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Court : Delhi

Decided On : Oct-01-1981

Reported in : ILR1982Delhi671

Judge : D.K. Kapur and; J.D. Jain, JJ.

Acts : Companies Act - Sections 633(2); ;Companies (Court) Rules, 1959 - Rules 7and 9; Employees Provident Fund Act; Central Excise Act; State Insurance Act; Sales Tax Act; Income-Tax Act

Appeal No. : Company Petition No. 12 of 1981

Appellant : Satinder Sandhu and ors.

Respondent : Bee Jay Engineers Pvt. Ltd.

Advocate for Pet/Ap. : A.N. Parekh, ; Ameeta Misra,; M.C. Sekharan and;

Judgement :

J.D. Jain, J.

(1) In Company Petition No. 12/81 the petitioners Shri Satinder Sandhu, P. N. Handa and N. S. Grewal constitute the Board of Directors of M/s. Bee Jay Engineers Private Limited, at present. They have moved an application under Section 633(2) of the Companies Act (for short the Act) read with Rules 7&9 of the Companies (Court) Rules 1959 for being relieved/excused from the proceedings

which are likely to be launched against them in respect of the alleged contravention of the Employees Provident Fund Act, Central Excise Act, State Insurance Act, Sales Tax Act and the Income-Tax Act with reference to tax deducted at source. It is, inter alia, contended by them that the original Board of Directors consisted of S/Shri J. S. Grewal, B. S. Sandhu, Mrs. B. K. Kaur and Mrs. A. K. Sandhu. However, both the ladies resigned from the Board of Directors sometime in 1974 and the business of the Company was, therefore, being looked after by the remaining two Directors. They too expired, sometime in 1980. The present Directors, it is contended are fresh entrants and two of them, namely, S/Shri. P. N. Handa and N. S. Grewal have been appointed as Directors by virtue of their technical skill. However, the Registrar of Companies launched prosecution against the Company and the present petitioners for committing default/breach of certain provisions of the Act. Apprehending that fresh prosecutions may be launched against them under the aforesaid Acts, they have prayed for relief against liability for breaches and defaults committed by the Company under the aforesaid Acts.

(2) Similar prayer has been made by the petitioners, S/Shri Bachan Singh, P. N. Handa, C. L. Metha, A. L. Talwar, S. S. Sandhu, V. S. Grewal, H. S. Sidhu and D. J. S. Sandhu in Company Petition No. 13/81, who constitute the Board of Directors of the Company M/s. Atlantic Engineering Services Private Ltd. As per averments in the said petition, out of the original Directors S/Shri J. S. Grewal and B. S. Sandhu died sometime in 1980 while Shri Bachan Singh resigned from Directorship in October 1980. Thereupon, present Board of Directors was constituted by co-opting four persons of professional competence and repute. In this case too, the Company had to face prosecution launched by the Registrar of Companies under the Companies Act they are apprehending further prosecutions for Contravention of the provisions of the above-mentioned Acts.

(3) Reliance was placed by the learned counsel for the petitioners in both the cases on a decision of H. L. Anand, J. in *Om Parkash Khaitan v. Shree Keshariya Investment Ltd.*, (1978) 48 Comp Cas 85, in which under similar circumstances the learned Judge had granted relief against prosecution of the applicant Shri Om Parkash Khaitan, a solicitor, who was appointed as a Director, by virtue of his

being its Legal Adviser, for defaults and breaches committed by the Company in relation to its obligations under the Employees' Provident Fund Act, Sales Tax Act, Employees' State Insurance Act, Indian Textiles (Control) Order, Essential Commodities Act and the Act. The learned Judge had, inter alia, observed that it was unreasonable to fasten liability on the Directors for defaults and breaches of a company where such directors are either the nominee-directors or are appointed by virtue of their special skill or expertise.

(4) B. N. Kirpal, J., before whom both these Company Petitions were listed, has struck a discordant note in his order of reference saying that he is unable to find any provision under the Companies Act which can possibly justify any such distinction amongst the directors. He has expressed the opinion that 'whether a person is a solicitor, an advocate or a businessman, as long as he is a director he is' obliged to comply with the provisions of the Companies Act and the cases of all tire directors have to be dealt with alike, even in cases where an application under Section 633 is filed'. He has also doubted the correctness of the decision of Anand, J. and has posed a question as to whether the Court while exercising powers under Section 633 of the Act has any jurisdiction to grant relief against prosecution under the other Acts. In his view, relief under Section 633 can be granted only from the offences committed under the Companies Act.

(5) This refer lice thus raises two questions of vital importance, namely, (1) whether the Court has jurisdiction to grant relief to an officer of a company as envisaged in Section 633 of the Act against liability for negligence, default, breach of duty etc. of the provisions of Acts other than the Act, (2) whether while exercising jurisdiction under Section 633 of the Act the Court can justifiably draw any distinction amongst the directors who are on the Board purely by virtue of their technical skill or. expertise or because they represent certain special interests and those who are in effective control of the management and affairs of the Company.

(6) Question No. 1 : Section 633 is reproduced hereunder for ready reference :

'(1)If any proceeding for negligence default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the Court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty,

misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him, either wholly or partly, from his liability on such terms as it may think fit : Provided that in a criminal proceeding under this sub-section, the Court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust. (2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had it had been a Court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1). (3) No Court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.'

(7) Evidently this Section is designed to provide protection to officers of a company against certain kinds of liabilities, its object being to provide against undue hardship and harassment in deserving cases and give relief from liability to persons who though technically guilty of negligence, default, breach of duty, misfeasance or breach of trust are able to convince the conscience of the Court that they have acted honestly and reasonably and having regard to the circumstances of the case they ought fairly to be excused from the charge or charges made against them. However, it is noteworthy that protection is sought to be given to an officer of a company which necessarily implies that the liability arises on account of negligence, default, breach of duty, misfeasance or breach of trust in relation to the affairs of a company which he is required to conduct honestly and reasonably. Surely, the protection offered by this Section will not extend to and cover acts of misfeasance or breach of trust etc. which have no connection whatsoever with his status or duties as an officer of a company. All the same, this Section cannot be construed to mean that default/offence committed by or proceeding against an officer must be under the Act as such. The expression

'any proceeding' occurring in this Section is of wide amplitude and comprehensive enough to include all kinds of proceeding i.e. civil as well as criminal. There is nothing in the language or the context in which this Section is laid to limit, restrict or continue its operation to a liability arising out of negligence, default, breach of duty, misfeasance or breach of trust under the Act alone, in our opinion, protection under this Section will be equally available to an officer of a company against liability to be proceeded against for negligence, default, breach of duty etc. even under other Acts so long as it is with-regard to the affairs and functioning of the Company. The power under this Section is manifestly a power to relieve from liability which in the context means relief from the consequences, namely, fines and penalties that flow from the negligence, default, breach of duty, misfeasance or breach of trust. Of course, the grant of relief is discretionary having regard to the considerations mentioned in the Section itself.

(8) It is the cardinal rule of construction of statutes that the language used by the legislature must be construed 'in its natural and ordinary sense; if the words of the statute are themselves precise and unambiguous then no more can be necessary than to expound those words in their ordinary and natural sense. In other words, where the terms of a Section are plain, the Court should expound it as it stands unless it finds either in the Section itself or in any other part of the statute anything that will modify or qualify or alter the language. If, however, the plain interpretation leads to some absurdity or some repugnance or some inconsistency with the rest of the statute, the grammatical and ordinary sense of the words may be modified so as to avoid the absurdity and inconsistency but no further. In the instant case the language of the Section is clear and explicit and we must give effect to it whatever may be the consequences. We see no ground for narrowing or limiting the application of the wide words of the Section. 'any proceeding' are emphatic words and the same ought not to be construed in narrow sense. Hence, we are of the considered view that this Section will apply to all legal proceedings. civil, criminal or otherwise, so long as the liability of an officer of a company arises, from negligence, default, breach of duty, misfeasance or breach of trust and he can be relieved from such liability on account of his having acted honestly, namely, in good faith and if he has justifiable reason to escape such liability. We may, at the same time, make it abundantly clear: that if the provisions of any particular statute

Under which liability is sought to be fastened on an officer of a company are in any way inconsistent with or have over-riding effect over the provisions of this Section, the Court exercising power under this Section will have to take due notice of the same before granting relief from liability

(9) Curiously enough there is virtually no case law on this aspect of the matter. As pointed out by the learned Single Judge, there is no discussion on the point in *Om Parkash Khaitan (supra)* and *H. L. Anand, J.*, seems to have proceeded on the assumption that such a power vests in the Court in regard to liability arising out of defaults and breaches committed by an officer of a company in relation to his obligations under various statutes like Employees' Provident Funds Act, Sales Tax Act etc. The only other authority alluded to by the learned counsel for the petitioner is *S. P. Chopra & Co. and another*, (1966) 1 Cri LJ 214(2), in which the petitioners were sought to be prosecuted under Section 409, Indian Penal Code on the complaint of one Dayavarat. In that case the petitioner *S. P. Chopra & Co.* was appointed voluntary liquidator of the *Muktsar Electric Supply Co, Ltd*, having its registered office at Lahore. In the return filed by the petitioners with the Registrar of Companies, Punjab, under Section 244 of the Companies Act, 1913, for the year ending 30th September, 1949, in Form No. 58, Rs. 30,000.00 were shown to have been paid to the Custodian, Enemy Property, Bombay, although Rs. 18,718.00 had, in fact, been paid to him by cheque and Rs. 11,282/ were spent on his account towards expenses. Relief was sought against apprehended claims in respect of negligence, breach of duty etc. by the petitioners under Section 281(2) of the Companies Act, 1913. On an examination of various decided cases, *A. N. Grover, J.* (as his Lordship then was) held that :

'...THE High Court can grant relief under sub-section (2) and that the scope of that sub-section is wide enough, to cover criminal prosecution. The word 'claim' in sub-section (2) must be construed as having been used in a special sense so as to include also criminal prosecution.'

(10) Evidently the word 'claim' occurring in sub-section (2) of Section 281 has since been substituted by the words 'any proceeding' by Act 65 of 1960 so as to bring it at par with sub-section (1) and remove the ambiguity, if any, arising out of

the correct connotation of the word 'claim'. For the reasons stated above, we are in complete agreement with the view expressed by Grover, J. and we answer this question in the affirmative.

(11) Question No. 2 : Upon its plain language Section 635 confers discretion on the Court to relieve an officer of a company proceeded against for any negligence..default, breach of duty, misfeasance or breach of trust, provided the Court finds that the officer has acted. honestly and reasonably and also having regard to all the circumstances of the case including those connected with his appointment, he ought fairly to be excused. Thus, for getting relief under this Section it must be proved by the person concerned that (1) he acted honestly, (2) that he acted reasonably, and (3) that having regard to all the circumstances of the case, he ought fairly to be excused, 'acting reasonably' means acting in the way in which a man of affairs dealing with his own affairs with reasonable care and circumspection could reasonably be expected to act in such a case. (See *Re Duomatic Ltd.*, (1969)1 All E. R. 161. The expression 'reasonable' means that an act or decision, concurred is or can be, supported with good reasons, or at any rate be one which a reasonable person might reasonably make. Hence, the discretion vesting in the Court has to be exercised in favor of the officer concerned when the Court is satisfied about the existence of these conditions. Of course, it has to take note of all the attending circumstances of the case for arriving at a judicious and just decision. Looking from this angle the learned Single Judge is right in saying that no distinction can be drawn amongst the directors for fastening liability or granting relief from liability on the consideration that a person is on the Board purely by virtue of his technical skill or because he represents certain special interests and there are other directors who are in effective control of the management and affairs of the company. With respect, we feel that H. L. Anand, J., over stated the point in observing that :

'..IT is necessary to make a distinction between the directors who are on the board, purely by virtue of their technical skill or because they represent certain special interests and those who are in the effective control of the management and affairs of the company, whether or not they have any financial stakes in it, in determining if relief from liability arising out of the breaches and defaults of the

company should be. granted or not.'

(12) The criteria for granting relief having been explicitly laid in the Section itself, no other criterion can be imported into it. Surely, the language of the Section does not warrant an interpretation drawing such a distinction. Indeed, Anand .J. was fully conscious of this fact when he observed that :

'WHILE there is a strong case for urgent legislative action, both in the matter of widening the frontiers of accountability of a company, both to its; board of directors and to the members, as also in relieving the special category of directors from consequences of default and breaches of the company, judicial moderation is necessary in the administration of Section 633 of the Act so as to ensure that such categories of directors are not subjected to the harassment of legal proceedings for breaches and defaults of a company, which may at times be rather protracted.'

(13) While we do find some force in the argument that the circumstance of a person being purely on the Board on account of his special skill or expertise may be a relevant factor in decoding whether he has acted honestly and reasonably in conjunction with other circumstances of the case it is per se no ground for exonerating such a director from liability on account of negligence, breach of duty, misfeasance or breach of trust etc. He has, like any other director, to satisfy the conscience of the Court that he fulfills the criteria to earn relief from liability as laid out in the Section and his being on the Board on account of his expertise or special skill will not in itself be enough to exonerate him from liability; it will be just one of the circumstances to be taken notice of as a factor justifying the reasonableness and honesty of the applicant's actions. Looked at from this angle, the fact of a person being on the Board of Directors because of his special skill or expert knowledge cannot, be said to be a wholly extraneous circumstance having no bearing whatsoever on the point in issue. We are, therefore, inclined to answer this question accordingly.

(>14) Both the questions formulated in the reference having been answered, the reference stands disposed of. Both the Company Petitions are sent back to the learned Company Judge for disposal in accordance with law.

