
(1991) 09 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No. 53 of 1984 in Company Petition No. 88 of 1978

Sandal Chit Fund and Financiers Pvt. Ltd. (In Liquidation) APPELLANT
Vs

Narinder Kumar Sharma and Others RESPONDENT

Date of Decision : 12-09-1991

Acts Referred:

Companies Act, 1956 — Section 542, 543

Citation : (1994) 79 CompCas 25

Hon'ble Judges : M.S. Liberhan, J

Bench : Single Bench

Advocate : Jaishree Thakur, for the Appellant; P.N. Arora, for respondents Nos. 1 and 2, L.M. Suri, Senior Advocate and Arun Kumar, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Liberhan, J.—The company was ordered to be wound up in November 29, 1979. Admittedly, the business was suspended in the year 1976. The company suffered a loss to the tune of Rs. 39,056.69. The official liquidator has preferred an application u/s 542. read with Section 543, inter alia, praying that a declaration be made that respondents have been guilty of playing fraud, misfeasance and breach of trust in relation to the company. They are jointly liable for the debt of the company amounting to Rs. 95,864.78. The petitioner prays that a decree for the abovesaid amount be passed against the respondents. The respondents denied the averments made and contend that the respondents are only the shareholders who own the company; There are no creditors. There is no allegation that any creditor has been defrauded or any person has been defrauded. There is no averment that the company was floated for any fraudulent purposes.

2. Respondents Nos. 3 and 4 have further averred that, in C.P. No. 107 of 1980, u/s 454, for prosecuting respondents Nbs. 3 and 4 for not filing the statement regarding the affairs of the company and not producing the record before the official liquidator, it was found that they were neither in a position to do so nor

they were actively running the affairs of the company. Even in this petition, there are no allegations against respondents Nos. 3 and 4 for running the company. It is further stated that the company is not to pay anything to anybody.

3. The official liquidator has not been able to refute the contention raised by learned counsel for the respondents to the effect that there are no averments made in the petition nor is there any evidence on record to prove that the business of the company was carried on with the intention to defraud the creditors of the company or any other person or that it was run for fraudulent purposes. No creditor has come forward to claim any amount due from the company. Learned counsel has failed to show any, evidence showing mens rea of the respondents to defraud the creditors or any other person or the company for fraudulent purposes.

4. There is nothing on record from which it can be assumed that any of the respondents who have taken permission for the formation of the company is liable for the acts of misfeasance and breach of trust in the affairs of the company.

5. In view of the observations made above, I find no force in this petition and the same is dismissed with no order as to costs.