
(1976) 08 DEL CK 0024

In the Delhi High Court

Case No : C.A. No. 664 of 1975 in C.P. No. 53 of 1975

Sipso Agencies P. Ltd. (In liquidation)

APPELLANT

Vs

Gajraj Singh and Others

RESPONDENT

Date of Decision : 04-08-1976

Acts Referred:

Citation : (1978) 48 CompCas 30

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

Bench : Single Bench

Advocate : Santosh Jain, for the Appellant; P.C. Khanna, for respondent No. 1, Daljit Singh, respondent No. 2 and Respondents Nos. 5 and 6 party in person, for the Respondent

Judgement

D.K. Kapur, J.—This is an application u/s 454 of the Companies Act, 1956, in respect of M/s. Sipso Agencies (P) Ltd., a company in liquidation. This company was ordered to be wound up by the orders passed in C.P. No. 23 of 1973 which was filed by the Registrar of Companies, Delhi. The winding-up order was passed on 6th November, 1974. The applicant gave notices to the 6 respondents claiming that they were directors on the date of the winding-up order according to the records of the Registrar of Companies. It was stated that none of the respondents had applied for extension of time and some of them were not even served and hence it could be inferred that they were avoiding service. The official liquidator sought a direction from the court qua these persons. Two of the respondents had written to the official liquidator on this matter and their replies have been annexed as annexures " E " and " F ". The reply of Gajraj Singh is annexure " E ", in which he states that he ceased to be a director on 11th February, 1969, when he submitted his resignation. He claimed to have handed over the complete charge to Shri R. L. Kohly, respondent-No. 5, on 31st December, 1966. Similarly, there is a reply from respondent No. 2, Shri D. K. Mehra, stating that he had resigned on 14th January, 1969, and these facts had been noted in previous decisions of this court passed in C.P. No. 81 of 1969 on 24th November, 1969, and C.P. No; 53 of 1973 on 6th November, 1974.

2. Notices of this application were given to the respondents but no one filed a reply. It was stated before me at the last hearing that some of the directors had resigned earlier and judgments would be shown to me. In this connection Mr. Satish Chandra has shown me a judgment passed by the Judicial Magistrate, First Class, Delhi, in case No. 315/3, concerning respondents Nos. 3 and 4. He has also shown me some certified copies of other judgments. From these judgments and certified copies of other documents filed in those cases, it appears that the Registrar of Companies had accepted the position that respondents Nos. 3 and 4 had resigned in 1965. Thus, the claim of respondents Nos. 1 to 4 is that they had resigned. Respondent No. 6 has also appeared before me and presented a written reply to the effect that he had resigned on 16th November, 1969. A similar written reply has been given on behalf of Gajraj Singh, respondent No. 1, to-day. An application, C.A. No. 458 of 1976, was moved on behalf of the respondent No. 2 and came before the court yesterday in which there was an affidavit stating that D. K. Mehra, respondent No. 2, had resigned on 14th January, 1969. Lastly, Shri R. L. Kohly, respondent No. 5, is present and he also states that he had resigned long ago though he cannot remember the date, but he will prove the same. Thus, the position of all the respondents is that they had resigned either in the year 1965 or 1969 or thereabouts. In any case, they all claim to have resigned long before the winding-up orders, which were passed on 6th November, 1974.

3. All the replies and documents filed are, in my view, of no effect in this case. Merely because all the directors had resigned in 1965 or 1969 does not mean that the court has become powerless to pass an order u/s 454 in accordance with the request of the official liquidator. In a previous case, I have expressed a view that an order can only be passed in respect of directors who were holding office within one year of the winding-up order, but on a closer examination of the section and the parallel provision in the English Act, I find that this interpretation does not seem to be sound.

4. I, now proceed to give my reasons for coming to the conclusion that persons who were directors even prior to one year before the winding-up order can be included within the category of persons against whom the official liquidator can obtain an order u/s 454.

5. The provisions of Section 454(2) require that a statement of affairs has to be submitted and verified by one or more of the persons who were at the relevant date the directors and by persons who were at that date the manager, secretary or other chief officer of the company. This is one part of the sub-section. The alternative part is : " or by such of the persons hereinafter in this sub-section mentioned, as the official liquidator, subject to a direction of the court, may require to submit and verify the statement". Thus, there are two groups of persons mentioned in the sub-section. The first category consists of persons who were directors on the relevant date and also the manager or other chief officer of the company on that date. The relevant date is defined in Sub-section (8) of

Section 454 as being the date of appointment of the provisional liquidator or the date of the winding-up order. In the present case, I have also got the main winding-up petition, C.P. 53 of 1973, before me, and note that therein the winding-up order was passed on the petition of the Registrar of Companies on 6th November, 1974. For the sake of completing the facts, I may mention that the ground on which the Registrar of Companies had sought the liquidation of the company was that there were disputes between the directors of the company who were shifting the responsibility for complying with these statutory requirements upon each other ; there was a complete deadlock in the management of the company and no balance-sheet had been filed after 31st December, 1966. It was further stated that enquiries by the office and through the police had revealed that the company had suspended its business over a year earlier. Among the facts stated in the petition was a claim that the assets of the company were Rs. 67,000 and odd and the liability was Rs. 42,000 or more. It was further stated in paragraph 10 that all the directors had been sent notices by the Regional Director, Northern Region, Company Law Board, Kanpur; and in response to those notices some replies had been given to the Regional Director. For instance, Gajraj Singh had stated that he handed over the charge of the company to Shri Kohly on 11th September, 1969, but Shri Kohly could not be served. Similarly, some of the other directors could not be served because they had left without address. Eventually, Shri Kohly was served on 16th December, 1972. During the winding-up petition, the ex-directors were made parties and Shri D. K. Mehra even at that stage wanted to say that he had resigned in 1969 and was no more liable in respect of the company sought to be wound up. Thus, it seems the common case of all the directors from the very beginning is that they had resigned earlier.

6. From these facts it is obvious that none of the directors can come into the first category mentioned in Section 454, because none of them appear to be the directors on the date of the winding-up order, which is the relevant date for this case.

7. The next question for consideration is whether the respondents can be included in the second category mentioned in the sub-section which consists of persons whom the official liquidator, subject to a direction of the court, may require to submit the statement. This class of persons has been sub-divided into four sub-classes. Firstly, there are persons who are or who have been officers of the company ; secondly, there are persons who have taken part in the formation of the company at any time within one year before the relevant date; thirdly, there are persons who have been in the employment of the company within that year and are in the opinion of the official liquidator capable of giving the information required and, fourthly, there are persons who have been employees of a company which was an officer of the company, within the said year. The question for consideration is whether there is any thing in the fourth sub-class which applies to this case, so as to bar an order being passed against the respondents who otherwise come into the first sub-class.

8. A little more analysis of the four classes included in this category is necessary. The first class consists of persons who are or who have been officers of the company. The directors are also within the category of officers, because the provision defining officers, Section 2(30), includes a director, managing agent, secretaries and treasurers, manager or secretary, etc., in the definition. Thus, there can be no doubt that a director is an officer. The first sub-class, Therefore, includes persons who are directors before the relevant date. Thus, this second category is wide enough to enable an order being passed against all directors whether they have resigned earlier or not. However, the official liquidator can only get a statement of affairs from them if the court gives a direction to this effect. The only problem with regard to the application of this definition is whether it is inconsistent with the fourth sub-class which applies to certain officers within one year of the relevant date. Coming to the second subclass, it is quite clear that it refers to persons who had taken part in the formation of the company at any time within one year before the winding-up order or appointment of the provisional liquidator. There is no ambiguity in this class. The third sub-class consists of persons who have been in the employment of the company within that period of one year and who are, in the opinion of the official liquidator, capable of giving information. In this class may be included other employees of the company who were in the employment at least within a period of one year prior to the passing of the winding-up order. Finally, it is necessary to refer to the fourth sub-class which consists of certain officers within the same year. At first sight, there seems to be a contradiction between the first sub-class and the fourth sub-class; and I must confess that I have myself made this mistake in an earlier judgment. A close examination of the wording and that of the parallel English section, which is Section 235 of the Companies Act, 1948, explains the real distinction. I first reproduce the wording as given in the Act:

"454. (2)(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."

9. At first sight, this sub-section seems to refer to officers of the company which is being wound up, but this is not the correct and true meaning of this sub-section. In fact, it refers to officers employed by another company which is itself an officer of the company being wound up. In this connection, it is necessary to note that the term " officer " used in Section 2(30) includes firms and even corporate bodies which may be either managing agents, secretaries or treasurers. It is obviously not possible to call upon a corporate body to submit a statement of affairs on the footing that it is an officer. To meet this contingency this sub-clause provides for an order by the court directing the officers employed by a company, which is itself an officer of the company, submitting a statement of affairs. The wording of Section 235 of the English Act is in identical terms and this seems to be the interpretation placed on the section there also, although the definition of officer as given in Section 455 of the English Act is somewhat different. Thus, there is no contradiction between the first and fourth sub-

classes. Consequently, ex-directors of a company, who resigned even more than one year before the winding-up order, can be directed to submit a statement of affairs.

10. In fact, the impossibility of getting a statement of affairs without giving a direction to a past director has been highlighted in the present case on account of the fact that all the directors claim to have resigned at least by 1969. The facts set out in the winding-up petition also show that the Company became more or less defunct in 1966, and may not have functioned at all after 1967. As the winding-up order had been passed in 1974, the choice with the court is either to say that no statement of affairs need be filed or to give a direction to the previous directors who were there in 1969, or earlier, for submitting a statement of affairs. Therefore, the choice with the court in the present case is an unavoidable one. I would normally not direct a person who had not been a director of the company for more than 5 or 6 years before the winding-up order to file a statement of affairs. In the circumstances of this case, where all the directors have claimed that they have resigned 5 or 6 years before winding-up orders, such a direction seems to be unavoidable.

11. It has been stressed by the learned counsel that I should go into the question as to who has got the books of account and should not pass a blanket order against all the respondents ; it is also stressed that some of the directors had genuinely resigned, and some are only raising this defense to avoid liability. It is urged that I should investigate this matter before passing an order u/s 454. In this connection, I find that the scope of the section is a limited one. The only direction sought by the official liquidator is an order against the directors directing them to file a statement of affairs. The section uses the words : "the official liquidator, subject to the direction of the court, may require to submit", which means that it is the official liquidator who is wanting the statement of affairs and he has to seek a direction from the court as to whether these are proper persons who should be asked to submit a statement of affairs. Having made this application, all I have to see is whether the respondents are the persons who are likely to give a statement of affairs concerning the company. As I cannot think of any other persons who can submit the statement, I would prefer to give a direction to all, rather than decide at this stage whether these persons are capable of giving the direction or not. Furthermore, a long drawn-out enquiry as to who has got the books and who is responsible for the defaults of the company is most uncalled for, and will naturally delay the proceedings beyond all reasonable bounds. Already, the winding-up order is more than 2 years old. No statement of affairs has been submitted ; no books of account have been found, no assets are in the hands of the liquidator. If the enquiry is to be held now, it seems that the liquidation proceedings will be stultified and rendered otiose at this initial stage. I would, Therefore, prefer to pass an order directing the respondents to file the statement of affairs. I make it clear that it is not necessary that all of them must file a statement of affairs but any one of them may file it, which will be sufficient compliance with the section. However, if none

of them file a statement of affairs, then all will risk a prosecution, subject, of course, to any defense that may be open to them.