(1962) 09 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Civil Original No. 64 of 1962

Waryam Singh APPELLANT

Vs

The Bhatinda Transport Co. (Private) Ltd., Bhatinda RESPONDENT

Date of Decision : 14-09-1962

Acts Referred:
Companies Act, 1956 — Section 433

Citation : (1962) 09 P&H CK 0021

Hon'ble Judges : Tek Chand, J

Bench : Single Bench

Advocate : H.S. Gujral, for the Appellant; B.R. Tuli, for the Respondent

Judgement

Tek Chand, J.—The only question which I am catted upon to dispose of at this stage is whether it is a fit case for appointment of a provisional liquidator to take over the records, assets and properties of the company till the petition for winding up is disposed of. The petitioner who has made an application u/s 433 read with section 450 of the Companies Act, 1956, contends that the Bhatinda Transport Company (Private) Ltd., Bhatinda, was incorporated in 1950 with its registered office at Bhatinda, with the nominal capital of Rs. 2,00.000/- divided into 2000 shares of Rs. 100/- each. The prescribed capital of the company was Rs. 1,80,600/- consisting of 1806 ordinary shares of Rs. 100/ each. The main object of the company is to carry passengers and goods in the buses and trucks. The petitioner became a shareholder by obtaining shares of the value of Rs. 16,500/-. In lieu of the share money he gave to the company his two buses along with two route permits. The allegations of the petitioner in his winding up petition are that the company had suspended its business for over a year and is therefore liable to be wound up u/s 433 (c) of the Companies Act. The main allegations are that the funds of the company have been misused and embezzled. There are several other similar allegations made in support of the plea for winding up of the company which it is not necessary to examine in detail here. This petition is being opposed by the company.

2. Before filing his petition in this case on 23rd May, 1962, the petitioner has filed another application under sections 397 and 393. In that petition a number of witnesses were examined and after that petition was disposed of, the petitioner has filed the present application u/s 433 of the Companies Act. For the purposes of deciding this petition, it will suffice to examine the statement of Phulel Singh, Managing Director of the company, which was recorded on 8th of September 1961 in C.O. 40 of 1959. During the course of his cross-examination he stated that a resolution, Exhibit R.6, dated 27th October 1960 whereby 11 route permits along with the buses of the company were transferred to Punjab Transport Co-operative Society Ltd., Amritsar, had been acted upon. Of these vehicles the respondent company, he stated, has no longer any route permit and it possesses no vehicle which may be plied these days. It is now the owner of three vehicles. He also stated that the company has no balance-sheet prepared for the year 1960. Eleven route permits of the vehicles were sold for Rs. 1,26,000/-, out of which the company had received a sum of Rs. 91,000/-. The balance it was stated was still due from the transferee company. Phulel Singh further stated that the company had no cash in any other branch, bank or its office and the money may be with the Directors. He could not state how much money of the company was with each Director. He could not give any reason as to why the cash belonging to the company was not being kept in the company or with the bank but with the Directors instead. He then said:-

It is true that the company has no intention to do any business and has ceased doing any business after the sale of its vehicles. I also admit that the three vehicles standing in the premises of the company are awaiting disposal.

By my order of 1st June 1962 in this case I had directed that the funds of the company may not be disbursed except to the extent of Rs. 500/- per month. On 10th August, 1962, Mr. Tuli counsel for the company had stated that the cash assets of the company would be deposited in a scheduled bank by 24th of August 1962 which were stated to be with the directors or other persons. On 24th of August 1962 an affidavit which was filed by Jagdev Singh director of the company stating that a sum of Rs. 4,854.90 nP. was the cash in hand which could not be deposited in the bank on 22nd August 1962 and he had undertaken to deposit the amount by next date and his client was allowed to do so. Mr. Tuli had stated at the bar that a sum of Rs. 4,854.90 nP. has now been deposited with the State Bank of Patiala at Bhatinda. The previous credit balance in favour of the company was Rs. 163.55 nP. Now the total cash in the bank is Rs. 5,015.45 nP. I am fully conscius of the off-repeated dictum of Lord Romilly in re London Hamburg, and Continental Exchange Bank (1866) 2 L.R. (Equity) 231 (236), when he observed-

It is perhaps convenient that I should state what my practice is with reference to the appointment of provisional liquidators. Where ''there is no opposition to the winding-up, I appoint a provisional liquidator as a matter of course, on the presentation of the petition. But where there is an opposition to it, I never do, because I might paralyse all the affairs of the company, and afterwards refuse to make the winding up order at all. But when the directors themselves apply or do not oppose the winding-up, then I appoint the provisional liquidator.

3. This is no doubt the sage advice for the Courts to follow, It Is, however, alleged in this case that the circumstances contemplated by Lord Romilly, when considering the desirability of making appointments of provisional liquidators are totally different. It is contended that the business of the company which consisted of plying transport vehicles was at a stand-still as the company had disposed of 11 of, its vehicles along with permits for Rs. 1,26,000/- and it had realized Rs. 91,000/- Phulel Singh also stated that no part of this amount had been deposited in the bank or kept in the office of the company. This money has been retained by the directors. In consequence of the orders made by me above a sum of Rs. 4,854 90 nP. has been deposited in the company''s account with the State Bank of Patiala at Bhatinda. Thus out of Rs. 91,000/- received as consideration for the sale of transport vehicles there is left with the company a total amount of Rs. 5,015.45 nP.

4. Mr. Tuli, learned counsel for the company, has drawn my attention to the written statement dated 8th of August, l962 wherein it is stated that the company still possesses two buses and the Board of Directors is contemplating acquisition of some remunerative route permits to continue the business of the company and a resolution to this effect was passed in their meeting held on 4th April 1962. It was stated that the company were trying to restart the business after their efforts for acquiring remunerative route permits become successful. It was said that whatever complaints mentioned in the previous application under sections 397 and 598 of the Companies Act and whatever is reiterated in the present petition was against the previous management. The company is now in the hands of different persons against whom no embezzlement or mismanagement or illegality has been alleged. My affection was also drawn to the affidavit of Jagdev Singn one of the directors of the company dated 14th of August 1962 wherein he had stated that a sum of Rs. 60,000/- had been advanced as a loan to Janta Transport Company, Private Ltd., out of which Rs. 21,000/- has been repaid leaving a balance of Rs. 39,000/-. It was also stated that another amount of Rs. 4,500/- was due to the respondent from Friend''s Transport Service, registered Bhatinda. Another sum of Rs. 19,000/- was lying in deposit with the Punjab Transport Co-operative, Society, Ltd. for meeting the scheme of the erstwhile workmen of the respondent company. It Will thus appear from the affidavit of Jagdev Singh himself that-the money belonging to the company is in the hands of other persons. It is then alleged that those persons are selling their shares and the amounts are capable, the basic fact is that the company today is not in possession of more than Rs. 5,015.45 nP. My attention has been drawn to in re Saw Mills awl Industries Ltd. AIR 1962 Ker 148, wherein it was stated that the company has not been earning a profit for a long time was not a ground for ordering winding up the company; u/s 433(f) of the Companies Act. In that case under the new management the company was making

appreciable profits during the short period and therefore in those circumstances it was held that it would not be just and equitable to order for winding up of the company. On the face of it that case is distinguishable. The question which arises in this case is different. From what I have said above, I feel satisfied that a case has been made out for the appointment of provisional liquidator as contemplated by section 450 of the Companies Act. I appoint the Official Liquidator attached to this Court as provisional liquidator and direct him to take into custody without delay the records, assets and properties of the company and to report to this Court of his having done so within a fortnight.

In the petition of winding up, the following issue is framed:-

Whether the company is liable to be wound up u/s 433(c) and (f) of the Companies Act? For evidence of the parties case to come up on 26th of October 1962. The list of documents on which respective parties place their reliance may be filed in this Court within a fortnight. The list of witnesses may also be furnished within a fortnight along with process fee and their addresses. The parties may admit or deny their documents within a week following.