

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.157 OF 2019
WITH
COMPANY APPLICATION NO.158 OF 2019
IN
COMPANY PETITION NO.172 OF 2014

Kailash Shriram Agarwal

....Applicant

IN THE MATTER BETWEEN :

M/s. ACG Associated Capsules Pvt. Ltd.

....Petitioner

V/s.

The Official Liquidator & Ors.

....Respondents

Mr. Anish Ramchandani a/w. Ms. Amruta Thakur i/b. Kiran Jain and Co. for applicant.

Mr. Aditya Pimple for Official Liquidator.

Mr. Mahendhar Aithe, Company Prosecutor present.

CORAM : K.R. SHRIRAM, J.

DATED : 19th JANUARY 2021

P.C. :

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1 This is an application for recall (wrongly worded as set aside) of the order dated 4th December 2015. By this order, the Court had allowed Official Liquidator's Report dated 21st July 2015. The Official Liquidator had sought leave to commence prosecution under Section 454 (5) of the Companies Act, 1956 and to issue process against accused, who are the ex-directors of the company (in liquidation) for not complying with the requirements under the provisions of Section 454 of the Companies Act, 1956. Pursuant to the said order, Mr. Pimple states that Official Liquidator has already commenced prosecution.

2 This company application has been taken out almost four years after the order was passed. In any event, the defence raised in the company application can be raised by applicant in the prosecution commenced by the Official Liquidator.

3 In the circumstances, keeping open the rights and contentions of the applicant to be raised in the prosecution commenced by the Official Liquidator, company application stands dismissed.

4 I may also add that in the order dated 30th September 2014 passed by this Court in this Company Petition, paragraphs 2 and 3 read as under :

2. The Company through its Directors undertakes that until the entire payment is made, the Company shall not file any application before the BIFR and/or seek protection under the Bombay Relief Undertakings Act and that in the event of any default of the installments as above, the Company Petition shall revive without reference to this Court and stand allowed in terms of prayer clauses (a) and (b) which are reproduced hereunder :

(a) That the Respondent Company, namely M/s. Varun Industries Limited be wound up by an order and under the direction of this Hon'ble Court under the provisions of the Companies Act, 1956.

(b) That the Official Liquidator or such other fit and proper person as this Hon'ble Court may deem fit, be appointed as the Liquidator of the assets and affairs of the Respondent Company, namely M/s. Varun Industries Limited, forthwith, with all necessary powers under the Companies Act, 1956.

3. The Company through its Directors further undertakes that if for any reason and at any stage a Reference is registered before the BIFR under the SICA Act or the Company is declared as a relief undertaking under the Bombay Relief Undertaking Act, the Company shall not seek any protection qua the above amounts agreed to be paid by the Company to the Petitioner.

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5 The counsel for applicant is unable to even state whether respondent nos.2 and 3 have been served.

6 Therefore, stand over to 9th March 2021.

(K.R. SHRIRAM, J.)

Gauri A.
Gaekwad

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by Gauri A.
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