



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Company Application (CAL) No. 67 of 1979

in

Company Petition No. 7 of 1972

[D. R. Gharote, the Asstt. Official Liquidator of the C. Eduljee & Co. Ltd. (in Liqn.) **Vs.**
Shri Ravishankar Agrawal, Ex. Director, C. Eduljee & Co. Ltd. and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. U. P. Parmar, Official Liquidator along with Mr. D. M. Prasad, Company
Prosecutor

CORAM : ANIL L. PANSARE J.

DATED : 11-10-2024

In *Narayan V/s Official Liquidator of Maharashtra Asbestos Private Ltd.*, the Division Bench of this Court in Company Appeal No. 13/2008 has discharged the appellant therein by setting aside the order passed by the Company Court. The Court held that the active engagement in the administration or management of the affairs of the Company is required prior to making declaration under section 543 of the Act of 1956.

2. In *Official Liquidator, High Court Madras V/s Gautham Dhiraj Mal Ranka & Others [2007 SCC OnLine Mad. 888]*, the High Court of Madras has discharged the ex-directors on the ground that, charges of misfeasance and non-fesance were made without pinpointing a specific act of dishonesty and misappropriation, and were general in nature.

3. In *Security and Finance Private Limited V/s B. K. Bedi and others [1990 SCC OnLine Del. 102]*, the High Court of Delhi has discharged the ex-directors on the ground of absence of specific allegations. The

Court held that when the allegations are not specific and details of fraud are not given, then the Court cannot indulge in the fishing or roving enquiry. The enquiry is to be confined to the purpose with which the business of the Company had been carried on and the persons, who were knowingly parties to that act. There has to be positive and specific evidence and pleadings in respect of the individual director.

4. Learned Company Prosecutor along with Official Liquidator submit that the proceedings under Sections 543 of the Act of 1956, are not maintainable, in as much as, the investigation report filed by the Chartered Accountant does not disclose the individual acts done by the ex-directors, and therefore, specific liability cannot be ascertained in terms of the provisions under Section 543 of the Act of 1956.

5. So far as proceedings under Section 542 of the Act of 1956 is concerned, it is not the case of the Official Liquidator that the ex-directors have, pending winding up petition, carried on business of Company with an intent to defraud the creditors or other persons and, therefore, proceedings under Section 542 of the Act of 1956, are not maintainable.

6. In view thereof, the Company Application No. 67/1979 is disposed of, as not maintainable.

Company Application (CAL) Nos. 68/1979 and 4/1980

7. These applications do not survive and thus disposed of accordingly.

Company Petition No. 7 of 1972

8. Official Liquidator shall file statement of assets and liabilities of the Company under liquidation for further consideration.
9. Stand over to 25-10-2024.

(Anil L. Pansare, J.)

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