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

COMPANY APPLICATION NO. 1084 OF 2015
WITH
COMPANY APPLICATION NO. 574 OF 2015
WITH
COMPANY APPLICATION NO. 575 OF 2015
IN
COMPANY PETITION NO. 1015 OF 2008

Smt. Prabha P. Shenai .. Applicant
Vs.
Official Liquidator of
Crown Maritime Co. Ltd. .. Respondent

WITH
COMPLAINT NO. 1 OF 2013
IN
COMPANY PETITION NO. 1015 OF 2008

The Official Liquidator of
Crown Maritime Co. Ltd. .. Official Liquidator
V.s.
Shri Sukumaran Sujathan & Ors. .. Respondents

WITH
CONTEMPT PETITION NO. 1 OF 2013
WITH
COMPANY APPLICATION NO. 1085 OF 2015
IN
COMPANY APPLICATION NO. 224 OF 2012
WITH
COMPANY APPLICATION NO. 26 OF 2016
WITH
COMPANY APPLICATION (LODG.) NO.44 OF 2016
IN
COMPANY APPLICATION NO. 26 OF 2016
WITH
COMPANY APPLICATION (LODG.) NO.215 OF 2016
IN
COMPANY PETITION NO. 1015 OF 2008

ALONG WITH
O.L. REPORT

Smt. Prabha P. Shenai through
C.A. Shri Prakash Raghunath Shenai .. Applicant/Petitioner
Vs.
Official Liquidator of
Crown Maritime Co. Ltd. & Ors. .. Respondents

WITH
COMPANY APPLICATION NO. 52 OF 2018
IN
COMPANY PETITION NO. 1015 OF 2008

Union of India, Income Tax Department
through Tax Recovery Officer-12 .. Applicant
Vs.
Crown Maritime Co. Ltd.
(In Liquidation) .. Respondent

WITH
COMPANY APPLICATION NO. 397 OF 2017
IN
COMPANY PETITION NO. 1015 OF 2008

Harendra Singh Bisht .. Applicant
Vs.
Crown Maritime Co. Ltd.
(In Liquidation) .. Respondent

Mr. Shanay Shah i/b Sarah Kapadia for applicant/petitioner.

Mr.Vishal Kanade a/w. Mr. Nikhil Rajani and Ms. Jyoti Sanap i/b M/s. V. Deshpande and Co. for Sajeev Sukumaran, Ex-director.

Mr.Akash Menon for Sukumaran Sujathan, Ex-director.

Mr. Mahendhar Aithe, company prosecutor for official liquidator.

Mr. Prathamesh Kamat for official liquidator.

Mr. Vinod Joshi for applicant in CA/52/2018.

Ms. Susan Abraham for applicant in CA/397/2017.

Ms. Priyanka Kothari, Amicus Curiae appointed by the Court.

CORAM : K.R.SHRIRAM, J.
DATE : 24TH FEBRUARY 2018

P.C.

COMPANY APPLICATION NO. 397 OF 2017

1 Mr. Kamat appearing for official liquidator, at the outset, submits that the application is premature. At the same time, Mr. Kamat seeks two weeks time to file affidavit in reply.

2 Affidavit in reply to be filed and copy served by 9th March 2018. Rejoinder, if any, to be filed and copy served by 17th March 2018.

3 Stand over to 21st March 2018.

COMPANY APPLICATION NO. 1084 OF 2015

4 Since, in the order passed in complaint no.1 of 2013, this Court has noted that Dena Bank has in fact taken possession of the assets of the company (in liquidation) and has also been allowed to retain the sale proceeds of the registered office subject to conditions imposed by the Court, Mr.Shah for applicant states nothing will survive in this company application.

5 Company application accordingly disposed.

COMPLAINT NO. 1 OF 2013

6 Crown Maritime Co. Ltd. (company) was ordered to be wound up on 18th March 2010. As required under Section 454(3) of the Companies Act, 1956, the ex-directors of the company were to submit, within 21 days from the relevant date or within such extended time not exceeding three months from that date which the Official Liquidator may, for special reasons, appoint statement of affairs. The 21 days period expired around 8th April 2010 and 3 months expired sometime around 8th June 2010. The ex-directors did not bother to file the statement of affairs. As per the order dated 16th August 2012, in official liquidator's report dated 27th July 2012, criminal complaint dated 16th January 2013 was filed against all the ex-directors.

7 It is the case of accused No.3-Sajeev Sukumaran represented by Shri Kanade that he was a minority shareholder and a nominal director of the company (in liqn.) and brother of accused no.1 and since 1990 he has been in Bahrain and was not at all involved in day-to-day affairs of the company (in liquidation). Mr. Kanade stated that there is an additional affidavit dated 17th July 2014 of accused no.3 confirming the same and that accused No.1- Sukumaran Sujathan is his brother and accused No.2- Ms. Meena Kumari Sujathan is the wife of accused No.1-Sukumaran Sujathan.

8 On 1st March 2013, accused No.1 was not present in Court but was directed to remain present on 8th March 2013. Again he remained absent and therefore the matter was stood over to 8th May 2013. On 8th May 2013, again accused no.1 was avoiding and therefore this Court was pleased to issue bailable warrant against accused No.1. On 20th June 2013, accused no.1 was present in Court and later collected copy of the complaint. On 4th July 2013, this Court directed accused No.1 to submit all the documents to the office of the official liquidator failing which, the Court would take note of his non-co-operation and would proceed to pass appropriate orders on the next date. On 11th July 2013 further time was granted to file all documents. Accused No.1 purportedly filed the statement of affairs without any supporting documents or books of accounts or details of trade debtors and loans and advances etc. A letter dated 23rd July 2013 was sent by the advocate for accused No.1 forwarding an affidavit in reply to the complaint and requested the Court to take the same as the statement of affairs being filed by accused No.1 for himself and on behalf of accused no.2. As there were various defects, again accused was given a chance to comply with the requisitions issued by the official liquidator, as could be seen from the order dated 15th October 2013. On 24th December 2013, again accused no.1 did not turn up and Court once again had to issue bailable warrant. Accused

chose to ignore everything and therefore on 3rd July 2014, another order was passed directing all the three accused not to leave India and to inform the Immigration Authority accordingly. This order restraining the accused from leaving India was recalled by an order dated 16th July 2014. All the ex-directors filed statement of affairs dated 28th August 2014.

9 Various orders have been passed which indicate the non-co-operation by accused no.1 and not furnishing the details to the official liquidator.

10 Before we proceed further, it should be noted that the object of Section 454 of the Companies Act, 1956 (The Act) is for the official liquidator to manage the company's affairs and to realize the amounts due and safeguard the assets of the company. The accused, by non-co-operating with the official liquidator, were in fact acting to the prejudice of all the creditors of the company.

11 The stand of the accused in the affidavit in reply dated 11th July 2013 is that all the data were stored in electronic form in the computer which were lying in the registered office premises which was sealed and sold by the secured creditor Dena Bank exercising its rights under the provisions of the Seuritisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002). According to the

accused Nos.1 and 2, therefore, they were unable to gather information to file the statement of affairs and also to submit details to be filed along with statement of affairs. At the same time, it should be noted that accused has filed statement of affairs in 2014 giving names of alleged debtors and creditors. If the computer was not available, I do not understand how these details at the least were available with the accused. At the same time, there is nothing on record to explain, when Dena Bank actually sealed the premises and took away the computers. It cannot be disputed that Dena Bank took away the computers because there are correspondences to that effect in the pleadings and there are also orders noted whereby Dena Bank's advocates have made statements that they would provide copies of all files to the accused. But there is no explanation whatsoever from the accused as to why they did not pursue the matter with Dena Bank and obtain the details.

12 Mr. Menon appearing for accused No.1 and accused No.2 pointed out a letter addressed by the earlier advocate of accused No.1 to Dena Bank seeking details. But Mr. Menon is unable to explain as to why, if Dena Bank did not co-operate, did the accused not move an application to this Court to direct Dena Bank to provide the details. There is also nothing on record or no explanation is available as to why, during the period when the company was wound up on 18th March 2010 and the date when Dena Bank

sealed the premises, the accused did not file the statement of affairs. I am restricting this only to accused No.1 and accused No.2 because Mr. Menon also agrees that accused no.3 was not involved in day to day affairs of the company.

13 Sub-section 5 of Section 454 of the Companies Act, 1956 reads as under :-

> *(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with the fine which may extend to [one thousand rupees] for every day during which the default continues, or with both.*

Mr. Menon, in fairness, submitted that accused no.1 has not explained why he did not file the statement of affairs and there was no escape for accused no.1, who is also present in Court and closely instructing Mr. Menon. At the same time, Mr. Menon submitted that though the accused was initially non-co-operating, but when he realized that he should co-operate with the Court, his attempts to get the details failed because the office was sealed and the computers were taken away by Dena Bank. At the same time, Mr. Menon says he has no explanation as to why the accused did not approach Dena Bank or apply to this Court for assistance in getting the details from Dena Bank. Mr.Menon states that the accused, however, may not be punished with imprisonment but the Court may impose fine on accused Nos.1 and 2. The Court asked Mr. Menon to take instructions as to how much fine accused nos.1 and 2 will pay to the Court. Mr. Menon, after taking instructions from accused no.1 who is present in Court, stated that accused no.1 will pay a sum of Rs.2 lakhs for himself and a further sum of Rs. 1 lakh will be paid on behalf of accused no.2.

14 Mr. Kamat counsel appearing for official liquidator states that the official liquidator has incurred substantial costs in prosecuting this complaint which would not have been incurred but for non-co-operation by accused no. 1 and accused no.2. In my view, cost of Rs. 50,000/- will be reasonable.

15 Mr.Menon, on instructions, from accused no.1 stated that this total amount of Rs. 3,50,000/-,(Rs. 2,00,000/- for accused no.1 + Rs. 1 lakh for accused no.2 + Rs. 50,000/- towards costs.) will be paid in two installments, viz., Rs. 2,00,000/- within two weeks from today and balance of Rs. 2,50,000/- within two weeks thereafter. This is accepted as an undertaking by accused no.1 for himself and on behalf of accused no.2.

Accused no.1, who is present in Court personally, also assures to this Court that these amounts will be paid on the due dates. This Court expects accused no.1 to stand by his word/undertaking to this Court.

16 It was also made clear to accused no.1 if these amounts are not paid for any reason on the due dates and he should not expect any extension of time to make these payments and in case he defaults on this undertaking to this Court, accused no.1 and accused no.2 will be punished with imprisonment under provisions of Section 454(5) of the Act. In addition, accused Nos.1 and 2 will be also held guilty of deliberate and willful disobedience of orders of Court and punished accordingly for contempt. Mr. Menon stated, with concurrence from accused No.1-Sukumaran Sujathan, that accused no.1 and accused no.2 will not commit any default and in case they default, the Court may imprison them even for three months. I accept this statement of accused no.1-Sukumaran Sujathan through Mr.Menon and as a responsible and well thought statement being made to the Court.

17 Out the amount of Rs.3,50,000/- to be paid by Pay order/Demand Draft on in favour of the official liquidator of this Court, Rs. 50,000/- to be kept aside to pay the lawyer’s fees and the remaining Rs.3 lakhs fine can be utilized for paying all the creditors.

In case of default, the official liquidator to place a report to that effect in this Court, on the first Wednesday after default.

18 The complaint accordingly stands disposed.

CONTEMPT PETITON NO. 1 OF 2013

19 Mr. Shah appearing for petitioner states that the breaches alleged in the petition have been complied with.

20 Therefore, contempt petition stands disposed.

COMPANY APPLICATION NO. 574 OF 2015

21 Mr. Kanade appearing for respondent no.2, having considered the affidavit file by applicant, states it is true that applicant had received remuneration of Rs.1,20,000/- for the financial year 1999-2000. Mr. Kanade states that respondent no.2 has been in Bahrain since 1990 and states that when he filed the affidavit dated 17th July 2014, respondent no.2 had, in fact, forgotten that he had received the remuneration during the financial year 1999-2000 and had, in fact, also signed the balance-sheet. Mr.Shah points out that even the balance-sheet for subsequent years indicates Directors' remuneration at Rs.6 lakhs for the financial year and that could also include respondent no.2. This is pure speculation. Therefore, in the absence of documents to the contrary, I have to accept the

statement of Shri Kanade. It is quite possible that somebody might have forgotten what happened 14 years ago.

22 In the circumstances, I cannot come to a conclusion that the statement made by respondent no.2 that he had not received any remuneration from the company (in liquidation) was a deliberate and false statement and that he should be prosecuted and punished under Section 629 of the companies Act, 1956.

It has to be clarified that this Court has not considered whether this Court can take cognizance of the offence alleged to have been committed by a director of the company under Section 629 of the Act.

23 Company application accordingly disposed.

COMPANY APPLICATION NO. 575 OF 2014

24 Heard Mr. Shah appearing for applicant and also considered the affidavit in support. The entire affidavit is based on surmises and conjunctures. The Court cannot punish any person based on surmises and conjunctures. It does appear that applicant is hurt by the fact that despite having four decrees in his favour in four separate summary suits against the company (in liquidation), applicant has not yet been able to recover the amounts. Though I feel sorry for applicant, that cannot be a reason to

punish somebody under the provisions of the Companies Act, 1956.

25 Company application therefore dismissed.

COMPANY APPLICATION NO. 1085 OF 2015

26 This application is filed seeking a prayer that this Court be pleased to withdraw permission granted to the company (in liquidation) as per order dated 13th October 2010 in Company Application No. 459 of 2010.

27 Mr. Shah appearing for applicant states that except prayer clause (k), the rest of the prayers would not survive.

28 Order dated 13th October 2010 in Company Application No. 459 of 2010 reads as under :-

> *This application is taken out by Mr. Sukumaran Sujathan, a Director of the Company in liquidation, seeking leave of this Court to prosecute/defend the proceedings which are set out at Items (a) to (x) of Prayer clause (1).*
>
> *2. After hearing the Advocate for the applicant and the official Liquidator, the following order is passed:*
>
> > *i. The Official Liquidator shall appoint M/s Intra Legal as Advocates for the Company in liquidation to defend the proceedings set out at items (a) to (x) of Prayer Clause 1 of the above Application.*
> >
> > *ii. The Applicant shall bear all costs and expenses that would be incurred for prosecuting/defending the said proceedings including the fees of M/s Intra Legal and*

> *the Official Liquidator shall not in any way liable for the said costs and expenses incurred for prosecuting/defending the said proceedings.*
>
> *iii. M/s Intra Legal shall, from time to time, keep the Official Liquidator informed about the developments in the said proceedings.*
>
> *iv. This order shall not preclude the Official Liquidator from taking possession of the records and properties/assets of the Company.*
>
> *3. The Company Application stands disposed of.*

29 In the affidavit in support, there is nothing to indicate as to why the leave granted by this Court to prosecute/defend the proceedings as set out in the company application No.459 of 2010 should be withdrawn. The affidavit in support contains all irrelevant statements.

30 Mr. Shah submitted that though the application does not indicate anywhere under what provisions such a leave can be revoked, Mr. Shah submitted if the Court can grant leave, certainly it has power to revoke the leave granted under Section 151 of the Code of Civil Procedure, 1908 read with Rule 6 and Rule 9 of the Companies (Court) Rules, 1959.

31 As stated earlier, the application does not even indicate as to why leave granted, has to be withdrawn. If such averments were contained in the affidavit in support, perhaps the ex-directors may have suitably dealt

with. Therefore, without going into the submissions made by Mr. Shah, as noted in paragraph 30 above, the application is dismissed.

COMPANY APPLICATION NO. 26 OF 2016

32 In this application, applicant is seeking an order punishing and imposing fine under Section 629 of the Companies Act, 1956 against respondent Nos. 3 to 7 and for other reliefs.

33 At the outset, Shri Shah appearing for applicant, in fairness, submitted that prayer clauses (b) to (e) cannot be granted in this application. So far as prayer clause (a) is concerned, Shri Shah once again, in fairness, submitted that it can be only against respondent no.3 because the affidavit in which the alleged unintentional false evidence is filed by respondent no.3.

34 Section 629 of the Companies Act, 1956 reads as under :-

> ***629. Penalty for false evidence :-***
> *If any person intentionally gives false evidence--*
>
> > *(a) upon any examination upon oath or solemn affirmation, authorised under this Act; or*
> >
> > *(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,*
>
> *he shall be punishable with imprisonment for a term*

which may extend to seven years, and shall also be liable for fine.

35 Mr. Shah states that application is under Section 629(b) of the Companies Act, 1956 and the affidavit filed by respondent no.3 in the winding up is the affidavit dated 28th August 2012 filed in company petition No.1015 of 2008. Shri Shah pointed out that in paragraph 5 of (i) of the affidavit, respondent no.3 has stated *"I say that apart from MV Crown I, Respondent Company was also having the following claims :- (i) Arbitration pending with Great Eastern Shipping Co. Ltd. The claim amount is Rs. 4 crores……………".* Mr. Shah submitted that at Exh. 'C' to the application is an email received from one Neel Kumar, Deputy Manager, Legal, of Great Eastern Shipping Co. Ltd. in which it is stated *"(b) still as a matter of good practice, we would like to clarify that we are no aware of any entity by the name M/s. Crown Maritime (I) Ltd. nor any arbitration proceedings are pending against any such entity."*

Therefore, according to Mr. Shah, the statement by respondent no.3 in his affidavit of pending arbitration proceedings for claim of Rs. 4 crores against Great Eastern Shipping Co. Ltd. is a false statement and therefore respondent no.3 has to be punished with imprisonment and also be held liable to fine.

36 Section 629 starts with *"If any person **intentionally** gives false evidence…………………"* Therefore, it has to be proved that the statement made by respondent no.3 in his affidavit was 'an intentional false statement'.

37 The reason why the word *"intentional"* is used is because there is a possibility that when an ex-director or any person files any false evidence or which terms out to be false or makes any statement in an affidavit which could turn out to be a false statement, it need not be intentional. A person might rely or have relied upon, for example, an auditor's report or a balance-sheet and profit-loss account of the company which was not prepared and signed by him and relying on the said balance-sheet or profit-loss account might state the asset of the company was of worth 'X' rupees. Later it might come to light that the company did not have assets worth so stated. The person who prepared the affidavit may still be a Director of the company who might be a technocrat who might not be able to read or understand the balance-sheet very well. It is also possible that he has simply relied on the balance-sheet and profit-loss accounts of the company to make this statement. That need not be an intentional false statement and that is why the legislature has used the word *"intentionally gives false evidence"* and it has to be proved beyond reasonable doubt.

38 In my view, if somebody has to be prosecuted under this Section, the Court has to come to a conclusion that the statement made was false and it was '*intentional*'.

39 Applicant has relied upon an email from Great Eastern Shipping Co. Ltd. First of all, there is no certificate under Section 65-B of the Evidence Act to prove this document. Consequently, it is possible that the author of the email relied upon by applicant might have made a mistake. It is also possible that on 21st November 2014, the date on which the said email was sent, no arbitration proceedings with Great Eastern Shipping Co. Ltd. in its records were pending. It should be noted here that the company was wound up by an order dated 18th March 2010 and this email has been received from Great Eastern Shipping Co. Ltd. on 21st November 2014 close to five years after the company was wound up. The affidavit filed by respondent no.3 is also dated 28th August 2012.

40 There is an order dated 13th October 2010 in Company Application No. 459 of 2010. A copy of the Company Application is not available with anybody but I see no reason why I should presume that prosecuting this arbitration against Great Eastern Shipping Company Limited should not be one of the proceedings listed therein.

41 In the circumstances, I cannot come to a conclusion that respondent no.3 intentionally gave false evidence. Application, therefore, without going into the issue as to whether this Court can take cognizance of an offence alleged have been committed by a director of a company under Section 629 of the Act, dismissed.

<u>COMPANY APPLICATION (LODG.) NO. 44 OF 2016</u>

41 Mr. Shah, on instructions from Shri Shenai, seeks leave to withdraw the application with liberty to file fresh application there are certain averments in the affidavit in support but consequent prayers have not been sought for. Application disposed as withdrawn with liberty as sought.

<u>COMPANY APPLICATION (LODG.) NO. 215 OF 2016</u>

42 Mr. Shah for applicant, on instructions from Shri Shenai who is present in Court, seeks leave to withdraw the application with liberty to file fresh application since there are certain averments in affidavit in support but consequent prayers are not sought for. Application disposed as withdrawn with liberty as sought.

<u>COMPANY APPLICATION NO. 52 OF 2018</u>

43 Heard the counsel for applicant and also considered the affidavit in support. For reasons mentioned therein, application allowed in terms of prayer clause (a).

44 The official liquidator to consider the affidavit of proof of debt of applicant and decide the same in accordance with law.

45 The Court appreciates and notes the immense support and assistance received from Amicus Curaie Ms. Priyanka Kothari, Advocate.

(K.R. SHRIRAM, J.)