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

OFFICIAL LIQUIDATOR'S REPORT NO.128 OF 2019
IN
COMPANY PETITION NO.412 OF 2013
AND
COMPANY PETITION NO.433 OF 2013

In the matter of the Companies Act, I of 1956

And

In the matter of Birla Surya Limited (In Liqn.)

1. Anil Manohar Kshirsagar and Ors.
2. Larsen and Tourbo Limited ….Petitioners

Mr. Deepak Sharma a/w. M.P. Sharma for Gavde Finance Pvt. Ltd.
Mr. T.N. Subramanium a/w. Ms. Nidhi Singh I/b. Vidhii Partners for noticee no.1 – Yashovardhan Birla, ex-director.
Ms. Niyati Merchant I/b. MDP and Partners for Edelweiss Asset Reconstruction, secured creditor.
Ms. Prangana Barua I/b. M/s. Manilal Kher Ambalal and Company for petitioner in CP/433/2013.
Mr. V.P. Katkar, Official Liquidator present.
Mr. Mahendhar Aithe, Company Prosecutor for Official Liquidator present.

CORAM : K.R.SHRIRAM, J.
DATE : 26th JULY 2019

P.C.:

1 At the outset, Mr. Aithe, Company Prosecutor for Official Liquidator sought leave to amend the prayer clause – (a) of the Official Liquidator's Report to delete the words “***and/or one of the office assistant of one of Birla Group of Company, Mr. S. Jayachandran Mannadiar***”.

2 Leave granted. Amendment to be carried out forthwith.

3 On 12th February 2014, an order was passed by this Court appointing Official Liquidator as Provisional Liquidator of Birla Surya Limited (in liquidation). Subsequently, by an order dated 21st July 2014, Official Liquidator has been appointed as Liquidator of the said company. It is alleged in the Official Liquidator's Report that when the Sheriff's bailiff went to serve a notice no.1422 of 2017 under Order XXI Rule 22 of the Code of Civil Procedure, 1908 on behalf of decree holder one Gavde Finance Pvt. Ltd., the ex-director of the company (in liquidation) received the notice and gave an acknowledgment using the rubber stamp of the Official Liquidator to acknowledge service. It is also alleged that the ex-director of company has not forwarded the same to the Official Liquidator. When this was brought to the notice of this Court, this Court passed an order dated 30th July 2018 in which the Court *prima facie* observed "it is strange to see that the Decree Holder got the Notice served on the ex-Directors and these ex-Directors seem to have used the rubber stamp of the Official Liquidator to acknowledge service. This is entirely illegal. The Official Liquidator will separately conduct an enquiry and place it before the Company Judge as to how this was done by the ex-directors."

4 Following this, the Liquidator conducted an enquiry and has placed this report for Court's directions. I have seen the page on which the ex-director is alleged to have put his signature and used the rubber stamp of

the Liquidator. At the outset, I have to note that nowhere in the said document, copy whereof is at page 16 of the Official Liquidator's Report, has the ex-director Yashovardhan Birla signed. On this point alone this report has to be rejected. Moreover, the same has been signed by one Jayachandran Mannadiar against whom the Liquidator is not seeking any prosecution. I have to note that the case of the Liquidator is misconceived because the ex-director or even that Mannadiar or anyone else has not used the rubber stamp of the Official Liquidator. The 'received' rubber stamp of the Official Liquidator can be found at page 24, Exhibit – D of the Official Liquidator's Report and that stamp is totally different from the stamp which is found on page 16. I have seen the endorsement and what the recipient has written is “Received without prejudice to our rights and contentions to notice – date 22nd November 2017 at 1.30 p.m. The company is under liquidation” and a rubber stamp giving the address of Official Liquidator for Birla Surya Limited, Bank of India Building, 5th Floor, Mahatma Gandhi Road, Mumbai - 400 023 is put. What this means, in my opinion, is that the Jayachandran Mannadiar has received the notice from the office of the Sheriff of Mumbai but while receiving in the office copy of the Sheriff's Bailiff, he has only informed the Sheriff's Bailiff that the company is under liquidation and the address of the Official Liquidator is at Bank of India Building, 5th Floor, Mahatma Gandhi Road, Mumbai - 400 023.

5 Therefore, I cannot come to a conclusion that Yashovardhan Birla or this Jayachandran Mannadiar has used the rubber stamp of the Official Liquidator.

6 Official Liquidator's Report, therefore, rejected.

(K.R. SHRIRAM, J.)