

IN THE HIGH COURT OF JUDICATURE AT PATNA
Or. Criminal Miscellaneous No.1 of 2014

Arising Out of PS. Case No.- Year-0 Thana- District-

The Official Liquidator High Court Patna Of Kaimur Finance Limited in Liquidation

... .. Petitioner/s

Versus

1. Anil Kumar Singh and Ors. S/O - Sri Lakshman Singh, Ex-Managing Director Of M/S Kaimur Finance Ltd In Liquidation Vill-Ahinoura, P.O. - Harinathpur, P.S. - Mohania, Distt. - Kaimur, State Of Bihar
2. Sheo Shankar Choubey, S/O - Sri Balibhadra Choubey, Ex-Director Of M/S Kaimur Finance Ltd, (In Liquidation), Vill - Bilashpur, P.O. - Sadokhar, P.S. - Chenari, Distt. - Rohtas. State Of Bihar
3. Vijay Bahadur Singh S/O - Late Keshaw Singh, Ex-Director Of M/S Kaimur Finance Ltd. (In Liquidation), Vill. - Ahinoura, P.O. - Harinathpur, P.S. - Mohania, Distt. - Kaimur State Of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.The Official Liquidator High Court Patna Of Kaimur Finance Limited In Liquidation
For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

43 19-01-2023 1. The official liquidator has filed this application for initiating proceedings against the Directors under Section 454 (5) of the Companies Act, 1956 alleging that the absconded accused were the Directors of the Company when the company was ordered to be wound up by this Court vide its order dated 3rd February, 2012. In view of the provisions contained under 454 (3), the Directors were obliged to submit his statement of affairs within a period of 21 days but the same was not submitted in time and in spite of notice given by O.L., the



statement of affairs were not made available.

2. In view thereof, prayer has been made to take action and punish the accused in terms of the provisions (*supra*). The accused nos. 1 & 3 have presented themselves before this Court and through their learned counsel they have submitted their explanation. As per their statement, accused no. 1 was in judicial custody and therefore, was incapacitated to file statement of affairs in the relevant time. As far as accused no. 3 is concerned, it has been pointed out that he was only a Director having no possession of the documents. He was having no actual working knowledge about the company and was a family member and therefore, made as Director.

3. Learned counsel for the petitioner has also pointed out that so far as accused no. 2, Shiv Shankar Choubey is concerned, he was the Director of Finance of the company and having all the documents of the company in his possession he was therefore, required to file the statement of affairs as soon as the company was brought under liquidation and directed to be wound up. On account of his inaction the accused no. 1 and 3 ought not to be penalized.

4. The Section 454 reads as under:

“454. Statement of affairs to be made to Official Liquidator:- (1) Where the Court has made a



winding up order or appointed the Official Liquidator as provisional liquidator, unless the Court in its discretion otherwise orders, there shall be made out and submitted to the Official Liquidator a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely:-

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, if any, held by the company;

(b) its debts and liabilities;

(c) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts; and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;

(e) such further or other information as may be prescribed, or as the Official Liquidator



may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company, or by such¹ of the persons hereinafter in this sub- section mentioned, as the Official Liquidator, subject to the direction of the ¹[Tribunal], may require to submit and verify the statement, that is to say, persons-

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the Official Liquidator, capable of giving the information required;

(d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-



one days from the relevant date, or within such extended time not exceeding three months from that date as the Official Liquidator or the ¹[Tribunal] may, for special reasons, appoint.

(4) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall be paid by the Official liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Liquidator may consider reasonable, subject to an appeal to the¹[Tribunal].

(5) ¹ If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to ³[one thousand rupees] for every day during which the default continues, or with both.

(5A) The ¹[Tribunal] by which the winding up order is made or the provisional liquidator is appointed, may take cognizance of an offence under subsection (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in



the Code of Criminal Procedure, 1898 , (5 of 1898 .)

2 for the trial of summons cases by magistrates.]

(6) Any person stating, himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code; (45 of 1860 .) and shall, on the application of the Official Liquidator, be punishable accordingly.

8) In this section, the expression " the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding up order."

5. In terms of Section 454 (3), it is therefore, essential that within the time limit prescribed therein, the statement of affairs must be filed. The provision is mandatory in character however, if there is a reasonable ground put forth by the Directors for the delay in the filing of the statement of affairs, the same can be examined and the delay can be condoned.



6. In the present case the learned counsel for the accused has pointed out the incapacity and inability of the accused no. 1, he being in judicial custody could not have filed the statement of affairs. It is also noticed that after having being released, he has already filed the statement of affairs with the O.L. which is not disputed. As regards accused no. 2, this Court notices that accused no. 2 has been absconding and there are already standing warrants issued with respect to him.

7. The delay in filing of statement of affairs for the reasons stated above, is found to be pardonable and accordingly the statement of affairs is directed to be taken on record.. The delay is condoned. The proceedings under 454 (5) of the Act of 1956 are accordingly dropped. Notices and warrants are discharged.

(Sanjeev Prakash Sharma, J)

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