

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

**COMPANY APPLICATION NO. 57 OF 2018  
IN  
COMPANY PETITION NO. 65 OF 2015**

Yogesh Dhirajlal Shah

.. Applicant

***In the matter between :***

Nainil International

.. Petitioner

Vs.

The official liquidator,  
liquidator of Devanshi Impex  
Pvt. Ltd.  
(In liquidation)

.. Respondent

Mr.Vijay G. Gangan I/b Pankaj S. Shah for applicant/original respondent.

Mr.Niraj Shah i/b Siddharth Murarka for original petitioner.

Mr.Mahendhar Aithe, company prosecutor for official liquidator present.

**CORAM : K.R.SHRIRAM, J.**

**DATE : 1<sup>ST</sup> AUGUST 2018**

**P.C.**

1 This application is to recall the order dated 14<sup>th</sup> December 2017 ordering the winding up of the company. In the affidavit in support, there was no explanation whatsoever and therefore, the following order came to be passed on 30<sup>th</sup> January 2018 :-

*“1 In the affidavit in support, there is no explanation whatsoever as to why the company did not remain present on 14<sup>th</sup> December 2017. MMK Law Associates are shown as advocates on record for respondent even in today's cause list. When I asked Shri Pankaj Shah appearing for applicant as to why MMK Law Associates did*

not remain present on 14<sup>th</sup> December 2017, counsel stated only MMK Law Associates can answer, not him or his client. This kind of casual approach in an application to recall an order of winding up cannot be accepted. When I asked the counsel as to whether applicant contacted MMK Law Associates to inquire as to why they did not remain present on 14<sup>th</sup> December 2017, the counsel confessed that applicant has not contacted MMK Law Associates. In fact that is the first thing, applicant should have been done inquiring as to why they did not remain present. At this stage, Mr. Pankaj Shah states liberty be granted to applicant to file further affidavit in support of the application after contacting MMK Law Associates and also get an explanation from MMK Law Associates as to why they did not remain present in Court on 14<sup>th</sup> December 2017. The affidavit to be filed and copy served at the convenience of applicant. Reply to be filed within two weeks of receiving the further affidavit.

2 Company application to be listed in due course after this further affidavit in reply is filed and the company application is numbered.”

2 On 6<sup>th</sup> June 2018, when the application was again listed, it was observed that in the further affidavit of applicant has simply stated that MMK Law Associates were not aware about listing of the matter on 14<sup>th</sup> December 2017 and due to inadvertence and oversight they did not check the weekly board. The following order was passed on 6<sup>th</sup> June 2018 :-

“1 Despite the liberty granted on 30<sup>th</sup> January 2018, applicant has still not filed an affidavit explaining why the earlier advocates also did not remain present. In the further affidavit of one Yogesh Dhirajlal Shah affirmed on 13<sup>th</sup> February 2018 it simply states MMK Law Associates were also not aware about listing of the matter on 14<sup>th</sup> December 2017 and due to inadvertence and oversight, they did not check the weekly board. The affidavit does not even indicate to whom applicant spoke in MMK Law Associates. There is no correspondence to that effect, nothing.

2 I am, therefore, not inclined to accept the explanation in the affidavit in support and in the further affidavit. At the same time, Shri Pankaj Shah appearing for applicant seeks leave to file a further affidavit giving complete details. Purely by way of

*indulgence, one more opportunity is given to applicant. The further affidavit to be filed and copy served within four weeks from today.*

3 *Stand over to 11<sup>th</sup> July 2018.”*

3 On 11<sup>th</sup> July 2018, the following order was passed :-

*“1 Mr. Shah states that pursuant to the order dated 6<sup>th</sup> June 2018, the applicant has affirmed further affidavit dated 6<sup>th</sup> July 2018. It is two pages affidavit, but there is no explanation why he took one month to prepare this affidavit. Mr. Shah for original petitioner states that he has not received copy of this affidavit. It is quite obvious that the applicant does not see any sense of urgency in hearing of this application.*

*2. Once the original petitioner receives the copy of this further affidavit, the original petitioner to file a reply within two weeks of receipt.*

*3. Stand over to 1<sup>st</sup> August 2018.”.*

4 Today, Shri Vijay Gangan is appearing for applicant and seeking an adjournment on the ground that Shri Pankaj Shah is not available today. It has to be noted that the matter was directed to be listed today on 11<sup>th</sup> July 2018, i.e., three weeks ago. The cause-list was also prepared and released on 27<sup>th</sup> July 2018. Therefore, applicant should have made arrangement for the counsel to go on with the matter.

5 Shri Shah appearing for the original petitioner states that applicant, in Paragraph 17 of the affidavit in support, has made a false statement that apart from this petition, there is no other company petition filed and/or pending in this Hon'ble Court against this company. Shri Shah submits and

rightly so, that there were two other company petitions being Company Petition Nos.380 of 2015 and 751 of 2015 against the company and both these petitions have been disposed pursuant to an order dated 1<sup>st</sup> February 2018. Shri Shah points out that these two petitions were listed on 15<sup>th</sup> December 2017 and 1<sup>st</sup> February 2018 and on both these dates, i.e., 15<sup>th</sup> December 2017 and 1<sup>st</sup> February 2018, MMK Law Associates were present in Court and appeared on behalf of the company. Shri Shah further states that the company (in liquidation) has also filed an Appeal (Lodg.) No. 21 of 2017 which came to be disposed on 31<sup>st</sup> January 2018 and even on that date MMK Law Associates had appeared. Shri Shah states that applicant, therefore, has made a false statement in the affidavit in support stating that there are no other company petitions filed and there is no explanation in the affidavit in support or in the further affidavit in support dated 13<sup>th</sup> February 2018 or in the affidavit dated 6<sup>th</sup> July 2018, as to why, if MMK Law Associates could have appeared on 15<sup>th</sup> December 2017, 31<sup>st</sup> January 2018 and 1<sup>st</sup> February 2018, they did not appear on 14<sup>th</sup> December 2017.

6 It should also be noted that in the affidavit, dated 13<sup>th</sup> February 2018 and in the affidavit of 6<sup>th</sup> July 2018, applicant had stated that MMK Law Associates/Mr.C.N. Mehta informed applicant that due to inadvertence and oversight, the firm did not check the weekly board of this Court as a result ,

matter went by default. 14th December 2017 was a Thursday and MMK Law Associates has appeared for the company in two other petitions on 15<sup>th</sup> December 2017. The cause lists for both the dates for final hearing have been released in the weekly board on Friday before. Therefore, to state that the advocate did not check the weekly board cannot be accepted.

7      Shri Shah also states that in the affidavit of 6<sup>th</sup> July 2018, it is only stated that some undesirable verbal exchanges took place in the office of Shri C.N. Mehta, who refused to appear in the matter and returned the papers. There is no mention about the date on which this discussion happened. I am not inclined to believe applicant because this application has been lodged on 22<sup>nd</sup> January 2018 and the affidavit in support is dated 28<sup>th</sup> January 2018 whereas MMK Law Associates has appeared for the company on 31<sup>st</sup> January 2018 and 1<sup>st</sup> February 2018, as noted above.

8      In the circumstances, as applicant has been economical with truth and despite opportunities has not come with an acceptable reason as to why the order dated 14<sup>th</sup> December 2017 should be recalled, application dismissed.

10     The Ex-directors of the company shall file the statement of affairs

within three weeks from today, failing which the official liquidator immediately to take steps as prescribed under Section 454 of the Companies Act, 1956.

(K.R. SHRIRAM, J.)

Shraddha  
Kamlesh  
Talekar

Digitally  
signed by  
Shraddha  
Kamlesh  
Talekar  
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