* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **CO.APP. 3/2014**

% **Date of decision : 24th November, 2015**

MUKESH BHARGAVA ..... Appellant
Through: Mr. Jayant K. Sood, Mr. Pranshu Dhingra and Mr. Honey Khanna, Advs.

versus

OFFICIAL LIQUIDATOR & ORS. ..... Respondent
Through: Mr. Rajiv Bahl, SC for R-1
Mr. P.D. Gupta, Adv. for R-2

\+ **CO.APP. 9/2014 & CM Nos.3266, 3267/2014, 5251/2015**

ANIL BHARGAVA & ANR. ..... Appellant
Through: Mr. Ravinder Singh and Mr. Atul Sahi, Advs.

versus

SMT. SUDESH MADHOK & ORS. ..... Respondent
Through: Mr. P.D. Gupta, Adv. for R-1
Mr. Rajiv Bahl, SC for Official Liquidator

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT (ORAL)

GITA MITTAL, J

1. The appellants in these two cases assail the order dated 20th November, 2013 passed in Co.Pet.No.100/1999, Co. App.No.1015/2004 and Report No. 857/2013 filed by the Official

Liquidator.

2. It appears that winding up proceedings were initiated at the instance of Smt. Sudesh Madhok in respect of affairs of M/s Pushkar Trading Co. Ltd., inter alia on the grievance that it had failed to return admitted dues of Rs.70 lakhs which had been advanced as a loan. During the course of these proceedings, allegations surfaced that Pushkar Trading Co. Ltd. had transferred the said amount to M/s Paam Pharmaceuticals (Delhi) Ltd. The appellants in these two appeals are stated to be directors of M/s Paam Pharmaceuticals (Delhi) Ltd. (since wound up by orders of the Rajasthan High Court). With regard to the grievance made by the petitioning creditor, an investigation to be conducted into the transactions complained of by the Serious Fraud Investigation Office ('SFIO' hereafter) was ordered by the Company judge vide order dated 24th February, 2012.

3. The SFIO filed a report dated 19th November, 2012 rejecting the explanation and the contentions of the appellants and recommending that the appellants had committed the offence of criminal breach of trust rendering them liable to be punished under Section 405 of the IPC punishable under Section 406 thereof with Section 120B of the Indian Penal Code amongst other actions.

4. The appellants were furnished copies of the report and were granted time to respond to the same. The appellants in both these appeals filed objections in writing before the learned Company Judge.

5. The report of the SFIO as well as these objections were listed before the court on 20th November, 2013 when the learned Single Judge was of the opinion that there could not be two trials with regard

to the same allegations and therefore, if the objections were decided on merits in the winding up proceedings and the case referred to trial, observations of the court would cause prejudice to the accused persons i.e. appellants herein. The court consequently refrained from adjudicating upon the objections. Liberty was given to the appellants-formal directors of the company to place their case before the criminal courts who would decide the same on its own merits without being influenced by the observations of the court. The order dated 20th November, 2013 has been assailed before us.

6. We find that prior to making these observations in the impugned order, the learned Company Judge has noted paras 9, 10 and 11 of the report of the SFIO. Thereafter, in view of the findings of the SFIO in these paragraphs, granted permission to the Official Liquidator to file an FIR. Therefore, the later observations that the court was not adjudicating upon the merits of the recommendations, lost significance in view of the approval having been granted by the learned Single Judge to the findings of the Supreme Court as recorded in paras 9, 10 and 11 of the aforesaid noticed report.

7. Before us, Mr. Jayant Sood, learned counsel for the appellants in Co.App.No. 3/2014 and Mr. Ravinder Singh, learned counsel appearing for the appellant in Co.App.No.9/2014 have contended that their objections not only relate to the merits of the observations and findings in the report of the SFIO but also raised jurisdictional objections to the maintainability of the criminal prosecutions. It was contended that the entire thrust of the transactions as noted by the SFIO also shows that it was a pure and simple loan transaction and

therefore, no criminality could be attached for any breach or violation thereof. Learned counsel for the appellants have submitted that though they had been directors at some point or the other of the companies, however, they were not concerned with the management and in any case, there was no material at all to show their involvement with the transaction which was the subject matter of the investigation. Learned counsels have also contended that there was no material at all available on record to show that ingredients of Sections 405 and 406 as well as Section 120B of the IPC were satisfied which could indicate implication of the appellants for commission of such offences in a criminal prosecution. It is urged that consequently, the entire recommendations of the SFIO were without any basis and the direction to register the FIR was not warranted.

8. The appellants would also contend that the recommendations regarding implication for commission of the stated offences as well as for prosecution of the appellants had been effected by the SFIO in a mechanical manner without application of mind.

9. It is necessary to bear in mind that registration of the FIR as well as implication for commission of criminal offences would have serious consequences. Any proceedings, prior to the trial before a court of competent jurisdiction, would obviously be taking a prima facie view only. In as much as, the appellants were urging jurisdictional issues which go to the root of the matter and had actually sought adjudication thereof before the learned Company Judge, no prejudice would have resulted if these aspects of the matter especially those relating to the law which applied, whether civil or

criminal, amongst others, could have been gone into without imperilling the defence of the appellants. The rights of the appellants qua the criminal prosecution could have been protected by noting that the observations were of a prima facie nature.

10. Before us also, the appellants contend that they are entitled to consideration of the objections without prejudice to their defence in the criminal trial.

11. It is further contended by Mr. Ravinder Singh, learned counsel for the appellant that the petitioning creditor had prosecuted only the appellants in Co.App.No.9/2014 for commission of offences under Section 138 of the Negotiable Instruments Act and that pursuant to a settlement reached therein, the agreed amounts stand paid to the creditor.

12. It may be noted that Mr. Rajiv Bahl, learned Standing Counsel on behalf of the Official Liquidator and Mr. P.D. Gupta, learned counsel who represents the petitioning creditor in the winding up proceedings submit that they dispute the merit of the objections raised by the appellants. We are of the view that the appellants are entitled to a consideration of their objections to the report of the SFIO before a view is taken thereon and direction made. These objections to the report of the SFIO deserve to be considered by the learned Company Judge at the first instance. We are refraining from opining on the conduct of the appellant.

13. In view of the above, it is directed as follows :-

(i) The orders dated 20th November, 2013, impugned in these appeals, are hereby set aside.

(ii) The parties shall appear before the learned Company Judge on 7th December, 2015 for fixation of a date when the objections of the appellants to the report of the SFIO would be taken up for consideration.

(iii) We make it clear that nothing herein contained is an expression of opinion on the merits of either the observations and recommendation in the SFIO's report or the objections of the appellants thereto.

Co. Appeal Nos. 3/2014 and 9/2014 are allowed in the above terms. CM Nos. 3266, 3267/2014 and 5251/2015 are consequently disposed of.

GITA MITTAL, J

I.S.MEHTA, J

NOVEMBER 24, 2015
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