(1987) 09 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : Company Petition No''s. 41 of 1983 and 56 of 1987

Smart Advertising Co. (P.) Ltd. (In Liquidation) APPELLANT

Vs

Ramesh K. Nanchahal and Another RESPONDENT

Date of Decision : 17-09-1987

Acts Referred:
Companies Act, 1956 — Section 543

Citation : (1989) 65 CompCas 92

Hon'ble Judges : R.N. Mittal, J

Bench : Single Bench

Advocate : D.P. Verma, for the Appellant;

Judgement

R.N. Mittal, J.—The petitioner-company was ordered to be wound up by this court, vide order dated August 31, 1984, in Company Petition No. 41 of 1983 and the official liquidator was appointed as its liquidator. Respondents Nos. 1 and 2 were its managing director and director, respectively, during the time it functioned. The respondents, it is alleged, did not take any active part in the functioning of the company and some of their acts were considered fraudulent and against the interest of the company and its creditors. They are, therefore, guilty of misfeasance and breach of trust in relation to the company.

2. It was further pleaded that on going through the statement of affairs, it was found that all the debts due from various parties to the company had become time-barred before it came into liquidation and the respondents did not take any action for realisation of those debts. The debts aggregate to Rs. 4,056.77 as detailed below :

Serial No.

Name and address

Amount

Rs. P.

1.

The Indian Farming Ministry of Agriculture,

Govt. of India

44.10

2.

The Indian Express, Delhi

19.80

3.

The Indian Express, Mount Road, Madras

29.40

4.

The Times of India, Ahmedabad

6.00

5.

Sh. Ajit Singh, Sherpur Engg., Garh Road, Meerut

16.20

6.

Pt. Hem Raj Sharma Raj Jyotishi, V. & P. O., Kartarpur

600.00

7.

M/s Bagga Art Studio, Gill Road, Rani Market, Ludhiana-3

395.07

8.

Ramesh K. Nanchahal, Impression International,

G. T. Road. Miller Ganj, Ludhiana-3

718.48

9.

The Director of Commercials, All India Radio, Backbay

Reclamation, Bombay-1

1,443.75

10.

M/s. Dynamic Sales Corpn., Rohit House, Tolstoy Marg,

New Delhi

100.00

11.

Gurunanak Fertilizers, V. & P. O. Gill, Ludhiana

139.20

12.

M/s. Peshawar Perfumery Products, Janta Nagar, Gill Road,

Ludhiana

210.00

13.

M/s. Sellaids, G. T. Road, Miller Ganj, Ludhiana-3

274.41

14.

The Harathweda, Aurangabad

60.36

Total

4,056.77

3. The above debts are the only assets-of the company and the creditors can be paid on realisation thereof. The respondents are personally liable to pay the aforesaid amount. Consequently, it is prayed that a decree for recovery of Rs. 4,056.77 with interest at the rate of 12% per annum from the date of the winding-up order, i.e., August 31, 1984, till the date of realisation of the amount, be passed in favour of the petitioner company and against the respondents jointly and severally.

Notice of the petition was issued to the respondents. The respondents did not appear to contest the case. Consequently, they were proceeded against ex parte.

4. The petitioner, in order to prove the case, produced Shri R. S. Negi, official liquidator. He deposed about the aforesaid facts. He further deposed that respondent No. 1 filed the statement of affairs with the list of debtors and creditors on November 17, 1984. After going through the statement, it was found that a sum of Rs. 4,056.77 was realisable from the debtors by the company (in liquidation). The amount had become time-barred before the

winding-up order passed by the court.

From the aforesaid statement, it is clear that the respondents did not institute any proceedings against the debtors for recovery of the amounts due to the company and allowed them to become time-barred. Section 543 of the Companies Act, inter alia, provides that if it appears that any past or present director of the company has been guilty of misfeasance or breach of trust in relation to the company, the court may, on the application of the official liquidator, or the liquidator, examine-into the conduct of the director and compel him to contribute such sum to the assets of the company by way of compensation in respect of misfeasance or breach of trust as the court thinks just. The words "misfeasance and breach of trust" have been denned by the Supreme Court in P.K. Nedungadi Vs. The Malayalee Bank Ltd. (In Liquidation) and Others, , wherein it was observed that misfeasance and breach of trust include breach of duty to the company resulting directly in misapplication or loss of the company''s assets. Allegations or proof of fraud are not essential. It is immaterial that the offender is also criminally liable. Breach of such duty makes him liable to repay or restore the company''s loss.

From the aforesaid definition, it is clear that if the company suffers any loss on account of breach of duty on the part of a director, he is liable to reimburse the company to the extent of such loss. In the present case, the breach of duty on the part of the respondents is apparent from the facts of the case. Therefore, they are liable to reimburse the company to the tune of Rs. 4,056.77. The petitioner has further claimed interest on the said amount from the date of filing of the petition till the date of realisation of the amount at the rate of 12% per annum. In my view, this claim of the petitioner is justified.

For the aforesaid reasons, I pass a decree for recovery of Rs. 4,056.77 with interest at the rate of 12% per annum from the date of filing of the petition, i.e., April 10, 1987, till the amount is realised jointly and severally against the respondents.

5. The respondents shall also pay costs of this petition, which I assess at rupees three hundred and fifty.

