
(2005) 07 DEL CK 0029

In the Delhi High Court

Case No : CA 311 of 1974 in CP 22 of 1968

Security and Finance Pvt. Ltd.

APPELLANT

Vs

Shri B.K. Bedi and Others

RESPONDENT

Date of Decision : 21-07-2005

Acts Referred:

Companies Act, 1956 — Section 454(5), 542, 543

Citation : (2005) 07 DEL CK 0029

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : S.K. Luthra and Manisha Tyagi, for the Appellant; V.K. Makhija and Vandana Khurana, for the Respondent

Judgement

A.K. Sikri, J.—CP No. 22/1968 was filed for winding up of M/s Security and Finance Pvt. Ltd. (hereinafter referred to as 'the company') (in liquidation). On 20th March, 1969, the Official Liquidator (OL) was appointed as the Provisional Liquidator and thereafter vide order dated 17th July, 1969 this company was ordered to be wound up. The directors of the company failed to file the statement of affairs. The old even filed proceedings u/s 454(5) of the Companies Act, 1956 (for short 'the Act') praying for initiation of criminal proceedings against them for failure to file the statement of affairs. This application was, however, dismissed in the year 1976 on the ground that 'it cannot be said that the directors had not a reasonable excuse for failure to file a statement of affairs'.

2. In liquidation proceedings, this court appointed M/s Walker and Chandhiok and Co., Chartered Accountants to scrutinize the accounts of the company. The balance sheets for the years 31st March, 1966, 1967, 1968 and 1969 were drawn up by the said firm. On the basis of the accounts prepared by the Chartered Accountants the old filed the instant application in the year 1974 under Sections 542 and 543 of the Act alleging misfeasance and malfeasance on the part of the respondents. 12 ex-directors are arrayed as the respondents and

the allegation is that these respondents were found to be guilty of gross and culpable negligence in the discharge of their duties and failed to conduct the affairs of the company in an honest and reasonable manner and were further guilty of dereliction of duty, and by their negligence enabled frauds to be committed and are liable, individually and collectively, to compensate the company for the losses flowing from such negligence and dereliction of duty. It is stated that the directors, individually and collectively, were also guilty of several irregularities and improprieties and carried out the business of the company with intent to defraud the creditors and shareholders and are thus personally responsible without limitation of liability for all the debts and liabilities of the company. They are further alleged to be liable on several counts for nonfeasance, misfeasance, breach of trust, fraud and mismanagement urged against them individually and collectively.

3. It may be stated at this stage itself that the due to pendency of these proceedings for such a long time, many respondents have died. Their LRs have not been brought on record except that of the respondent No. 9. The respondent No. 4 was ordered to be deleted from the array of parties vide order dated 30th March, 1990. The application, today, is contested by the respondent No. 10. Apart from the respondent No. 10, other two respondents against whom the present application survives, are respondents No. 3 and 7 who have not been appearing for last several years [It is not certain whether they are also alive today?]. Thus the application is to be adjudicated qua the respondents No. 3, 7 and 10 only. In so far as the LRs of the respondent No. 9 are concerned, they took the stand that they have not inherited property of deceased respondent No. 9 and presumably because of this reason nothing was argued on behalf of the LRs of the respondent No. 9. Respondents 3, 7 and 10 are Col. B.N. Khanna, Mr. T.S. Sethi and Mr. S.C. Agarwal. This position is explained at the outset as that has bearing on the outcome of the proceedings qua these respondents inasmuch as most of the allegations of irregularities are against specific persons/ex-directors for which these respondents would not be responsible.

4. The allegations contained in the application may be summarized at this stage.

(a) The trade debtors and loans and advances are stated to have been made to certain persons, details whereof are given in Annexure-A to the application. However, it is alleged that the respondents are unable to furnish full particulars and addresses of these debtors with the result and in the absence of these particulars, recoveries cannot be made by the OL. The applicant, Therefore, has reasonable suspicion that the persons mentioned in Annexure-A are the fictitious persons to whom the alleged loan and advances were given and in fact the respondents misappropriated this amount. It is also stated that as per the audit conducted by the aforesaid Chartered Accountants several discrepancies in the books and accounts and misfeasance have been noticed and inspire of that they failed to file their comments on the audited report inspire of giving opportunities in this behalf.

(b) Several payments have been shown which are stated to have been made to persons, details whereof are given in Annexure-B to the application. However, relevant vouchers are not supported and no proper receipts are available. Some of the instances are given as under:

(i) On 2nd January, 1968 a sum of Rs. 5,000/- is shown to have been paid by the company to Mr. Deva Singh Saxena being last Installment against pronote No. 3814 dated 6th October, 1965. The depositor's receipt has neither been obtained on the pronote nor on the voucher itself.

(ii) On 6th October, 1967 a sum of Rs. 15,000/- is shown to have been paid in cash to Smt. Sunita Devi Bedi towards payment of the pronote which has not been get discharged by the depositor.

(iii) On 3rd January, 1967 a sum of Rs. 2,000/- was shown to have been paid but the depositor receipt has not been obtained either on the pronote attached with the voucher or on the voucher itself.

(c) The company was having three cars, registration details whereof are given, were allegedly being used by Mr. L.M. Sethi, Chairman, Mr. P.S. Bedi, Director and Mr. G.S. Puri, Managing Director. But these were sold and other cars were purchased in lieu there of. However, many irregularities were found in the sale and purchase of these cars. One car was purchased from a relative of Mr. L.M. Sethi at excessive price. Likewise company car was sold to his Chairman's relative at a meager rate. One car which was with Mr. P.S. Bedi and was sold for Rs. 11,500/- receipt thereof has not been credited and the amount is misappropriated. Another car was purchased for Mr. P.S. Bedi in August, 1965 for Rs. 16,781/- and was sold in January, 1968 for Rs. 11,000/- and this sale price of Rs. 11,000/- was also misappropriated.

(d) As per the books of accounts prepared by the Chartered Accountants, the company was having on 31st March, 1968 a cash in hand of Rs. 41,671.48 paise and a cash of Rs. 11,470.70 paise in imprest. It was having stamps in hand worth Rs. 10,329.19 paise.

Bank balance of Rs. 28,574.59 paise. All these amounts of Rs. 92,345.56 paise have not been handed over to the old and thus it is believed that these amounts are misappropriated by Mr. G.S. Puri, Director in charge of the cash.

(e) The company was having a unit at Modi Nagar by the name Security Engineering Corporation and on 31st March, 1968 a sum of Rs. 2,74,455.45 paise was recoverable from the said unit. The value of the said unit was in excess of the said sum of Rs. 2.74 lacs but no details, documents, papers or any link were given by the ex-management to the old to find out the assets of the said unit. The old could realize only Rs. 54,000/- by the sale of the land and Rs. 3,500/- by the sale of material. It is, Therefore, clear that assets of that unit worth assets more than Rs. 2 lacs were misappropriated.

(f) As on 31st March, 1968, the company was having investment of Rs. 36,625/-.

No details thereof are given, including shares scripts etc.and, Therefore, this amount could not be realized. There was also stock in trade amounting to Rs. 95,069.43 paise but even that is not handed over to the old and seems to have been misappropriated.

(g) As per the audited accounts of the company, an amount of Rs. 12,66,565.82 paise is recoverable from the directors and their relatives or firms or associated companies of the directors, details whereof are given in Annexure C to the application. Annexure C reads as under:

Details of Advance recoverable in cash or in kind as at 31st March, 1968

Particulars Debit Amount

Personal Account No.I	7,38,648.75	-Do-	4,31,654.60	Collector, Delhi	3,883.50
Prepaid Comm.	1,608.97	Personal Hundi accounts	12,450.00	Salaries and Conveyance	65,850.00
Refundable Diet Money	70.00	-----			
Total				12,66,565.82	-----

(h) A sum of Rs. 8,000/- from certain parties was received by Mr. B.K. Bedi but has not been accounted for. Many assets of the company, including typewriter, air-conditioner, cooler and cycle etc. were misappropriated by Mr. G.S. Puri, the then Managing Director, details whereof are given in the application.

5. Pursuant to the orders of this court, the old has filed points of claims which are as under:

(i) Whether the business of the applicant company from 15.11.49 till 17.7.69 was carried on with intent to defraud its creditors and for fraudulent purposes?

(ii) Whether the list of debtors furnished by respondents is fictitious and the respondents have misappropriated the amounts stated to be due from those debtors amounting to over Rs. 75,00,000/-?

(iii) Whether the amounts shown to have been paid as per Annexure B are fictitious and actually have not been accounted for by the respondents and consequently the respondents jointly and severally are liable to pay the same to the company?

(iv) Whether the cars DLI 5911, DLI 5179, DLI 9482 and DLF 6080, DLE 5179 and RSL 800 were fraudulently sold/purchased/retained by the respondents with a view to benefit themselves jointly or severally?

(v) Whether the amounts set out in para 2(b) has been misappropriated or wrongly retained by the respondents and they are liable to reimburse the same with interest to the company?

(vi) Whether a sum of Rs. 2,00,000/- was misappropriated by the respondents from the assets of the company's unit called Security Engineering Corporation, Modi Nagar and the respondents are liable to reimburse the company to that extent?

(vii) Whether the respondents have misappropriated the stock in trade of the value of Rs. 95,069.43 and are, Therefore, liable to reimburse the company to that extent jointly and severally?

(viii) Whether the sum of Rs. 36.625/- invested by the company has been misappropriated by the respondents and they are liable to reimburse the same?

(ix) Whether the respondents are liable to reimburse the company jointly and severally for a sum of Rs. 12,66,565.82 as set out in para 2 (g) and Annexure C together with interest?

(x) Whether respondent No. 1 is liable for the payment of the amounts shown in para 2(h), to the company?

(xi) Whether the movable properties of the company set out in para 2 (i) including clauses a,b, c, d have been misappropriated and they are liable to reimburse the value of the same jointly and severally?

(xii) Whether the property being land measuring 15 kanals has been sold by respondent No. 1 and not accounted for its sale proceeds to the company and has, Therefore, become liable to reimburse the company by the market value of the same?

(xiii) Whether the respondents are jointly and severally liable to reimburse the company to the extent of Rs. 5,54,526/- as set out in Annexure D for being guilty of non-feasance?

(xix) Whether a declaration that the business of the company was carried on with intent to defraud the creditors of the company and its shareholders should be given in the circumstances pleaded and proved in this case?

(xv) Whether the respondents jointly and severally have misapplied/retained the properties and monies of the company and are guilty of misfeasance and breach of trust as set out in para 3 of the application and have, Therefore, become liable for payment of the entire liabilities of the company?

(xvi) Is the applicant entitled to the reliefs prayed for para 8 of the application?

(xvii) To what other reliefs is the applicant entitled and against which of the respondents?

6. In the replies filed by some of the respondents, the allegations made in the application are denied and it is stated that they have not committed any such act of misfeasance or malfeasance. It is also stated that the application suffers from vice and infirmity of mis joinder. The allegations are general, vague and of wild nature. Some of the respondents have also stated that they were not concerned with the day to day the affairs of the company. Some of them had even resigned much earlier and in any case they cannot be fastened with any liability as they were not actively managing the affairs of the company. It is alleged that the management of the company was entirely in the hands of Mr. G.S. Puri,

Managing Director. It may not be necessary to narrate the specific defense of these respondents as they are no more parties to this application except respondents 3, 7 and 10. Therefore, specific defenses of only these respondents are required to be noted. These respondents have also taken the objections noted above. That apart, it is contended that there is not even a single averment of any act or omission attributed to the respondent No. 3. It is also stated that whatever particulars of alleged irregularities are given they relate to a period anterior to 1st March, 1968 when the respondent No. 3 joined the company and, Therefore, is not responsible for those acts. It is also stated that as far as respondent No. 3 is concerned, during his period he acted honestly and was never in default and never had any intention to defraud and, Therefore, none is alleged against him.

7. Almost on same lines is the reply of the respondent No. 7 who also submitted that no averments are attributed to him. It is further stated that the company's affairs were managed and controlled by the respondents 1 and 2 only who were the Managing Director and Joint Managing Director of the company. He was not having any control or work or actively taking part in the promotion or formation of the company. He has further sought to explain that no doubt he was at times attending the board meetings but in the bona fide manner and in good faith he was signing the minutes. No act was done to defraud the creditors. He has denied that the debtors mentioned in Annexure A of the application are fictitious persons. He has also stated that there was no discrepancy in the books of accounts and there is no misappropriation.

8. The respondent No. 10 has also contended that the petition does not disclose any specific charge against him and, Therefore, in the absence thereof proceedings u/s 543 of the Act cannot be maintained. During arguments, this aspect was traced by citing following judgments:

- (i) Hanuman Prosad Verma v. Stock and Finance Ltd. (1985) 58 Comp.Cas.338.
- (ii) Official Liquidator v. Raghawa Desikachar (1975) 45 Comp.Cas.136.
- (iii) Official Liquidator v. Joginder Singh Kohli (1978) 48 Comp.Cas.357.
- (iv) Security and Finance Pvt.Ltd. v. B.K.Bedi, (1991) 71 Comp.Cas.101
- (v) In Re: Central Calcutta Bank Ltd., .

9. He has further stated that his father was a director and was having shares worth Rs. 10,000/-. After his death on 31st December, 1951 he was taken as director of the company in September, 1962. At that time, he was 22 years of age and, Therefore, he never acted as a director of the company and he never worked in the company and was not aware of the affairs of the company. Only Mr. B.K. Bedi and Mr. G.S. Puri who were the Joint Managing Directors were looking after the affairs of the company. Learned counsel contended that in these circumstances he cannot be held liable in these proceedings as per the law laid down in the case of Peake and Hall Ltd. reported as 1985 PCC 87 . and pressed

the following observations from that judgment:

"A director who was ignorant of the company's insolvency and the intent of the other directors to defraud the creditors is not personally liable for the company's debt even if the ignorance was due to failure to perform his duties as director."

10. Learned counsel for the respondent No. 10 has also contended that no documents or evidence have been produced by the old showing any fraudulent act on the part of the respondent No. 10. The old had filed evidence by way of affidavit without there being any cogent evidence in that regard. The respondent No. 10 has denied all these allegations in his affidavit.

11. It may be noted at this stage that the old has filed the affidavit repeating the averments made in the application as well as supporting the points of claims. From the narration of facts stated in the beginning, it is clear that the application was filed on the basis of final accounts of certain years prepared and audited by M/s Walker and Chandhiok and Co., Chartered Accountants. However, the said accounts or audit report are not filed and/or numbered by the OL. All the respondents have denied the allegations and, Therefore, apart from making averments on the basis of accounts it was the duty of the old to prove the said allegations. Be that as it may, the averments made in the application clearly point accusing finger at Mr. B.K. Bedi and Mr. G.S. Pur. The defense of the four respondents noted above is also that Mr. B.K. Bedi and Mr. G.S. Puri were in charge of the affairs of the company. Reflection of this would be found from the reading of the application itself wherein while giving specific instances names of these two persons only are repeated too often. No specific allegation is made against any other director including the respondents 3, 7 and 10. This lends credence to the defense of the respondents 3,7 and 10 that they were not involved in the day to day affairs of the company and the control and management of the company was in the hands of Mr. Mr. B.K. Bedi and Mr. G.S. Puri. It is clear from the judgments quoted by learned counsel for the respondent No. 10 that it is for the old to make specific allegation against a particular director or an officer exposing his conduct to the acts of misfeasance or misconduct to enable the court to examine the said conduct and give specific findings as to which director is actually responsible for the acts of isfeasance.

12. No doubt there are specific allegations against Mr. B.K. Bedi and Mr. G.S. Puri. However, these allegations qua them are not required to be examined as both have died and their LR's are not brought on record.

13. In fact in these very proceedings the respondent No. 4 had made an application for deletion of his name and prayer was made that proceedings against him be quashed or dropped. By a detailed order dated 30th March, 1990 passed in that application (which is reported as Security and Finance Pvt.Ltd. v. B.K. Bedi 71 Comp.Cas.101. This application of the respondent No. 4 was allowed and this petition was dismissed against him. After taking note of various judgments of different High Courts as well as this court dealing with the

principles which are to be kept in mind in proceedings under Sections 542 and 543 of the Act, the court examined the allegations in respect of the respondent No. 4 and found that except for one specific allegation regarding sale ocar, all other allegations were general and vague and did not concern the respondent No. 4. Allegations in respect of car were also found unsubstantiated. The court agreed with his contention that he was initially employed and subsequently taken as a director for the administrative purposes and from that position also he resigned on 14th August, 1967 which resignation was accepted in the meeting held in the month of March, 1968 much before the order of winding up.

14. The aforesaid observations taken to their logical conclusion in the present case would squarely apply to the respondents 3,7 and 10 as well. This application is accordingly dismissed qua the respondents 3, 7 and 10 as well.

15. Before parting, I may observe that long pendency of these proceedings resulted in defeating the very purpose for which applications are filed under Sections 542 and 543 to rope in erring directors who indulge in the act of misconduct. Sections 542 and 543 are inserted in the statute book by the legislature with the intention to check malpractices. They are supposed to act as deterrent and compel the directors to manage the company properly keeping in view their fiduciary position. However, if the proceedings are allowed to go on endlessly because of various factors and mostly the delay is attributable to inaction on the part of the old in not pursuing such proceedings with all vigour and efficiently as required, such provisions lose stings and embolden those who indulge in malpractices. In the present case, the allegations primarily were leveled against the respondents 1 and 2. However, they died during the pendency of the proceedings. Likewise, many other directors died. The old could not even successfully bring their LRs on record. Result is that out of 12 respondents initially imp leaded, today proceedings are pending against the respondents three respondents only and these respondents are those respondents who are not responsible for the day to day affairs of the company. Even as per the OL's own case no specific allegations were made against them. I hope that this would be an eye opener and the OL's office shall more vigilant in pursuing such other cases.

16. As the application has abated against other respondents, there is no option to dismiss the same. Ordered accordingly.