
(1995) 03 GUJ CK 0001
In the Gujarat High Court

Case No : Criminal Case No. 2 of 1990, in Company Petition No. 28 of 1987

V.P. Singhal, Official Liquidator

APPELLANT

Vs

Chatrabhujdas Chimanlal and Another

RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Companies Act, 1956 — Section 454

Citation : (1996) 86 CompCas 422

Hon'ble Judges : J.N. Bhatt, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; D.N. Trivedi, for the Respondent

Judgement

J.N. Bhatt, J.—The complainant is the official liquidator who had filed Company Petition No. 28 of 1987, in which Bharat Suryodaya Mills Company Ltd. ("the company" for short) was ordered to be wound up by an order of this court passed on March 14, 1989. The liquidator was appointed as provisional liquidator. Subsequently, by an order of this court passed on May 5, 1989, the said provisional liquidator was appointed as official liquidator of the company.

2. By virtue of the provisions of section 441(2) of the Companies Act, 1956 ("the Act" for short), the winding up of the company is deemed to have commenced at the time of presentation of the petition for winding up which, as such, was presented on February 12, 1987.

3. After appointment of the official liquidator, the complainant had taken inspection of the records maintained by the Registrar of Companies and, during the said inspection, it was noticed that accused Nos. 1 and 2 had been described as directors of the company (in liquidation). Subsequently, the accused appeared before the official liquidator and the complainant had recorded their statements under rule 130 of the Companies (Court) Rules, 1959, in which the accused have stated that they were the directors as on the date of liquidation of the company.

4. Thus, it is stated in the complaint that, at the material time, accused Nos. 1

and 2 were the directors of the company and, as such, they were under statutory obligation to furnish to the complainant liquidator, a statement of affairs as contemplated by the provisions of section 454 of the Act. The complainant, by his registered notice dated March 29, 1989, addressed to both the accused instructed them to prepare and submit a statement of affairs as required under the provisions of the Act. The accused persons did not comply with the request made in the said registered notice. Thus, they did not file the statement of affairs. With the result, the complainant sent first a reminder on December 6, 1989, for the purpose of filing the statement of affairs and also requested them to seek extension of time from this court as the official liquidator had no power to extend the time for filing the statement of affairs. Copies of the said notices and the reminder sent by the official liquidator are already placed on record which are not in controversy. Both the accused persons had received the notice and the reminder sent by the complainant. The accused persons in their written statement before the official liquidator under rule 130 of the Companies (Court) Rules, 1959, confirmed having received the above notice and promised to prepare and submit the said statement of affairs.

5. Thus, it is the case of the complainant that despite giving sufficient notice and also the reminders, the accused persons have failed to comply with the provisions of section 454 of the Act. Therefore, a complaint was filed in this court, on April 20, 1990, against both the accused who were then the directors of the company, by invoking the aid of provisions of section 454(5) of the Act. This court issued notices against both the accused persons. Accused No. 2 who is the son of original accused No. 1 has filed two affidavits. Original accused No. 1, the father of accused No. 2, had unfortunately, expired during the pendency of this complaint, on March 15, 1991. Obviously, therefore, his name came to be deleted.

6. From a conjoint reading of both the affidavits filed by accused No. 2 dated February 22, 1995, and March 14, 1995, the following aspects have emerged unquestionably :

(1) That the statement of affairs required to be filed u/s 454 could not be filed by the accused persons for a period of one year and four months after, the order of winding up came to be recorded.

(2) That the order of winding up of the company was passed in Company Petition No. 28 of 1987, on May 5, 1989. The statement of affairs was required to be filed on or before May 26, 1989 (within a period of 21 days from the date of the winding up order).

(3) That there is delay of one year and four months in filing the statement of affairs.

7. The defence of accused No. 2 in the two affidavits can be highlighted as follows. There is also an unqualified apology for delay in filing the statement of affairs.

(1) Death of the father.

(2) Non-co-operative attitude of the official liquidator despite repeated requests for opening the office which was locked and the possession of which was with the official liquidator.

(3) Want of supply of electricity.

(4) Apprehension of serpent bite while working in the office of the company.

One of the consequences of the winding up order is the requirement of filing of the statement of affairs to be furnished to the official liquidator. Section 454 prescribes provisions, whereby, the statement of affairs is required to be filed before the official liquidator. It also prescribes punishment for non-compliance with the statutory requirement. Where the court has passed an order of winding up or has appointed the official liquidator, the statement of affairs of the company, in the prescribed form verified by an affidavit and containing particulars mentioned in section 454(1)(a) to (e) must be filed within a period of 21 days from the relevant date or within such extended time not exceeding three months from that date as the official liquidator or the court may, for special reasons, appoint.

8. If any person without reasonable excuse commits default in complying with any one of the requirements of section 454, he can be punished 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. There is a purpose and policy behind incorporating such provision in section 454 of the Act.

9. After having heard the official liquidator, accused No. 2 and his learned counsel and more particularly, on the quantum of sentence and also considering the grounds due to which statement of affairs is delayed, in the opinion of this court, the ends of justice will be satisfied if accused No. 2 (as accused No. 1 has already expired during the pendency of this prosecution) is sentenced to pay a lump sum fine of Rs. 2,500 for making default in filing the statement of affairs and failing to comply with the statutory provisions of section 454 of the Act.

10. Having regard to the facts and circumstances and the plea of guilt of accused No. 2, this court has no hesitation in finding that the prosecution has, successfully, proved that accused No. 2 is guilty of the offence punishable u/s 454(5) of the Act. Therefore, he is convicted u/s 454(5) of the Act and is sentenced to pay a fine of Rs. 2,500 and, in default, to undergo simple imprisonment for seven days.

11. The learned advocate for accused No. 2 states that accused No. 2 may be given fifteen days" time to pay up the amount of fine of Rs. 2,500. After hearing both the sides, this court finds that this request is quite reasonable and, therefore, fifteen days" time is granted to pay up the fine.