
(2012) 03 KAR CK 0095

In the Karnataka High Court

Case No : Co. Petition No. 168 of 2004 in Co. Application No. 1000 of 2009

Official Liquidator of Janamadhyama Prakashana Ltd, (In Liquidation)

APPELLANT

Vs

Gregory Mathias, Mathias Aluminium and Plastics (P.) Ltd.

RESPONDENT

Date of Decision : 22-03-2012

Acts Referred:

Companies Act, 1956 — Section 454

Citation : (2012) 113 SCL 245

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Judgement

A.S. Bopanna, J.—The instant application is filed by the Official Liquidator u/s 454 of the Companies Act, 1956 praying that this Court take cognizance of the offence committed by the respondent in not filing the statement of affairs as provided in law and to punish the accused. The company-in-liquidation was ordered to be wound-up by this Court vide order dated 21.11.2005 passed in COP No. 168/2004. Subsequent thereto, the erstwhile directors of the Company-in-liquidation were required to file statement of affairs within 21 days as contemplated in law. It is in that context the applicant alleges that the erstwhile directors have not complied with the requirement of law and therefore sought for taking cognizance and punishing the erstwhile directors who have been impleaded as respondent Nos. 1 to 5.

2. A perusal of the proceedings in the instant application indicates that all the respondents other than respondent No. 3 have been discharged from the proceedings on different dates. The 3rd respondent has also filed his detailed objections contending that he is not required to file statement of affairs, inasmuch as he was not the director of the Company-in-liquidation as on the date of the order passed by this Court to wind-up the company-in-liquidation. In a normal circumstance, when the objection statement is filed to the main application, tendering of evidence would have been required. However,

considering the fact that the 3rd respondent has sought discharge from the instant proceedings on the ground that he had resigned, the same is a legal aspect. In that context, a perusal of the objection statement would disclose that the 3rd respondent has also produced the documents at Annexures-R1 to R3. By the document at Annexure-R1, it is pointed out that the resignation letter of the 3rd respondent though dated 29.03.2003 was filed in the office of Registrar of Companies on 07.04.2003. The said document is testimony to said assertion of the 3rd respondent. Challan is produced at Annexure-R2. The letter addressed by the 3rd respondent to the Registrar of Companies seeking grant of form No. 32 is at Annexure-R3. The said documents, in my view would disclose that the applicant in fact had resigned as a director of the company-in-liquidation and even though there is no document to indicate that the same was on 29.03.2003. However, the fact, that the same has been lodged in the Registrar of Companies on 07.04.2003 is sufficient. That being the position, the 3rd respondent in any event was not required to file the statement of affairs and therefore the allegation made against him is not sustainable.

The 3rd respondent also stands discharged from the proceedings. As a consequence thereof, the application in CA No. 1000/2009 is not maintainable and the same is disposal of.