(1975) 09 DEL CK 0020

In the Delhi High Court

Case No : Civil Petition Appeal No. 93 of 1971 and Civil Appeal No. 86 of 1973

Official Liquidator of Gurco Pharma Pvt. Ltd. APPELLANT

Vs

S. Nihal Singh and Others RESPONDENT

Date of Decision : 03-09-1975

Acts Referred:

Citation : (1977) 47 CompCas 254 : (1976) 12 DLT 22

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : Rajiv Bahl and A.N. Khanna, for the Appellant;

Judgement

D.K. Kapur, J.

(1) This is an application u/s 454 read with Section 468 of the Companies Act, 1956, moved by the Official Liquidator of M/s. Gurco Pharma (P) Ltd., in connection with the winding up of that company. It was stated in the application that respondents I to 7 had not submitted the statement of affairs required by Section 454 and hence an order of the Court was sought. I heard this application first on 11th September, 1973, when I passed an interim order. On that date, I noted that respondents 1, 6 and 7 were exparte but the remaining respondents were represented by Mr. A.N. Khanna. I took up the cases of all the persons mentioned in the application who were represented by Mr. Khanna. I noted that according to Shri K. Mahadevan, he had been removed from 26th September, 1972, before the Provisional Liquidator was appointed. As far as the other persons were concerned, I noted that they had difficulty in filing the statement of affairs because the books, etc. were not available. I think, that a direction u/s 454(2) is to be given to persons who are not directors on the relevant date, i.e., the date when the Provisional Liquidator was appointed. The other persons who are directors, are per force, to file a statement of affairs unless the same is dispensed with by an order of the Court passed u/s 454(1). The other persons mentioned in sub-section (2) can be directed by the Official Liquidator through an order of the Court to file a statement of affairs. This includes ex-directors and

respondent No. 2 is an ex-director, who can be directed to file a statement of affairs. As far as the existing directors are concerned, no direction is necessary under sub-section (2). I, Therefore, proceed to give a direction to Shri K. Mahadevan to file a statement of affairs. If any statement has been filed, it will be assumed to be in compliance with the direction of the Court.

(2) Turning to the other directors, who were directors on the relevant date, i.e., on the date of the appointment of the Provisional Liquidator, no direction of the Court is necessary as they have per force to file a statement of affairs by the provisions of sub-section (2) of Section 454. The statement of affairs to be filed by these persons u/s 454(1) has to correspond with what is required by that sub-section and all the particulars mentioned in that sub-section have to be complied with. Of course, if the directors cannot obtain this information or the books do not contain all the information, then the statement of affairs has to contain only those particulars which they are able to give.

(3) One point has been mentioned during arguments before me today, which is to the effect that once the period of three months mentioned in sub-section (3) of Section 454 has expired, then the Court cannot direct the filing of a statement of affairs. I think, this contention is erroneous. The scheme of the Act is that the statement of affairs has to be filed within 21 days of the relevant date. In case a Provisional Liquidator is appointed, the relevant date is 21 days from the date of appointment and incase a winding up order is passed, it is 21 days from the date of the winding up order. The Court and the Official Liquidator can extend this time for three months at the maximum by reason of what is contained in Section 454(3). After that date a default starts operating which is penalised by Section 454(5). For each day of default, a fine can be imposed by the Court. The fine is to go on till the default comes to an end. Now, when does that default come to an end ? Obviously, when the statement of affairs is filed. This means that the statement of affairs can be filed much later, but the delay is subjected to the fine under sub-section (6) of Section 454. If it is shown to the Court that the default by the directors or other persons required to file a statement of affairs was due to some reasonable excuse, then the fine or penalty can entirely be dispensed with. Even if a person does not have reasonable excuse, but there is some other circumstance which would reduce the liability, the Court has full jurisdiction to impose a very small or light penalty. If the default is a serious one, the Court has power to order imprisonment to a term which may extend to two years. Thus, every case is dealt with. The provisions of the Section show that there can be a late filing of the statement of affairs, but up to three months, the default can be excused under sub-section (3) of Section 454 by an order of the Official Liquidator or the Court. Now, Mr. Khanna has also made a submission that I should make some observations regarding persons who are directed by the Court to file a statement of affairs. He submits that in the present case, the direction to Shri K. Mahadevan to file a statement of affairs has been made today, which is long after 21 days from the date of the winding up order and, Therefore, such a person may not be subjected to the provisions of Section 454(5) of the Act. I

would not like to express my opinion on this point at this stage, but I am satisfied that if such a person defaults, even if Section 454(5) is not attracted, the Court has sufficient power to compel the enforcement of its orders in other ways. This decides this application. No costs.

