IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

COMPANY APPLICATION NO.37/2007 IN
OFFICIAL LIQUIDATOR'S REPORT NO. 2/2007 (D) IN
COMPANY PETITION NO.7/2001(In Liquidation)

Official Liquidator and Liquidator of M/s. Maharashtra Explosives Ltd. (In Liqn.) High Court of Bombay, Nagpur Bench, Nagpur. Vs. Jagdish Prasad Goenka and 8 Others.

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

Dr. Anjan De, Advocate for applicant.
Mr. V. V. Bhangde, Advocate for respondent nos. 1 to 6.

CORAM : ANIL L. PANSARE, J.
DATE : 16.02.2024

Heard.

2. The Official Liquidator has filed the present proceedings under Section 542 and 544 of the Companies Act, 1956. The Supreme Court in the case of ***Official Liquidator Vs. Raghawa Desikachar and Ors.,*** reported in ***(1974) 2 SCC 741,*** while dealing with the charge of misfeasance or nonfeasance, has held in paragraph 7 as under:

> *"7. .....It may be mentioned that misfeasance action against the Directors is a serious charge. It is a charge of misconduct or misappropriation or breach of trust. For this reason the application should contain a detailed narration of the specific acts of commission and omission on the part of each Director quantifying the loss to the Company arising out of such acts or omissions. The burden of proving misfeasance or nonfeasance rests on the Official Liquidator. The Official Liquidator, it may be mentioned, merely relied upon the evidence*

recorded in public examination of the Directors and on a few documents tendered in evidence. At the stage of public examination there was no charge of misfeasance against the Directors and they were not in a position to know what would be the grounds that would be alleged against them for recovering any amounts, for the loss said to have been caused to the Company by reason of such misfeasance. The application made by the Official Liquidator did not give sufficient particulars which, in our view, it should have. Once a show cause notice was given to respondents 1 to 4 the Official Liquidator did not lead any evidence nor rely upon any other documents, nor did respondent 5 who was instrumental in initiating the misfeasance case against respondents 1 to 4 lead any evidence. In our view, there was no justification whatsoever for the District Court to reject the evidence which the respondents had intended to lead or to disallow the production of documents other than those already produced, and for that reason the High Court rightly ordered that additional evidence be recorded in this case."

3. Thus, the Supreme Court has held that in the application alleging misfeasance, which attracts charge of misconduct or misappropriation or breach of trust, the official liquidator should state detailed narration of the specific acts of commission and omission on the part of the each director quantifying the loss to the Company arising out of such acts or omissions. The Court further held that the burden of proving misfeasance or nonfeasance rests on the official liquidator.

4. Thus, the official liquidator has to apply mind while alleging misfeasance against the directors or persons responsible for such charge.

5. In the present case, the official liquidator has relied upon the investigation report of the chartered accountant, who was cross-examined by the ex-directors. The chartered accountant admitted that he has not assigned specific roles in the individual names of the directors. He further admitted that he did not find any material against the individual director to fix the responsibility. He deposed that he cannot tell the names of the directors who had a control over the company's business. He has then deposed that he does not have any material to show that the directors were benefited. He has then admitted that the directors were not negligent in respect of the issue relating to the recovery of money. The counsel has taken me through further evidence which indicates that there is absolutely no evidence against the individual director. The chartered accountant has opined that all the directors are responsible for the lapses committed in handling the company's affairs. This evidence, if considered in the light of the law laid down by the Supreme Court supra, can be said to be insufficient to prove the serious charge of misfeasance. There is, thus, no merit in the application. The application is dismissed.

(Anil L. Pansare, J.)

Kahale