

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE DAY OF 16TH JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

ORIGINAL SIDE APPEAL NO.7/2024

BETWEEN:

SRI ASHOK PRAKASH
S/O LATE SRI B.N.PRAKASH
AGED ABOUT 61 YEARS
NOW R/AT NO.151
2ND MAIN, 10TH CROSS
NGEF LAYOUT, NAGARABHAVI
BENGALURU-560 072.

...APPELLANT

(BY SRI ADITYA SONDHI, SENIOR ADVOCATE FOR
SRI PARASHURAM A.L., ADVOCATE)

AND:

THE OFFICIAL LIQUIDATOR
M/S. ATHREYONIX SYSTEMS
PRIVATE LIMITED (IN LIQUIDATION)
ATTACHED TO HIGH COURT OF KARNATAKA
IV FLOOR, D AND F WING
KENDRIYA SADAN, KORAMANGALA
BENGALURU-560 034.

...RESPONDENT

(BY SRI K.S.MAHADEVAN, ADVOCATE)

THIS ORIGINAL SIDE APPEAL IS FILED UNDER SECTION 483 OF THE COMPANIES ACT, 1956 READ WITH SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 PRAYING TO SET ASIDE THE ORDER OF THE LEARNED SINGLE JUDGE DATED 24.01.2024 IN COMPANY APPLICATION NO.195/2007 IN COMPANY PETITION NO.53/2001 AND CONSEQUENTLY DISMISS COMPANY APPLICATION NO.195/2007 IN COMPANY PETITION NO.53/2001 FILED BY THE RESPONDENT AND ETC.

THIS ORIGINAL SIDE APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, **JAYANT BANERJI J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

Heard Sri Aditya Sondhi, learned Senior Counsel for the appellant and learned Counsel for the OL¹.

2. The appellant is an ex-Director and minority shareholder of the company in liquidation. In Company Application No.195/2007 moved by the OL under Section 543(1) of the Act², by means of the impugned order, the learned Single Judge, after noticing Exs.P1 and P2, which are respectively the balance sheet of the company in liquidation as on 15.03.2002 and the Statement of Affairs filed under Section 454 of the Act, has partly allowed the application in Company Petition No.53/2001³ directing the appellant and other respondents in the aforesaid company application to jointly and

¹ Official Liquidator

² The Companies Act, 1956

³ Company Petition

severally pay a sum of Rs.7,77,204/- along with interest at the rate of 8% per annum from 15.03.2002 till its payment.

3. The contention of learned Senior Counsel for the appellant is that an application bearing C.A.No.1083/2002 in the Company Petition was filed by the OL under the penal provisions of Section 454(5) and (5A) of the Act alleging that the Statement of Affairs of the company in liquidation was not filed by the appellant within time. On 24.01.2024, C.A.No.1083/2002 was dismissed against the three other Directors, and it survived only against the appellant. The order of 24.01.2024 in C.A.No.1083/2022 was challenged by the appellant in OSA No. 4/2024 in which, while allowing the application and setting aside the order dated 24.01.2024, the appellate Court by an order dated 10.09.2025, required the learned Company Judge to reconsider whether the appellant had reasonable cause for not filing the Statement of Affairs of the company in liquidation within twenty one days of the winding-up order. It is contented that since the matter has been remanded to the learned Company Judge, the instant proceeding against the sole appellant deserves to be set aside and the impugned order of the learned Company Judge be set aside.

4. In Company Application No.195/2007 the Directors were arrayed as respondent Nos. 1 to 4, with the respondent no.1 being the appellant herein. The OL sought recovery of an amount of Rs.8,26,079/- along with interest at the rate of 18% per annum from the ex-Directors, the amount being the difference in the value of assets which were not handed over to the OL. The following were, inter alia, the prayers made in the Company Application No.195/2007:

- a) "To summon the respondents 1 to 4 for the purpose of examination with regard to the matter specified therein.
- b) Direct the Ex-Directors to make good the an Rs.8,26,079/- jointly or severally as described in para 8(a) above to the Official Liquidator together with interest @ 18% p.a. or any other rate as this Honourable court may be fix with effect from the date of winding up.
- c) Direct the ex-directors to make good the an amount of Rs.24,022/- jointly or severally as described in para 8 (b) above to the Official Liquidator together with interest @ 18% p.a. or any other rate as this

Honourable court may be fix with effect from the date of winding up.”

5. The company in liquidation was ordered to be wound up by an order dated 15.03.2002. The OL had taken charge of the available assets of the company in liquidation thereafter. The recovery of the aforesaid amount of Rs.8,26,079/- was sought on the premise that there is misfeasance on the part of the ex-Directors who refused to hand over the assets of the company in liquidation. The amount of Rs.24,022/- was sought as the same was shown loans and advance but the full details with necessary supporting documents about the loans and advance were neither furnished nor remitted, therefore, the OL was not in a position to recover the same. The ex-Directors disputed the claim of the OL and thereafter evidence of the parties was recorded. No issues were framed by the Company Judge.

6. The points that would require consideration are:

- i) Whether the ex-directors are liable to pay Rs.8,26,079/- and with what rate of interest?
(Answered in the Negative)

- ii) Whether the ex-directors are liable to pay Rs.24,022/- and with what rate of interest?

(Answered in the Affirmative)

- iii) If the ex-directors are so liable to pay, then whether their liability would be joint and several?

7. Ex. P1 is the balance sheet as on 15.03.2002. In Ex. P1, under the heading of Current Assets, Loans and Advances, in Clause 'a', the value of the inventories as on 15.03.2002 is shown as Rs.8,26,081/-. The inventories, as appearing in Schedule 6 to the balance sheet, reflects raw materials, stores, spares and packing materials. Ex. P2 is the Statement of Affairs of the company in liquidation as on 15.03.2002. This bears Notary's seal and the date of 01.01.2007 under the signature of the appellant. This Statement of Affairs is a revised one, which was filed on 29.01.2007 by the appellant, as reflected in the Company Application No.195/2007. The gross realizable value of assets specifically pledged is shown in the Statement of Affairs as Rs.8,86,079.00. It is admitted by learned Counsel for the OL that there was no valuation conducted at the time of taking over of the assets of the company in liquidation.

8. PW.1 is T. Venkateshaiah, who was working as Assistant in the Office of the OL, Bangalore. It is stated by him in the examination in chief that the OL had valued the assets of the company in liquidation through a secured creditor M/s. Dena Bank and the valuer had valued the assets of the company in liquidation for a sum of Rs.60,000/-. It has not been testified that on which date the valuation of the stock was got done through the secured creditor, M/s. Dena Bank, Bengaluru.

9. It is further stated by PW.1 that the OL had issued letters to the Ex-Directors to submit the Statement of Affairs and to hand over the books of accounts of the company in liquidation on 09.05.2002. Other than one cash book, two box files and two flat files containing computer print out of General Ledger, Journal, Sales and Purchase Register of the company in liquidation, no other books and records were handed over. One of the directors, Sri Ashok Prakash had filed Statement of Affairs which was defective. The office of the OL sent a letter on 11.05.2006 to the Ex-Director for rectification of defects in the Statement of Affairs. On 29.01.2007 the Ex-Director submitted revised Statement of Affairs. As per the Statement of Affairs and Balance Sheet as at 15.03.2002 the fixed Assets and

Inventories were valued at 8,86,079.00 the breakup of which is as follows:

- i) Fixed Assets : Rs. 59,998.00
- ii) Stock : Rs.8,26,081.00
- iii) Other Assets : Rs. 36,921.00

10. The OL had valued the assets of the company in liquidation through the secured creditor M/s. Dena Bank which had valued the assets of the company in liquidation for a sum of ₹ 60,000. The ex-directors had not handed over the assets fully except remittance of cash of ₹ 12,899/- being the cash balance. Therefore, the ex-directors are liable to make good the loss of Rs.8,26,079.00, being the difference in the value of assets which were not handed over to the OL along with interest at the rate of 18% per annum with effect from 15.3.2002 or the rate at which may be fixed by this court.

11. It is stated by the PW-1 that as per the Statement of Affairs filed by the Ex-Directors the loans and advances were mentioned as Rs.24,022/-. The ex-Directors had neither remitted the amount nor furnished the full details with necessary supporting documents about the loans and advances; therefore, the OL was not in a position to recover

the same. Therefore, the ex-Directors are liable to make good the loss of Rs.24,022/- with interest at the rate of 18% per annum or the rate which may be fixed by this Court with effect from 15.03.2002. The total misfeasance amount claimed was stated to be Rs.8,50,101/- together with interest at the rate of 18% per annum on the rate which may be fixed by this court with effect from 15.3.2002.

12. In the cross examination of PW.1, it was stated with reference to the stock and fixed assets that the claimed amount from the ex-Directors was a sum of Rs.8,26,079/-. The PW.1 deposed that the ex-Directors had handed over their stocks and assets to them. It was denied that without proper valuation the OL put the said stocks and assets to auction as if the said items were scrap.

13. In his examination-in-chief, the appellant stated that in the year 1996 he had started the company. He is a qualified engineer and at that time the technology relating to solar equipments was at a nascent stage. During the course of the year, he developed much of the technology out of his own accord and also procured equipments relating to manufacturing and testing of solar equipments. During that relevant period of time, the technology that was available was quite exorbitant

and was quite high in value. As such the equipment that was purchased was shown in the books of account and was depreciated as per normal banking accounting procedure. The depreciation and the written down value of the equipments were being shown in the books. However, the same did not reflect the true value of the equipments. He stated that the equipments are electronic components, printed circuit boards, electrical items, mechanical items, production facilities, inspection and testing facilities. It was stated that these items were of some technological value, at the material point of time when he was producing the solar equipment. Due to financial constraints, the solar technology failed in the initial stages and he had to close several operations and in the year 2002, the manufacturing process was completely stopped. The technology relating to solar technology got boost from the Central Government in the year 2004. Thereafter, the latest equipment from different parts of the world and especially from China flooded the Indian market. When cheap manufactured equipment started flowing in, the equipments which were in his factory became obsolete and worthless. Further the equipments from China which were better, started flowing in and the rates were one-tenth of the cost of his company's equipments. This

was the reason why the book value, which was shown as per standard accounting procedure, even though valued at approximately Rs.8,00,000/- had actual value of Rs.60,000/-.

14. The appellant further deposed that the valuation of the equipments were not under his control. He stated that he had never mis-utilised the assets nor had overvalued the equipments and the difference of the value, if any, were only due to the account of obsolete technology which got transformed in the advanced technology in relation to the solar technology as a whole. He further stated that due to heavy financial constraints he did not have funds to improve the technology and the equipments. Due to this he had to close his company's operation and in view of his qualification he started to work in his individual capacity as a consultant to a group of solar manufacturing units at Kolkata. He stated that even as on date of the testimony, he was working as a consultant and earning a meagre amount. He denied that he had any intention to defraud anybody. Misappropriation of the wealth of the company in liquidation or its profit were denied.

15. There is no cross-examination of the appellant in Company application No.195/2007.

16. Having considered the facts of the case, what emerges is that admittedly the revised Statement of Affairs was filed by the appellant on 29.01.2007. However, no evidence has been led on behalf of the OL that when was the initial Statement of Affairs filed, nor that what were the objections of the OL on that, and, very importantly, whether there was any gross negligence on the part of the appellant. It is noted that the appellant was not cross examined by the OL insofar as the aspects of misfeasance or negligence are concerned. The testimony of the appellant, though he was not subjected to cross examination, is that as per the standard accounting procedure, the books of accounts reflected the depreciated value of the equipments and not their actual value. Though it is noted that Company in liquidation was ordered to be wound up in the year 2002, the change in policy of the Central Government came about in the year 2004. As is the case of the appellant, flooding of the market by Chinese goods in the field of solar equipment, is not unbelievable. The statement of the appellant that due to financial constraints and the exorbitant value of the technology available at the relevant point of time has not been rebutted by the OL by cross examining the appellant or producing any material to contradict the same. Any

act of deliberate negligence or fraud on the part of the appellant has not been established by the OL that would bring his conduct within the mischief referred to in Section 543(1) of the Act.

17. This Court, in the case of ***Chamundi Chemicals and Fertilisers Ltd. v. M C.Cherian*** [1993 SCC Online KAR 9] held that only misfeasance or gross negligence amounting to breach of duty causing loss is actionable and ordinary negligence is insufficient. It was observed that:

*"..... It is relevant to analyse section 543 of the Act. It enumerates the powers of the court to assess damages against the delinquent directors mulcting them with the damages for not acting reasonably and thus committing the company to unnecessary loss. The proceedings, however, do not extend to any and every kind of claims which the company may have against the delinquent directors. It is confined to claims relating to misfeasance or breach of trust in respect of their duties in relation to the company. Thus, it is only misfeasance which includes breach of duty breach of trust resulting in loss to the company which will come within the purview of section 543 of the Act. **Mere negligence or neglect of duty will not by itself create liability unless there was gross negligence amounting to misfeasance or breach of duty resulting in loss to the company.***

In the decision of the Madras High Court in Official Liquidator. Madras Oils and Fertilizers P. Ltd. v. G.

Shanmugham (1979) 49 Comp Cas 903, it is observed thus (at page 906) :

"Section 543 of the Companies Act which enumerates the power of court to assess damages against the delinquent directors has set down certain norms for the exercise of such power resulting in mulcting the exofficers, may be directors, with damages for not acting reasonably and thus committing the company to unnecessary loss. The vein that runs through the intendment of section 543 of the Companies Act appears to be that there should be prima face proof of such negligence bordering on misfeasance and breach of trust which alone was generally the basis for invocation of the punitive rule contained in section 543 of the Companies Act. No doubt, section 545(1)(a) and section 543(1)(b) create as between themselves a dichotomy in the matter of exercise of the power of the court in such matters. As per clause (a) of sub-section (1) of section 543 of the Act, such a power to assess the damages could be invoked in case of misapplication and retention of monies or property of the company and on a fair and reasonable conclusion by the court that the officers of the company are liable or accountable for the same. The court can then exercise its jurisdiction and assess the damages against the delinquent director or officer. Clause (b) of subjection (1) of section 543 of the Act, however, lays down a specific hypothesis for the invocation of the power and for the exercise of it. It contemplates that the delinquent director should be found to be guilty of misfeasance or breach of trust in relation to the company. Therefore, clause (b) deals with a particular situation, wherein it should appear to the court, whether on the application of the liquidator

or any creditor or contributory, that the company whilst it was functioning acted through a body known as the directors or the officers who are guilty of appropriation without authority of the funds of the company It may ultimately be a case wherein there was misappropriation also resulting in the breach of that faith which the shareholders and the creditors outside the domestic chamber of activity of a company place in the body of directors or officers in charge of the affairs of the company.

Thus, it enables the court on an application by the official liquidator or any other creditor or contributory to examine the conduct of the delinquent directors or officers of the company. The court examines the conduct to see if they were guilty of any misfeasance or other breach of duty to the company. If the court so finds, it can order the delinquent directors or officers to repay or restore the assets of the company or such sum as the court thinks just."

(Emphasis Supplied)

18. In the case of **Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar, [(1973) 1 SCC 602]** the Supreme Court observed:

"45. It is certainly a question of fact, to be determined upon the evidence in each case, whether a Director, alleged to be liable for misfeasance, had acted reasonably as well as honestly and with due diligence, so that he could not be held liable for conniving at fraud and misappropriation which takes place. A Director may be

shown to be so placed and to have been so closely and so long associated personally with the management of the Company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of the business of a Company even though no specific act of dishonesty is proved against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the Company even superficially. If he does so he could be held liable for dereliction of duties undertaken by him and compelled to make good the losses incurred by the Company due to his neglect even if he is not shown to be guilty of participating in the commission of fraud. It is enough if his negligence is of such a character as to enable frauds to be committed and losses thereby incurred by the Company."

19. It is noted that the items of the inventory, which has been valued by the secured creditor at Rs.60,000/- has not been shown to be produced by PW.1. In the examination-in-chief of PW.1, the valuation report of the secured creditor has not been referred to as marked. Moreover, the list of inventories of the value mentioned in the balance sheet, has also not been furnished nor proved.

20. Therefore, the first point for consideration is answered in the negative, that is to say, **the ex-directors are not liable to pay Rs.8,26,079/-**.

21. On behalf of the OL it has been proved that as per the Statement of Affairs filed by the ex-directors, the loans and advances were mentioned as Rs.24,022/-. The ex-directors had neither remitted the amount nor furnished the full details with necessary supporting documents about the loans and advances. Therefore, the OL was not in a position to recover the amount. No question has been put to the P.W. 1 in this regard during his cross-examination. Further, even the appellant in his examination in chief has not deposed about this amount shown under the heading of loans and advances.

22. Therefore, the second point for consideration is answered in the affirmative and it is held that **the ex-directors are liable to pay Rs.24,022/- with interest**. The interest payable would be simple interest at the rate of 6% per annum from the date of the order of winding up till the actual date of payment.

23. In the Company application No.195/2007 it is noted that only the appellant appeared. The other respondent did not contest the application. Though the OL has referred to the liability of the ex-directors, however, no distinct liability has been pleaded and proved by the OL in respect of the amount of

Rs.24,022/-. The amount pertains to the heading of loans and advances. The directors of a company are required to actively participate in the affairs of the company. They must keep abreast of the finances of the company. They cannot plead ignorance. It is therefore, held in answer to point no.(iii) that the **ex-directors of the company in liquidation are jointly and severally liable** to repay the amount of Rs.24,022/- with the awarded interest.

24. It is pertinent to mention here that much emphasis has been placed on behalf of the appellant on the proceedings initiated under Section 454 (5) of the Act; that the order of the learned Single Judge has been set aside in appeal and that the matter has been remanded to the learned Single Judge for his consideration. Be that as it may, the proceedings under Section 454(5) of the Act are distinct from the proceedings under Section 543(1) of the Act and they have no bearing on each other.

25. In view of the facts and circumstances aforesaid, the following:

ORDER

- (i) The appeal is accordingly, partly allowed.
- (ii) The ex-directors are not liable to pay Rs.8,26,079/- to the OL.
- (iii) The ex-directors are liable, jointly and severally, to pay Rs.24,022/- with interest to the OL.
- (iv) The interest payable by the appellant would be simple interest at the rate of 6% per annum from the date of the order of winding up till the actual date of payment.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

KSR