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

COMPANY APPLICATION NO. 7 OF 2005
WITH OFFICIAL LIQUIDATOR REPORT NO. 59 OF 2004
IN COMPANY PETITION NO. 9 OF 1991

(Official Liquidator & Liquidator of M/s Nagpur Transformers Limited Vs. Mr. Ashim Marumdar & Ors.)

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 Official Liquidator.
Ms Sharda Wandhile, Counsel for respondent no.5.

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CORAM : ANIL L. PANSARE, J.
FEBRUARY 16, 2024.

The Official Liquidator is seeking action against the respondents/ex-directors of the Company under Sections 542 and 543 of the Companies Act, 1956. In all, seven persons have been arrayed as respondents. Respondent no.2 is reported dead. Ms Sharda Wandile, learned Counsel appears for respondent no.5. None appears for the other respondents.

2] Dr. De, learned Counsel for the Official Liquidator contends that the respondents are facing charge of misfeasance, malfeasance, non-feasance, breach of trust, etc. and have misapplied funds of the Company to the tune of rupees five crore approximately and, therefore, they be directed to repay the said sum. He has relied upon the Investigation Report prepared and filed by the Chartered Accountant.

3] I have gone through the Investigation Report. The Chartered Accountant has blamed all the Ex-

Directors for poor management of the Company. The Chartered Accountant has *inter alia* stated that the Directors have not repaid amount of loan, unsecured loan is shown as other loan, incorrect book entries have been made for cash loans, have repaid part of loan to the tune of Rs.2,78,000/- pending liquidation proceedings, they have intentionally not paid the amount due to sundry creditors, committed error in showing depreciated value of fixed assets, they have not handed over fixed deposit receipts to the Official Liquidator, etc.

4] Thus, the Chartered Accountant has not attributed specific role to each Director. The Hon'ble Supreme Court in the case of *The Official Liquidator Vs. Raghawa Desikachar And Others [(1974) 2 SCC 741],* while dealing with the importance of specific charge for misfeasance under the provisions of the Companies Act, 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 Company arising out of such acts or omissions. The burden of proving misfeasance or non-feasance 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 Nos. 1 to 4 the Official Liquidator did not lead any evidence nor rely upon any other documents, nor did respondent No. 5 who was instrumental in initiating the misfeasance case against respondents Nos. 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."

Thus, the Supreme Court has held that the application alleging misfeasance or non-feasance should contain a detailed narration of the specific acts of commission and omission on part of each Director qualifying loss to the Company arising out of such acts or omission. The Court further held that burden of proving misfeasance or non-feasance rests on the Official Liquidator.

5] In the present case, the Official Liquidator has merely relied upon the Investigation Report filed by the Chartered Accountant. As stated earlier, the Chartered Accountant has levelled generalized charge against the Directors. There is absolutely nothing in the report to indicate as to which Director has committed fraud or which Director has committed misfeasance or malfeasance or non-feasance or breach of trust or which Director has misapplied the amount. The qualifying loss to the Company by such acts of the respective Directors is also absent.

6] Thus, even if the Investigation Report filed by the Chartered Accountant is accepted to be true, there is absolutely no evidence as regards misfeasance, malfeasance, breach of trust, etc. against any Director. The Official Liquidator ought to have applied his mind before relying upon the report of the Chartered Accountant. There is, thus, no merit in the application.

7] The learned Counsel for respondent no.5 submits that the Chartered Accountant has blamed one Aparna Bose for taking active role in collection and distribution of assets and debts even after the order of winding-up proceedings. Despite such fact, the Official Liquidator has not made her party respondent. She further states that upon own showing of the Chartered Accountant, respondent no.5 was appointed as Director on 31/3/1993. Despite such status, he has been shown as

Director in the annual return prepared up to 30/9/1990. The report further indicates that the Directors' liability has been fixed as per the audited balance sheet of 31/3/1992. Accordingly, she submits that if the audited balance of March – 1992 is considered, respondent no.5, who was appointed as Director in March – 1993, could not have been made responsible for any liability.

8] To my mind, the lapses pointed out by the learned Counsel Ms Wandile would further certify that the Chartered Accountant has not carried the investigation diligently and the Official Liquidator has not applied his mind but has blindly placed reliance upon the report. The net result is that there is no merit in the application. The same is accordingly rejected.

(ANIL L. PANSARE, J.)

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