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

COMPANY APPLICATION NO. 36 OF 2004
IN OFFICIAL LIQUIDATOR REPORT NO. 26 OF 2004
IN COMPANY PETITION NO. 1 OF 1998

(In the matter of M/s Snehal Housing Development Finance Ltd. Vs. Shri Arun Bapuraoji Wadikar & Ors.)

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

Ms U.P. Parmar, Official Liquidator with Shri Dharmnath Prasad, Company Prosecutor.
Shri S.O. Ahmed, Counsel for respondent no.1.

CORAM : ANIL L. PANSARE, J.
AUGUST 16, 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 Companies Act, 1956 (for short "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] Ms U.P. Parmar, Official Liquidator, submits that the proceedings under Sections 543 of the Companies Act, 1956, are not maintainable inasmuch 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 filed in terms of the provisions under Sections 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, Company Application No. 36/2004 is disposed of as not maintainable.

7] In view of order passed above, Civil Application Nos. 291/2021, 59/2010 and 1/2005 in Civil Application No. 36/2004, do not survive. The same stand disposed of accordingly.

<u>COMPANY PETITION NO. 1/1998</u>

8] The Official Liquidator shall submit statement of assets and liabilities for further consideration.

9] Stand over to 23/8/2024.

10] To be heard along with Civil Application Nos. 89/2002, 98/2002, 93/2002, 90/2002, 91/2002, 29/2003, 94/2002, 11/2003, 27/2003, 19/2003, 95/2002, 97/2002, 103/2002, 107/2002, 106/2002, 101/2002, 104/2002, 8/2003, 6/2003, 105/2002, 4/2003, 31/2003, 100/2002, 99/2002, 102/2002, 111/2002, 114/2002, 133/2002, 115/2002, 123/2002, 5/2003, 124/2002, 119/2002, 112/2002, 117/2002, 121/2002, 9/2003, 24/2003, 14/2003, 116/2002, 120/2002, 118/2002, 3/2003, 30/2003, 26/2003, 25/2003, 20/2003, 13/2003, 18/2003, 23/2003, 22/2003, 33/2003, 12/2003, 32/2003, 16/2003, 15/2003, 28/2002, 21/2003, 17/2003, 7/2003 and 10/2003.

JUDGE

Sumit

Signed by: Mr. Sumit Agrawal
Designation: PA To Honourable Judge
Date: 16/08/2024 18:14:44