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

COMPANY APPLICATION NO. 13 OF 2018
IN COMPANY PETITION NOS. 12 OF 2012 AND 14 OF 2013
(Official Liquidator of M/s. Shivmangal Ispta Pvt. Ltd. Vs. Shri Nitin Manoj Maheshwari & Anr.)

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, Counsel for the applicant.

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CORAM : ANIL L. PANSARE, J.
JANUARY 19, 2024.

The Official Liquidator has filed complaint under Section 454(5) of the Companies Act, 1956 on the ground that the erstwhile Directors, i.e., the non-applicants herein have not submitted statement of affairs of the Company within 21 days in terms of sub-sections (1)(2)(3) of Section 454 of the Companies Act.

2] The Official Liquidator has been appointed vide order dated 8/5/2015.

3] When enquired, the Official Liquidator, Shri S.D. Patil submits that notices in this regard were issued to ex-directors on 7/7/2015. If that be so, the Official Liquidator ought to have filed the complaint on or immediately after passing 21 days from 7/7/2015. Instead, the complaint has been filed after about three years, i.e., on 15/2/2018. The delay resulted into losing vital information as regards the residence of ex-directors and, therefore, they could not be served till date.

4] As could be seen, neither non-applicant no.1 nor non-applicant no.2 have been served till date. Notice to non-applicant no.1 has been not served, reasons thereof are not known. So far as non-applicant no.2 is concerned, notice has been not served because the postal remark indicates that the addressee has left. Resultantly, there is absolutely no progress in the complaint that has been filed belatedly.

5] Sub-section (5A) of Section 454 of the Companies Act provides that the complaint filed under sub-section (5) of Section 454 shall be processed in terms of the procedure laid down in the Code of Criminal Procedure, 1973 for the trial of summons cases by the Magistrate.

6] Chapter XX of the Code of Criminal Procedure, 1973 deals with trial of summons cases by Magistrate. Section 258 provides for stopping of the proceedings at any stage without pronouncing judgment for the reasons to be recorded.

7] In my view, what has been stated hereinabove are good reasons to stop the proceedings. It appears that except for losing judicial time and public money in tracing the non-applicants, no fruitful result will be capitulated if the proceedings are continued. Had the Official Liquidator taken prompt steps, fruitful results could have been obtained.

8] In the light of above, the belated complaint filed by the Official Liquidator bearing Company Application No. 13/2018 stands stopped/dropped.

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9] The Official Liquidator shall file statement of assets and liabilities to proceed with dissolution proceedings.

10] Stand over to 2/2/2024.

(ANIL L. PANSARE, J.)

Sumit