(1999) 08 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 59 of 1998 in Company Petition No. 55 of 1996

Rama Fibres Limited APPELLANT

Vs

G.R. Hada and others RESPONDENT

Date of Decision : 26-08-1999

Acts Referred:
Companies Act, 1956 — Section 2(13), 454, 454(2)

Citation : (2000) 4 CompLJ 226

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : Amit Sethi, for the Appellant; A.C. Jain, Ms. Jaishress Thakur, A.M. Punchhi, Sanjeev Sharma, Ashok Jagga, Kanwaljit Singh, D.R. Trikha, Pankaj Gupta and Anand Chhibber, for the Respondent

Judgement

V.S. Aggarwal, J.—Rama Fibres Limited had been ordered to be wound up by this court on 11.7.1996. An order had been passed in Company Petition No. 55 of 1996 on the recommendation of Board for Industrial and Financial Reconstruction. Official liquidator attached to this court has been appointed as the liquidator. The official liquidator had filed a complaint u/s 454(5) of the Companies Act, 1956 (for short ''the Act''). It has been asserted that under the provisions of section 454(2) of the Act it is mandatory and obligatory on the part of the ex-directors to file a statement as to the affairs duly verified with an affidavit. The same has not been done and thus the complaint has been filed.

2. Arguments were heard on the limited question as to whether a complaint could be filed against the nominee directors or not because a large number of the respondents pleaded that they were simply the nominee directors and consequently they could not be prosecuted.

3. To appreciate this controversy, reference can well be made to section 2(13) of the Act which defines ''director'' in the following words :

"(13) ''director'' includes any person occupying the position of director, by whatever name called."

4. Sub-sections (1), (2) and (5) of section 454 of the Act reads as under :

"454. Statement of affairs to be made to official liquidator. - (1) Where the court has made a winding up order or appointed the official liquidator as provisional liquidator, unless the court in its discretion otherwise orders, there shall be made out and submitted to the official liquidator a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely :

(a) the assets of the company stating separately the cash balance in hand and at the bank, if any, and negotiable securities, if any, held by the company;

(b) its debts and liabilities;

(c) the names, residence and occupations of its creditors, stating separately the amount of secured and unsecured debts, and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;

(e) such further or other information as may be prescribed, or as the official liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the official liquidator, subject to the direction of the court, may require to submit and verify the statement, that is to say, persons -

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company or have been in the employment of the company within the said year, and are, in the opinion of the official liquidator, capable of giving the information required;

(d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

* * * * (5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which

may extend to one hundred rupees for every day during which the default continues, or with both."

5. It is abundantly clear from the definition of the ''director'' that no distinction has been made between a nominated director or any other director. Therefore, simply asserting that he was a nominee director will not absolve the concerned person from the liability, if any. At the same time, statement of affairs has to be furnished by one or more of the persons who at the relevant date were the directors of the company. The relevant date is the date when the company was wound up. In other words, if on the date the company was wound up, the concerned person was not the director, sub-section (2) to section 454 of the Act would come to the rescue of such a person.

6. Reference with advantage can well be made to the decision in the case of C.R.E. Wood Company (P) Ltd. v. Sardar Iqbal Singh and another(1985) 1 Comp LJ 80 : (1984) PLR 124 (Delhi Section) wherein it was held that the mere fact that a person was director of the company in earlier years would not render him liable u/s 454(5) of the Act unless it is shown that he held the status of director on the date of winding up order.

7. Shri Suraj Bhan, respondent No. 9, has filed the reply. He pointed out that he was the Additional Director of Industries, Haryana. He was appointed as nominee director of the company, now in liquidation. He retired on 31.12.1994 and, therefore, tendered his resignation to the managing director, Haryana State Industrial Development Corporation, from the directorship on the Board of the company. A copy of the resignation addressed to the managing director, Haryana State Industrial Development Corporation, dated 30.12.1994, has been appended mentioning that since he is retiring on 31.12.1994, therefore, he tenders his resignation. In his place, one Shri S. P. S. Chauhan was nominated as a director. In the absence of any other material on the record, it is clearly shown that Shri Suraj Bhan was not the director when the company was wound up.

8. Shri D. R. Gupta, respondent No. 5, in his reply has pointed out that he was removed as special director of the company on 26.4.1993. Therefore, on the date when the company was wound up, he was not the director thereto. A copy of the order passed by the Board for Industrial and Financial Reconstruction has been appended which shows that Shri D. R. Gupta was the director of the company on the date when the company was wound up (sic). As against them, therefore, the proceedings cannot continue and are directed to be dropped.

9. As regards others, namely, respondents No. 6, 7 and 8, there are no specific documents on the record to come to a conclusion that they ceased to be the directors of the company on the date when the company was wound up. They may, if so advised, submit proper documents supported by an affidavit.