structures in February, 1967, he got only about ten corrugated sheets and 8-10 balas cannot be accepted. Depreciation in balas and corrugated sheets is very marginal. No evidence, however, has been adduced as to what was the rise in the value of these materials during the period 1961 to 1967, much less that it went up by ten times. It is, therefore, not possible to allow the claim of Rs. 15,000 under this item, which seems to be highly exaggerated. Taking, into consideration the rise in the price of these materials as well as depreciation of the same during the relevant period, in my view Rs. 3,000 would be the reasonable value of the materials of the structures put up by the company and removed by respondent No. 1.

32. For the reasons given above, I hold that the respondent No. 1 is guilty of misfeasance in relation to two items of the claim of the official liquidator, namely, a sum of Rs. 1,19,862 as the value of the stock of paper and Rs. 3,000 as the value of the materials forming part of the structures removed by respondent No. 1, that is, in all, for a sum of Rs. 1,22,862 with interest thereon at the rate of 6 per cent. per annum pendente lite and future. The official liquidator will also get

the costs of this proceeding from the respondent No. 1. Hearing fee Rs. 560 only.

33. In the result, this application is allowed in part as indicated above against respondent No. 1 and the same is dismissed without costs against respondent No. 3.