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

Company Application No. 153 of 2003
with
Company Petition No. 7 of 1995

[Official Liquidator & Liquidator of Orange City Builders Pvt. Ltd. (in liqn.) **Vs.** Shri Vasant Motiram Sonawane & Ors.]

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

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Shri Shriniwas Deshpande, Counsel for the Official Liquidator.

CORAM : ANIL L. PANSARE, J.
DATE : 02.02.2024

On previous date, following order was passed:

"The learned Counsel for the Official Liquidator submits that respondent no. 3 has passed away. The learned Counsel for respondent no. 2 seeks adjournment on the ground that some instructions are awaited.

2] As could be seen, the Company Petition has been filed in the year 1995. The present application has been filed in the year 2003. It is high time that the proceedings have seen the light of the day.

3] In the circumstances, last chance is granted to respondent no. 2 with an understanding that upon his failure to cross-examine the Chartered Accountant on next date, it will result into closure of evidence of the Chartered Accountant.

4] Stand over to 2/2/2024.

5] In the meantime, the Official Liquidator shall place on record the status of assets and liabilities of the Company as on date and the steps taken by him to complete winding-up proceedings"

2. The Chartered Accountant is present today. None appears for the respondent no. 2 despite the order that his absence will lead to closure of evidence of the Chartered Accountant.

3. Evidence of the Chartered Accountant stands closed accordingly. The following documents are marked exhibits.

Exhibit Number/s	Name/s of document
1	Examination in chief by way of affidavit filed by the Chartered Accountant
2	Investigation Report of Orange City Builders Pvt. Ltd. prepared by the Chartered Accountant
3 to 44	Receipts and Vouchers
45	Complaint filed by Orange City Builders Pvt. Ltd. through its Director Shri V. M. Sonewane
46 to 51	Cash Book
52	Statement of affairs under Section 454 of the Companies Act, 1956 in respect of Orange City Builders Pvt. Ltd.

4. Heard learned counsel Mr. Shriniwas Deshpande. Perused the investigation report of the Chartered Accountant C. V. Paturkar & Company. Respondent nos. 1 and 3 have expired and, therefore, proceedings will continue against respondent nos. 2 and 4.

5. The Official Liquidator has initiated proceedings under Sections 542 and 543 of the Companies Act, 1956. Mr. Shriniwas Deshpande fairly submits that ingredients of Section 542 will not be attracted for the reason that there is no evidence that in the course of winding up of a company,

the business of company has been carried on, with intent to defraud creditors of the company or any other person as mentioned in Section 542 of the Companies Act.

6. The proceedings thus continued under Section 543 which deal with power of Tribunal to assess damages against delinquent Directors, etc. The Chartered Accountant has, in his affidavit of chief examination, given details as to how Ex-Directors of the company were responsible for misfeasance to the tune of Rs. 4,74,000/-.

7. The investigation report of the company under question, namely, Orange City Builders Pvt. Ltd. show as to how the liability has been fixed. The Chartered Accountant has quoted various instances to fix the liability. It appears that multiple vouchers were prepared under the heads of broker commission, rent and taxes, cash payment, loan refund, travelling and conveyance and other such debit vouchers which do not bear signatures of the receiver and the false debit entries have been made in the cash book accordingly. The Chartered Accountant has then investigated the affairs of the company's ex-directors and also as regards liability towards secured creditors. It appears that certain amount obtained from Central Bank of India, Dharampeth Branch, Nagpur has been utilized for personal benefits. The Chartered Accountant fixed the liability in following terms.

> ***"Fixation of Liability***
>
> *While discussing every point in details we have fixed up the amount of liability in each case to facilitate the framing of charges of misfeasance against the ex-directors of the company. We hereby summarise the issue wise liability :-*

1. Misappropriation of funds by ex-directors	*Rs. 2.49 lacks*
2. Liabilities towards secured creditors	*Rs. 2.82 lacks*

Total	*Rs. 5.31 lacks*

From the above it will be clear that the ex-director of the company have misutilised/misappropriated/defrauded the funds of the company and hence besides the specific liability in each case, they are generally liable for misfeasance, malfeasance and breach of trust with regards to the affairs of the company.

Conclusion

While performing this assignment we have confined ourselves to the factual records and information made available to us. We have tried to make this report self explanatory and self contained as has been possible for us to do so with the main purpose that if and when needed, the same may come handy and helpful in the supplementation of any evidence that may be taken in any action, suit or proceedings against one or more persons concerned."

This detail evidence and the investigation report has been not challenged by the respondents despite giving opportunity. Thus, in a way, the respondents have admitted the charges made against them, having not cross-examined the Chartered Accountant. There appears no reason why should the liability not fixed in terms of Section 543 of the Companies Act.

8. Learned counsel for the Official Liquidator further submits that to the credit of the company, there is only Rs. 1463/- left without any assets and for want of funds, the order of dissolution of the company may be passed. He then submits that the amount that will be recovered in terms of

the order passed by this Court can be distributed amongst the creditors. According to him, there are three creditors, one is secured creditor and other two are unsecured creditors. The secured creditor is Central Bank of India, Dharampeth Branch, Dharampeth, Nagpur and the outstanding amount is Rs. 2,58,965/-. The unsecured creditors are (a) The Tax Recovery Officer, Nagpur having claim of Rs. 1030/- and (b) Shri Harish Somaji Talmale, resident of Pauni, District Bhandara, having claim of Rs. 2,25,000/- with interest at the rate of 18 %.

9. Upon recovery of amount fixed in terms of Section 543 of the Companies Act, 1956, the Official Liquidator shall disburse the amount to the creditors in terms of the provisions the Companies Act, 1956 meaning thereby that the liability of secured creditor shall be discharged first and balance will be proportionately disbursed amongst the unsecured creditors. The Official Liquidator shall, before disbursement of amount, verify whether the creditors have recovered the amount in any other proceedings and if any creditor has recovered the amount, the amount available with the Official Liquidator shall be disbursed to remaining creditors in terms of the provisions of the Companies Act. The Official Liquidator shall make good the administrative expenses from the said amount but with prior sanction of the Court. Hence, following order.

ORDER

(i) It is held that the Ex-Directors are guilty of misfeasance and are hereby directed to repay the amount of Rs. 5,31,000/- along with interest at the rate of 6% p.a. from

5-11-2003, the date when the liability was fixed by the Chartered Accountant.

(ii) The amount shall be paid within eight weeks from today.

(iii) The amount be deposited with Official Liquidator.

(iv) Upon receipt of amount, the Official Liquidator shall disburse the amount in terms of paragraph nos. 8 and 9 of the body of the order.

Order corrected as per Court's order dtd. 29-2-2024

(v) The misfeasance proceedings stand closed. The Civil Application No. 153/2003 is accordingly disposed of.

(Anil L. Pansare, J.)

kahale/wasnik