$~CP-29

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

\+ CRL.O.(CO.) 1/2012

M/S SIMCO SCIENTIFIC INSTRUMENTS MARKETING CO LTD ..... Petitioner

Through:

versus

RAJBIR SINGH DARYAN & ORS. ..... Respondents

Through: Ms.Ruchi Sindhwani, Adv. for OL

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% **22.11.2017**

1. The present complaint is filed under Section 454(5) of the Companies Act, 1956 for non-compliance of the provisions of Section 454(1) by the Ex.-Directors.

2. Learned counsel for OL submits that the OL was appointed as a provisional liquidator in the connected Co.Pet.76/2008 by the order of this court dated 13.05.2010.

3. Based on the records with the Registrar of Companies (*hereinafter referred to as the 'ROC'*), the OL found four former directors of the Company. Later on, Sh.Udit Daryan, is said to have resigned in 2006. A team from the Office of the OL visited the registered office of the company situated at D-7/7163, Vasant Kunj, New Delhi for taking over possession of assets and records of the company. It turned out that the said premises has already been let out to one Sh.Nazaf Ali on lease. On inspection of the premises no record pertaining to the company was found. Notice under Section 454 and 456 of the Companies Act, 1956 and under Rule 130 of the Companies (Court) Rules, 1956 were also issued to the directors/ex-

directors. Statements were recorded on various dates. Statement of affairs was filed by Sh.R.S.Daryan on 24.02.2011 where most of the figures have been shown as nil. Ex-directors have continued to maintain that the company has no moveable and immoveable assets after ceasing operation in 2001. However, no record to this effect has been filed. The OL pointed various contradictions in the statements recorded by the ex-directors. Additionally, the statement of affairs has all necessary/relevant columns being filed as nil. Hence, the present complaint has been for taking cognizance under section 454(5A) of the Companies Act for non-compliance of the provisions of Section 454(1) by the ex-directors.

4. The learned counsel for the OL relies upon the judgment of this court in the case of ***Technical Consultancy House Pvt. Ltd. v. Kuldip Raj Narang & Ors., (1989) 66 Company Cases 410 (Del.)*** to support her pleas.

5. The respondents have been served on and have appeared. None has appeared for the respondents today. It is manifest that they have failed to file proper statement of affairs which in law they were obliged to file.

6. Under Section 454 where a winding up order has been passed or the OL has been appointed as a provisional liquidator, the statement of affairs of the company in the prescribed form have to be filed within 21 days from the relevant date.

7. In ***Technical Consultancy House Pvt. Ltd. v. Kuldip Raj Narang & Ors***,(supra) this court has held that the statement of affairs is a basic documents from which the proceedings after wounding up order has been started. In the context of non-filing of the statement of affairs, this court held as follows:

“... As noted in the judgment above, the books of account and other statutory records of the company were not handed over to the official liquidator. The directors contravened the provision of law regarding tiling of the statement of affairs which is an important document to enable the official liquidator to start the process of winding up of the company. It now appears to me that the official liquidator is extremely handicapped in the present case and perhaps he has no choice except to seek an order under section 481 of the Act for dissolution of the company without knowing who the debtors are and who the creditors are and what functions the company performed. That appears to be the unfortunate result. It was again asserted that no creditor had come forward even after the petition for the winding up order was advertised. It is not the case of the accused now advanced does not help the accused at all. I have already mentioned that the company was in fact ordered to be wound up on a creditor's petition. The official liquidator has not invited any claims so far; and it will not be possible to send individual notices to the creditors as provided and I do not know what he is going to do in the circumstances of the present case. The gravity of the offence cannot be minimised. That the offence under section 454(5) of the Act is a continuing one cannot now be disputed in view of the decision of the Supreme Court in Maya Rani Punj v. Commissioner of Income- tax [1986] 157 ITR 330. By this decision, an earlier decision of the Supreme Court in Commissioner of Wealth-tax v. Suresh Seth [1981] 129 ITR 328 was overruled. A question, however, arose as to whether sentence of fine which is for each day during which the default continues is to be limited up to the date of filing of the complaint or up to the date of conviction. The first impression was that perhaps it would he up to the date of conviction in the present case inasmuch as the court did take notice of the fact that during the pendency of this complaint, the statement of affairs was not filed and that which was filed was altogether not in accordance with the provisions of section 454(1) of the Act and could not be termed as a statement of affairs in the eye of law. However, in my opinion, a sentence of fine cannot be imposed for the period after filing of the complaint. Sub-section (5A) of section 454 of the Act is as follows:

> "The court by which the winding up order is made or the provisional liquidator is appointed, may take cognizance of an offence under sub- section (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure, 1898, for the trail of summons cases by magistrates".

8. Accordingly, I hold the respondents guilty of non-compliance of the provisions of Section 454(1) of the Act and impose a cost of Rs.25,000/- on each directors. This amount will be paid to the common pool fund.

9. The petition stands disposed of.

JAYANT NATH, J.

NOVEMBER 22, 2017/v