IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **29.09.2023**

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Comp.A.No.173 of 2018 in C.P.No.320 of 2013

RMP Infotec Private Limited,
Represented by their managing director,
Rajesh Chandran,
No.183 / 300, 1st Floor,
Thambu Chetty Street,
Parry's Corner,
Chennai - 600 001. ... Applicant

Vs.

1. The Official Liquidator,
High Court, Madras as a (Official Liquidator of
Three Sum Productions Pvt. Ltd.

2.Mr.P.K.Raghuram @ Karan
Director, Three Sum Productions Pvt. Ltd.,
No.136, CEEBROS, 3-F, 3rd Floor,
Shyamala Garden, 4th Block,
Arcot Road, Saligramam,
Chennai - 600 093.

3. Mr.R.Balasubramaniam @ Shakthikumar,
Director, Three Sum Productions Pvt. Ltd.,
No.1/B1, Ashok Nandana Apartments,
Second Cross Street, Trust Puram,
Kodambakkam,
Chennai - 600 024. ... Respondents

PRAYER: Application filed under Rule 9 and Rule 260 of the Company Court Rules, 1959 read with Section 542 of Companies Act, 1956 to declare that the respondents 2 and 3 shall be personally responsible without any limitation of liability for all or any of the debts of the delinquent company namely M/s.Three Sum Productions Pvt. Ltd.

For Applicant	:	Mr.Vaibhav R Venkatesh
For Respondents	:	Mr.B.Ambili Deputy Official Liquidator for R1 R2 to R3 - No Appearance

ORDER

This company application has been filed under Section 542 of the Companies Act, 1956 seeking for a direction from this Court to hold the respondent Nos.2 and 3 personally responsible for the debts payable by the Company under liquidation viz., M/s.Three Sum Production Pvt. Ltd.. The Company under liquidation, which is M/s.Three Sum Production Pvt. Ltd. is now represented by the learned Official Liquidator, since the said Company has been wound up pursuant to the orders passed by this Court.

2. The case of the applicant is that the respondent Nos.2 and 3, who are the directors of M/s.Three Sum Production Pvt. Ltd., availed a loan from

the applicant under a memorandum of understanding dated 25.04.2008 on behalf of M/s.Three Sum Production Pvt. Ltd., the Company under liquidation. The memorandum of understanding dated 25.04.2008 entered into between the applicant and M/s.Three Sum Production Pvt. Ltd. has been marked as Ex.A1 before the learned Master. As seen from the memorandum of understanding, a sum of Rs.1,06,00,000/- was lent by the applicant to the Company under liquidation, viz., M/s.Three Sum Production Pvt. Ltd..

3. The Certificate of Incorporation of the Company under liquidation dated 21.04.2008 has also been filed as an exhibit, which is marked as Ex.A2. Cheques issued by M/s.Three Sum Production Pvt. Ltd., the Company under liquidation, bearing cheque Nos.492055 and 492056 both dated 05.08.2011 towards repayment of the loan to the applicant have also been returned 'dishonoured' for insufficient funds, as seen from Ex.A4 series and Ex.A5 series.

4. The applicant has also sent a legal notice to the respondents on 18.08.2011 calling upon the respondents to pay the outstanding dues of the

applicant arising out of the memorandum of understanding dated 25.04.2008. The respondent No.3, who was one of the directors of the Company under liquidation, has also acknowledged his liability by sending a letter to the applicant on 29.09.2011 which has been marked as Ex.A7. The applicant has also sent another legal notice on 17.07.2013 to the Company under liquidation, which has been marked as Ex.A8. The said notice was also acknowledged by the Company under liquidation on 20.07.2013 and the Postal Acknowledgement Card has also been marked as Ex.A9.

5. The applicant has also filed the supporting affidavit filed by the Company under liquidation in Comp.A.No.853 of 2015 in C.P.No.320 of 2013 dated 03.08.2015, wherein the Company under liquidation has admitted their liability to the applicant. The said supporting affidavit dated 03.08.2015 is marked as Ex.A11. The learned counsel for the applicant would submit that the Company under liquidation had to utilize the loan given by the applicant for the production of a movie. But, however, soon after the money was lent, the respondents have misappropriated the said funds for the personal benefit of the respondent Nos.2 and 3.

6. A report has also been filed by the learned Official Liquidator dated 24.03.2023 which confirms that despite the fact that M/s.Three Sum Production Pvt. Ltd. was wound up by orders of this Court as early as on 09.06.2015, the statement of affairs was not submitted by the respondent Nos.2 and 3, the ex-directors of the Company under liquidation in compliance with the statutory requirements as per the provisions of the Companies Act, 1956. As seen from the report, there has been total non cooperation on the part of the respondent Nos.2 and 3 pursuant to the order of winding up passed by this Court.

7. As seen from Section 542 (1) of the Companies Act, 1956, the following criteria has to be satisfied by the creditors for making the ex-directors of the Company under liquidation personally liable for the debts of the applicant:

"The business of Company has been carried on, with intent to defraud the creditors of the Company or any other persons, or for any fraudulent purpose".

8. In the case on hand, the applicant has established through the following documents that the Company under liquidation and its ex-directors viz., the respondent Nos.2 and 3 have carried on business of the Company with an intent to defraud the creditors of the Company and for a fraudulent purpose:

Date	*Nature of Documents*	*Ex. No.*
25.04.2008	Memorandum of understanding entered between the applicant company and M/s.Three Sum Production Pvt. Ltd.	A1
21.04.2008	Certificate of Incorporation of M/s.Three Sum Production Pvt. Ltd. along with Memorandum of Association	A2
13.08.2009	Power of Attorney executed by 3rd respondent appointing one applicant Mr.Rajesh Chandan as his power attorney agent	A3
05.08.2011	Cheques bearing No.492055 and 492056 issued by Three Sum Productions Pvt. Ltd. to applicant	A4
06.08.2011	Return memos for cheques bearing No.492055 and 492056.	A5
18.08.2011	Legal notice sent on behalf of applicant	A6
29.09.2011	Letter issued by 3rd respondent to the applicant	A7
17.07.2013	Legal notice sent on behalf of applicant to M/s.Three Sum Production Pvt. Ltd.	A8
20.07.2013	Copy of postal acknowledgement card	A9
03.08.2015	Supporting affidavit filed in Comp.A.No.853 of 2015 in C.P.No.320 of 2013	A11

9. As seen from the aforementioned documents, which are marked as Exhibits, it is clear that the respondent Nos.2 and 3, who are the ex-directors of the Company under liquidation viz., M/s.Three Sum Production Pvt. Ltd., have misappropriated the funds lent by the applicant under the MOU dated 25.04.2008 and the said funds were never used by them to achieve the object of the loan as per the MOU dated 25.04.2008.

10. The report of the learned Official Liquidator dated 24.03.2023 also confirms that the respondent Nos.2 and 3, who are the ex-directors of the Company under liquidation, have not cooperated with the learned Official Liquidator and till date, they have not even filed the statement of affairs as per the statutory requirements of the Companies Act, 1956.

11. The applicant in the following paragraphs of the Affidavit filed in support of this application has also pleaded that the respondent Nos.2 and 3, who are the ex-directors of the Company under liquidation, had played fraud on the applicant:

"3. The delinquent company herein is represented by three directors namely Mr.P.K.Raghuram alias Karan having office at No.136, Ceebros Apartment, 3F, 3rd floor Shyamala Garden, 4th Block, Arcot Road, Saligramam, Chennai- 600 083, Mr. R.Balasubramanian alias Shakthi Kumar, whose address is same as the address of the delinquent company, The Third Director is Mr.Dheeraj Kher, whose last known address is also same as the delinquent company. These three persons have become directors by virtue of filing Form-32 which was filed before ROC on 14.04.2008. Subsequent to this date, bank account has been opened in the name of the delinquent company, and the entire monies of the petitioner have been siphoned off by the three directors. The money has come into the delinquent company's account and subsequently the delinquent company has defaulted its liability to repay the petitioner. It is clear that the delinquent company has an account in Vijaya Bank, Triplicane branch, Bearing A/c No.00002500000. It is certain that the bare perusal of the aforementioned bank account which would clearly reveal that the monies which had come into the delinquent company's account have been siphoned off

and thereafter no further entries would have been reflected in the account for a simple reason being that no documents or returns have been filed by the delinquent company till date.

4. It is pertinent to mention herein that the delinquent company have moved an application where the Company application No. 853 of 2013, wherein the delinquent company themselves have admitted in paragraph 4 and 7 of the said affidavit that admittedly a sum of Rs.50,00,000 is due and further that the delinquent company was incorporated only in the year 2008-09 purely for the purposes of receiving loan from the applicant herein. The respondents had moved the said application for the purposes of seeking a direction from this Hon'ble court to remove the seal which have been placed by the official liquidator. The said application came to be allowed by the virtue of the order of the Hon'ble Court dated 25.09.2015 and the official liquidator was directed to remove the seal affixed on the premises of the property of the delinquent company since the property of the delinquent company was neither belonging to the delinquent company or its director or through the third party, but the delinquent company was merely a lessee *of the said property.*

5. Thus, it is seen that the delinquent company is not having any assets of its own and the only transaction which the delinquent company had was with the applicant, wherein the delinquent company had borrowed a huge amount of money. It is also crystal clear that the sole beneficiaries of the transaction with the applicant are the directors of the delinquent company. The delinquent company have shown scant regard for the law of the land and have not followed the mandate under the Companies Act, 1956. After the orders have been passed by the Hon'ble court in September 2015, there was no action taken by the official liquidator against the delinquent company and not even the statement of affairs prepared of the delinquent company have been prepared by the official liquidator. The directors of the delinquent company have not been given information, intimation or notice to submit the affairs with the delinquent company to the official liquidator. The preliminary reports have also not been placed on record by the official liquidator. In short, no further proceeding has been taken by the official liquidator against the delinquent company and thus, the applicant have been unfairly prejudiced. Left *with no other choice, the present application has been moved under Section 542 of the Companies Act, 1956 read with Rule 260 of the Company Court Rules, 1959 and proceed against the individual directors of the respondent company.*

6. It is clear that the Respondents 2-4 have played a fraud on the plaintiff. They have started the company only to defraud the monies of the applicant and there was no genuine interest to run the affairs of the delinquent company. No returns have been filed and not a single document has been uploaded by the delinquent company with the RoC after incorporation. The delinquent company was nothing but a sham to cheat and play a fraud on the applicant."

12. It is clear that the respondent Nos.2 and 3, the ex-directors of the Company under liquidation, had played fraud upon the applicant to deprive the applicant to recover its dues as per the MOU dated 25.04.2008. The report of the learned Official Liquidator dated 24.03.2023 also confirms the non cooperation of the ex-directors of the Company in the liquidation process.

13. The applicant has satisfied the requirements of Section 542 (1) of the Companies Act, 1956. Therefore, this application has to be allowed as prayed for and the respondent Nos.2 and 3, the ex-directors of the company under liquidation, are made personally liable for the debts due and payable to the applicant in terms of the MOU dated 25.04.2008 entered into between the applicant and the Company under liquidation viz., M/s.Three Sum Production Pvt. Ltd.. Accordingly, this application viz., Comp. A.No.173 of 2018 in C.P.No.320 of 2013 is allowed.

14. In view of the order passed in Comp. A.No.173 of 2018 in C.P.No.320 of 2013, the application filed by the learned Official liquidator in C.A.No.60 of 2019, seeking for dissolution of M/s.Three Sum Production Pvt. Ltd., as per provisions of Section 481 of the Companies Act, 1956 has to be allowed for the following reasons:

a) The fund position of the Company under liquidation, as on date of filing of C.A.No.60 of 2019, discloses that only a sum of Rs.10,000/- is available to the credit of the Company under liquidation;

b) The ex-directors of the Company under liquidation have also not filed the statement of affairs as required under Section 454 of the Companies Act, 1956;

c) The officials of the learned Official Liquidator have handed over the possession of the Company's registered office premises along with keys to Shri.R.Balasubramanian, ex-director of the Company under liquidation and they have shifted the available books and records to the learned Official liquidator's record room on 16.10.2015;

d) The report of the learned Official Liquidator dated 24.03.2023 confirms the aforementioned facts and the learned official liquidator has stated in his report that the amount lying to the credit of the Company under liquidation is very meagre and further, it is stated that there are no other creditors for the Company under liquidation except for the applicant in this application;

e) The learned Official Liquidator has also stated that no useful purpose will be served, if the Company is not dissolved as per the provisions of Section 481 of the Companies Act, 1956.

15. Accordingly, Comp.A.No.60 of 2019 in C.P.No.320 of 2013 is also allowed as prayed for.

29.09.2023

Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE. J.,

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Comp.A.No.173 of 2018 in C.P.No.320 of 2013

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