

In Re: S. Pandit

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Court : Mumbai

Decided On : Aug-17-1989

Reported in : [1990]68CompCas129(Bom)

Judge : M.L. Pendse, J.

Acts : [Companies Act, 1956](#) - Sections 5, 210, 220 and 633(2)

Appeal No. : Company Petition No. 195 of 1989

Appellant : In Re: S. Pandit

Judgement :

Pendse, J.

1. This petition is filed by a director of Nihon Electronics Limited under section 633(2) of the [Companies Act, 1956](#), for being relieved from original proceedings and the liability that might be brought against the petitioner in respect of default in complying with the provisions of sections 210 and 220 of the Companies Act. The facts giving rise to the filing of the petition are as follows.

2. The company was incorporated on October 15, 1982, as a private limited company and converted into a public limited company on May 5, 1986. Apart from the petitioner, the other directors of the company are : (1) Manohar Chhabria, (2) K. N. Malhotra, (3) A. V. Karnik and (4) S. S. Vaidya, Chhabria is mostly residing

at Dubai, while the petitioner, Malhotra, and Karnik are residing at New Delhi and Shri Vaidya is a practising solicitor in Bombay. The company manufactures televisions and commercial production was started in September, 1986. The company belongs to the Orson group of companies and the entire production of the company is for Orson Electronics Limited, which is also a public limited company. The directors of Orson Electronics Limited are the same as that of Nihon Electronics Limited.

3. Initially, the company's financial year commenced from July 1 and ended on June 30 of the next year. Subsequently, in view of the Direct Tax Laws (Amendment) Act, 1987, all the assesseees were required to have previous year to be uniform with the assessment year. Accordingly, the company requested the Registrar of Companies to extend the financial year from July 1, 1987, to June 30, 1988, till December 31, 1988, and the Registrar accordingly granted permission. The company was required to hold annual general meeting for the year ending December 31, 1988, before the end of the year. The company requested the Registrar to grant extension for holding the annual general meeting and the extension was granted till March 31, 1989. The company was, therefore, duty bound to hold the annual general meeting on or before March 31, 1989, and accordingly the meeting was scheduled on March 31, 1989.

4. Section 210 of the Companies Act demands that at every annual general meeting held in pursuance of section 166, the board of directors shall lay before the company (a) a balance-sheet as at the end of the period specified in sub-section (3), and (b) a profit and loss account for that period. Sub-section (5) also prescribes that if any person being a director of the company fails to take all reasonable steps to comply with provisions of the section, then he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both. Section 220 of the Companies Act provides that after the balance-sheet and the profit and loss account have been laid before the company at the annual general meeting, three copies of balance-sheet and profit and loss account should be filed with the Registrar of Companies within 30 days from the date on which the same were laid before the annual general meeting. The section further prescribes that failure to do

so would render the company and every officer of the company liable to punishment.

5. On March 14, 1989, i.e., prior to the date of the scheduled meeting, the present petition was filed under section 633 of the Companies that the petitioner and other directors have reason to apprehend that proceedings will be taken against them in respect of default in not complying with the provisions of section 210 and section 220 of the Companies Act and, therefore, the High Court should relieve the petitioner and other directors from the criminal or civil liabilities arising out of the default. The apprehension was based on the assumption that at the annual general meeting to be held on March 31, 1989, the balance-sheet and profit and loss account would not be placed before the meeting, nor would the copies of the same be filed with the Registrar within 30 days from the meeting. The petitioner claims that it is not possible to prepare the balance-sheet and profit and loss account and place it before the annual general meeting for two reasons.

6. The first reason is that while preparing the accounts of Orson Electronics Limited, Orson's statutory auditors, Ratan S. Mama and Co., noticed major irregularities. At the relevant time, the board of directors of Orson included one Sham Bhatia and Malcolm Anthony Monteiro. It is claimed that Bhatia was the managing director of Orson and Monteiro was the group general manager in respect of the Orson group of companies. It is further claimed that Bhatia and Monteiro as directors of Orson with effect from December 24, 1987, and April 27, 1988, respectively. It is claimed that the board of directors of Orson decided to conduct investigation about maintenance of accounts by independent chartered accountants and prepare balance-sheet only after the investigation report was received. Criminal complaint was filed against Bhatia with the police after interim investigation report disclosed fraud to the tune of Rs. 5.94 crores. It is then claimed that M/s. Lovelock and Lewes, the firm of chartered accountants, which was appointed to carry out investigation into the affairs of Orson, have not yet submitted final report. It is then claimed that it was also decided to ascertain the accuracy of accounts of Nihon Electronics Limited and the directors felt that unless proper accounts have been prepared and the misdeeds of Bhatia are corrected, final balance-sheet and profit and loss account cannot be prepared before the

annual general meeting.

7. The second reason for not preparing the balance-sheet and profit and loss account is that the Central Excise authorities raided the offices of Orson and Nihon Electronics Limited on March 16, and 17, 1988, and that the Central Excise authorities took away most of the account books, records, documents and papers of the company. Through the Central Excise authorities supplied xerox copies of the documents, it is claimed that from such copies it is not possible to prepare the balance-sheet and profit and loss account.

8. Shri Tulzapurkar, learned counsel appearing on behalf of the petitioner, relying upon the averments made in the petition, submitted that this is a fit case in which the High Court should exercise powers under sub-section (2) of section 633 and relieve the petitioner and other directors of any criminal or civil liability arising out of the default in not complying with the requirements of section 210 and section 220 of the section 220 of the Companies Act. The learned counsel urged that the default was to occur on March 31, 1989, for reasons which were beyond the control of the directors. It was also urged that the directors have acted honestly and reasonably and, therefore, the default should be excused. It is not possible to accede to the submission of the learned counsel. It is undoubtedly true that the High Court has wide powers under sub-section (2) of section 633 of the Companies Act to relieve an officer of the company from civil or criminal liability arising out of the default, negligence or breach of duty, but in my judgment this power should be very sparingly used and the officers of the company can-not as a matter of right claim that civil or criminal proceedings should not be instituted against them for the default. On the facts and circumstances of the present case, I am not inclined to exercise my powers and relieve the petitioner and other directors of proceedings which they apprehend would be adopted by the Registrar of Companies. The contention that the balance-sheet and profit and profit and loss account could not be completed because Bhatia and Monteiro had mismanaged the accounts cannot be accepted merely because a complaint has been lodged by the company with the police against those two former directors, Secondly, the balance-sheet was to be prepared as on December 31, 1988, and Shri Tulzapurkar states that even today the balance the balance-sheet and profit and

loss account is not ready. The police complaint lodge against Bhatia and Monteiro is in respect of accounts of Orson and that complaint should not be confused with while examining the default in not preparing the balance-sheet of Nihon Electronics Limited. The second reason given by the Petitioner for the default cannot be accepted as reasonable. Though the Central Excise authorities had raided the premises and have taken away some of the documents, the petitioner accepts that xerox copies of those documents were supplied and, therefore, the fact of the raid is not enough to avoid the liability of preparing the balance-sheet and lying it at the annual general meeting. I wish to make it clear that I am not recording a finding that the directors have not acted honestly and reasonably and that issue would be determined by the court in which the proceedings may be instituted by the Registrar of Companies and before which court it is open for the directors to establish that they had acted honestly and reasonably.

9. Shri Tulzapurkar also submitted that even assuming that there is default in not complying with the requirements of sections 210 and 220, still it is not open to take any proceedings against the petitioner as the petitioner would not fall with the meaning of the expression 'officer who is in default' as prescribed in the unamended section 5 of the Companies Act. The unamended section provides that an officer who is in default means any officer who is knowingly guilty of default, non-compliance, failure, refusal or contravention mentioned in the provisions or who knowingly and wilfully authorises or permits such default or non-compliance. In my judgment, it is not possible to determine whether the petitioner knew of the default or wilfully connived with the default in the present proceedings. It is always open to the petitioner to establish that fact in case prosecution is launched by the Registrar of Companies.

10. Shri Tulzapurkar invited my attention to an unreported decision of a single judge delivered on March 21, 1985, in Company Petition No. 460 of 1984 (since reported as H. Nanjundiah v. V. Govindan, Registrar of Companies), but the said judgment has no application to the facts of the present case.

11. Accordingly, the petition fails and is dismissed, but without any order as to costs.

