

Legal Proceedings (Sections 632 – 635AA)

Power of Court to grant relief in certain cases (Section 633)

Question 1

Gulmohar Ltd., a company registered under Indian law owns a factory' in Calcutta, wherein it manufactures jute products. By a notification of the State Government, issued during October, 2002, due to a strike and lock-out, it was declared a relief undertaking. After four months, in February, 2003, the lock-out was lifted. However, during the said period the company's directors defaulted in payment of Provident Fund (PF) and other ancillary dues. During the month of December, 2002, the Regional PF Commissioner initiated criminal proceedings against the company and its directors under the Employees PF and Miscellaneous Provisions Act, 1952, for default and delay in payment of PF dues.

Immediately the directors of the company applied to the High Court for relief under Section 633 of the Companies Act, 1956, praying for relief from liable under the PF law. 77th petition is now pending before a single judge. The company desire to know from you, as to the tenability of their claim for relief at the High Court, and as to whether they would be excused and exonerated by the High Court, in respect of the contraventions committed under the PF law.

Briefly discuss the law on the subject and state whether the petition filed by the directors would be admitted or not under the Companies Act.

Answer

The crux of the matter involved in the above case, is whether the words “any proceeding” against an officer of a company, would mean only a proceeding under the Companies Act or any Criminal proceeding under any other law. The provisions of the Companies Act, define “officer” and “officer in default” but there is no definition for the word “proceeding”. In the present case, the proceeding has not resulted from or has not been brought about as a consequence of default, refusal, contravention, non-compliance or failure under the Companies Act, 1956, but has come about as a result of certain acts and omissions committed by the directors of the company Gulmohar Ltd., under the Employees PF and Misc. Provisions Act, 1952. The Court has powers under Section 633 to grant relief only to a director/officer of a company, and not to the company. But the significance of the words “in any proceeding” employed in Section 633(1) require to be understood.

The facts of the case, bear resemblance to those which came up before their Lordships of the Supreme court in *Rabindra Chamarla and Others Vs Registrar of Companies, West Bengal and others*, 1992 (73) Comp. Cas. 257 (SC).

Going by the tenor of section 633 of the Companies Act, 1956 and the Supreme Court ruling the directors of Gulmohar Ltd., cannot avail of relief under Section 633 of the Companies Act, 1956 and their Petition is not likely to succeed. It is liable to be dismissed.

Question 2

It is apprehended by the Directors of a Public Company that they are likely to be prosecuted for an offence under the Companies Act, 1956 which is not compoundable. Explain the provisions of the Companies Act, 1956 under which the Directors can seek relief from the liability for offence. What will be the position in case prosecution has already been launched? (November 2010)

Answer

Relief under Section 633: Section 633 of the Companies Act, 1956 seeks to grant relief to the company directors and offences from liability in respect of offences under the Companies Act.

The relief under Section 633 can be sought on any proceeding for negligence default, breach of duty, misfeasance or breach of trust. The relief may be granted by the Court either wholly or partly. For getting relief under this section it must be proved to the satisfaction of the Court by the person concerned (1) that 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.

In a case where proceeding is only apprehended, the application for relief should be made to the High Court having jurisdiction in the matter [Section 633 (2)]

In a case where the proceedings of a prosecution against an officer have already commenced, the application for relief should be made to the Court before which the proceedings are pending e.g. the Criminal Court.

Hence, the application seeking relief can be made either after proceedings are started against the person concerned or by way of preventive action.