

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**OFFICIAL LIQUIDATOR'S REPORT NO. 291 OF 2016
IN
COMPANY PETITION NO. 550 OF 2013**

In the matter of Companies Act,
1956;

and

In the matter of M/s.Hydrocarbor
Development Co.Pvt.Ltd. (In Liqn.)

ETA Star Holdings Ltd.

...Petitioner

Ms.Yogini D. Chauhan, Deputy Official Liquidator.

Mr.Aditya Surgh I/b. Little & Co. for Petitioner.

Ms.Pooja Thorat with Anukul Seth for Ex-directors- Mr.Sudhi Ranjan Das
and Mr.Ravindran Siva.

CORAM : S.C. GUPTE, J.

9 DECEMBER 2016

P.C. :

This report seeks directions against the ex-directors of the company for identifying the assets of the company (in liquidation), which are lying at various places described in prayer clause (a). The report also seeks certain directions for inventerisation and valuation of movable and immovable assets of the company described in prayer clause (b). The report also seeks permission to file criminal complaint under Section 454(5) of the Companies Act, 1956 against ex-directors of the company for non-compliance with the requirements of Section 454 such as filing of statement of affairs, etc. As far as the four ex-directors of the company (in liquidation) are concerned, only the directors mentioned at Serial Nos.3 and 4 of

paragraph 17 of the report are represented before the court through counsel. Learned Counsel for these noticee ex-directors submits that these directors have complied with the requisitions of the Official Liquidator and submitted the necessary statement of affairs and accounts. She also submits that the Liquidator's queries have been duly replied by her clients and that there is no case for prosecuting them under Section 454(5) of the Companies Act, 1956.

2 A perusal of the affidavit filed by these ex-directors indicates their separate compliance with the provision of Section 454(5) and there is no case of prosecuting them at this juncture, since they are co-operating with the Official Liquidator and also have undertaken to further co-operate with the Official Liquidator and comply with all the requisitions of the Official Liquidator. Learned Counsel also submits that her clients shall make themselves available for identifying the assets of the company (in liquidation) at Durgapur and Bantumilli. Insofar as the Sangapur project of the company (in liquidation) is concerned, it is submitted that the two other ex-directors, who are mentioned at Serial Nos. 1 and 2 in the table set out in paragraph 17, are in possession of these assets at the location. It is submitted that those ex-directors are better placed to identify the assets of the company (in liquidation) at Sangapur. As for the other prayers of the Official Liquidator, namely, prayer clauses (b) and (c), appropriate directions may be issued to Official Liquidator. As far as Oriental Bank of Commerce seeking possession in terms of Section 13(4) of the SARFAESI Act is concerned, despite notice, they are not present before the court. Prayer clause (e), in the premises, may not be considered. Liberty, however, may be reserved to Oriental Bank of Commerce to apply for suitable relief in a company application.

3 Accordingly, the report is disposed of in terms of the following order :

(I) Shri Sudhi Ranjan Das and Ravindran Siva, ex-directors of the company (in liquidation) are directed to co-operate with the Official Liquidator for visiting the site of the company's assets at a Durgapur, and Bantumilli with a view to identify the assets and to enable the Official Liquidator to take possession of the same. The expenses of such exercise can initially be borne by the ex-directors. The expenses, however, may be allowed in the course of administration of the assets as liquidation expenses in priority over other debts owed by the Company (in liquidation);

(II) Prayer clause (b) of the report is allowed;

(III) The Oriental Bank of Commerce, secured creditors of the company (in liquidation), are directed to deposit the payment of costs of valuation of the assets with the Official Liquidator. Such costs to be deposited with the Official Liquidator within three weeks of the Official Liquidator making a requisition for payment of such costs;

(IV) After considering the details of receipts, payments and bank statements, etc. filed by the ex-directors, in case the Liquidator has any further queries, the former shall comply with the requisitions made by the Liquidator in this behalf on the basis of such of the documents as may be available with them;

(V) Prayer clause (e) is not considered for the moment. Liberty is, however, reserved to M/s. Oriental Bank of Commerce to seek appropriate reliefs in

respect of prayer clause (e) on a separate application;

(VI) Official Liquidator is permitted to file a criminal complaint under Section 454(5) of the Companies Act, 1956 read with Rule 132 of the Companies (Court) Rules, 1956 against Ms. Shabnam Arif Memon and Mr. Deepak Vrajlal Raval, ex-directors of the company (in liquidation) mentioned in prayer clause (f).

4 The OLR is disposed of accordingly.

(S.C. Gupte, J.)
