

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17th January, 2012

+ **CO.APP. 12/2011**

MRS. JAMNA DATWANI

..... Appellant

Through: Mr. Sudhir Makkar with Ms. Meenaakshi
Singh, Adv.

versus

OFFICIAL LIQUIDATOR

..... Respondent

Through: Mr. Ashish Makhija, Office Liquidator
with Ms. Neha Rastogi, Adv.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

A.K.SIKRI, ACTING CHIEF JUSTICE

1. This appeal is preferred against the order dated 2nd December, 2010 passed by Learned Company Judge in Crl. O.(CO) No.4/2006 (in CP No.263/1997) filed by the Official Liquidator under Section 454 of the Companies Act, for prosecution of eight Directors of M/s.Metlex Ceramics Ltd. (in liquidation) on the ground that no Statement of Affairs had been filed by any of these Directors inspite of the company being ordered to be wound up as far back as on 21st July, 2004. The appellant herein had appeared in those proceedings. Her statement was recorded by the Official Liquidator. Thereafter the matter was heard. The contention of the appellant was that she is a housewife and was not participating in the affairs of the company; her husband who was mainly looking after the affairs of the company had suffered a stroke and because of which he was paralyzed and confined to bed; in his absence she was made to sign certain papers; otherwise she was not concerned with the running of the company (in liquidation). The Learned Company Judge after

examining the matter has by the impugned order found that as per the appellant's own admission she had been signing documents of the company and this *prima facie* showed that she was looking after the affairs of the company. With respect to the plea of the appellant in her statement recorded before the Official Liquidator as well as the Court that the affairs of the company were looked after by Manager, Chartered Accountants etc. and she did not know them and that she signed the documents without reading those documents, the Learned Company Judge has stated that this is her defence which has to be established and examined in trial. Though the Learned Company Judge by the impugned order found a case for proceeding against the appellant but still gave another opportunity to the appellant. Though the appellant has not filed any subsequent order but the counsel informs that upon the appellant failing to avail opportunity by filing Statement of Affairs, she has been ordered to be proceeded against.

2. The admitted position which prevails today is that the company was ordered to be wound up on 21st July, 2004. Almost 7½ years have passed but the statement of affairs has not been filed so far. Learned Company Judge has recorded dismal state of affairs which are delaying the process of winding up. We had directed the Official Liquidator to file the report about the status of other Directors of the company. The Official Liquidator has filed the report stating as under:-

Status Report

“R-1	Sh. Jaswant Kumar Garg S/o Sh. Dharam Chand Garg A, 2-B, Ashok Vihar	The Hon'ble Court vide its order dated 10 th August, 2006 deleted the name of Sh. J.K. Garg, from array of parties, as the IDBI has appointed the said
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- New Delhi-110 052. respondent as the nominee of IDBI on the Board of Directors of the Company w.e.f. 4/11/93 and withdrew the nomination w.e.f. February 04,1998. Copy of order and letter of IDBI are enclosed as Annexure 'A'.
- R-2 Sh. Tircky Vaidyanathan Gaveron
B-154, B.K. Dutt Colony,
New Delhi As per process server report he was residing on rent at the given address 8-10 years ago. Copy of notice along with process report is enclosed as Annexure 'B'.
- R-3 Sh. S.L. Chopra
C-3/13, Safdarjung
Industrial Area, New Delhi-
110 006. Sh. S.L. Chopra has filed affidavit before the Court stating that he had ceased to be a Director and did not have any information or record with him. This office has filed reply before the Court that Form No.32 has not been filed. So the present proceedings be continued against the ex-Director. A copy of affidavit and reply are enclosed as Annexure 'C'.
- R-4 Sh. J.K. Mukhi
A-27, Neeti Bagh
New Delhi. He appeared in this office on 21.07.04 and recorded his statement under Rule 130 of the Companies Court Rule, 1956 and the Hon'ble Court vide its order dated 14.09.07 discharged Sh. J.M. Mukhi from the criminal proceedings and his name is deleted from the array of the respondents. A copy of the statement and order is enclosed as Annexure 'D'.
- R-5 Sh. Balu Datwani As per Police report whereabouts of

	71-Golf Links New Delhi.	Sh. Balu Datwani not known. A copy of the Report is enclosed as Annexure 'E'.
R-6	Sh. Raghuber Sareen Nigam S/o Sh. Shiv Sharan Lal Nigam Vaishali, Pitampura New Delhi.	He appeared in this office on 30.09.04 and recorded his statement under Rule 130 of the Companies Court Rule, 1956 and also given a letter on 30.09.04 stating that for a very short time (2-3 weeks) he was appointed as Special Director in this company by the BIFR. Copy of statement and letter dated 30.09.04 are enclosed as Annexure 'F'.
R-8	Sh. Rajiv Bohra S/o Sh. Johrimal Bohra G-159, Sarita Vihar New Delhi	As per the Police report Mr. Rajiv Bohra is not residing at the given address. A copy of report is enclosed as Annexure 'G'."

3. It is clear from the above that R-1 Sh. Jaswant Kumar Garg and R-6 Sh. Raghuber Sareen Nigam were appointed to the Board of Directors as nominee of IDBI and on the direction of BIFR respectively. In so far as R-4 Sh. J.K. Mukhi is concerned he was discharged by the Company Judge vide order dated 14th September, 2007 and his name had been deleted from the array of the respondents. R-2 Sh. Tircky Vaidyanathan Gaveron is not available at the given address and his present whereabouts are not known. Same is the position of R-5 Sh. Balu Datwani; though he is stated to be a resident of 71, Golf Links, New Delhi. We are informed that he was a resident of UK and residing in UK for the last more than 30 years. In these circumstances, it cannot be said that even he was handling the affairs of the company at the material time.

4. This leaves us with R-3 Sh. S.L. Chopra and R-8 Shri Rajiv Bohra. Even though Sh. Rajiv Bohra is shown as Managing Director in the Crl.O filed by the Official Liquidator, even he is not residing at the given address and his present address is not known as per the Police report. In so far as Shri S.L. Chopra is concerned, his statement was recorded in which he stated that he ceased to be Director and did not have any information or record with him. However at the same time, the Form 32 was not filed before the Registrar of Companies and therefore in the report filed by the Official Liquidator it is stated that for the purpose of present proceedings he could be treated as ex-Director responsible for the affairs of the company. No order so far has been passed by the Learned Company Judge in respect of Shri S.L. Chopra. The Official Liquidator should place these facts before the Learned Company Judge so that the Learned Company Judge is able to pass appropriate orders in respect of other Directors as well.

5. In so far as present appeal is concerned, we find that *prima facie* there is material to proceed against the appellant under the aforesaid provision. Mr. Makkar, Learned counsel for the appellant has relied upon the Full Bench judgment of this Court in *M/s Security & Finance Pvt. Ltd. v. B.K. Bedi* 10 (1974) DLT 181 and Division Bench judgment in *Devindar Kishore Mehra v. Official Liquidator* 16 (1979) DLT 150 and on the basis of these judgments his submission is that there should be some evidence on record before the Learned Company Judge decides to proceed against a person under Section 454(5) of the Companies Act. These judgments are discussed at length by the Learned Company Judge in the impugned order. The Learned Company Judge has also

referred to and has distinguished those judgments.

6. We have deliberately referred to the position qua other Directors and have pointed out that as of today except Sh. S.L. Chopra it would not be possible to proceed against any other Directors. If the appellant or Sh. S.L. Chopra are also allowed to go scot free and are not even tried, the effect of that would be as if none of the Directors had any responsibility and/or duty to file the statement of affairs; such a situation cannot be accepted at all. It cannot be said that not even one Director was responsible for running the company and the company was managed by some other persons who were not Directors. Once the appellant assumed the position of a Director and some evidence has come on record in the form of signing the documents, *prima facie* it would lead to the conclusion that she was taking part in the day to day affairs of the company. Learned Company Judge has rightly held that whatever she had stated in her defence can be looked into at the time of trial. We are therefore of the opinion that there is no merit in this appeal; the same is accordingly dismissed. However we again impress upon the Official Liquidator to take up the matter before Learned Company Judge against Sh. S.L. Chopra. The Official Liquidator shall also take correct address and positive steps for serving Sh. Tircky Vaidyanathan Gaveron and Shri Rajiv Bohra.

No order as to costs.

ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

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