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

OFFICIAL LIQUIDATOR'S REPORT NO. 46/2000 IN COMPANY APPLICATION NO. 47/2000 IN COMPANY PETITION NO. 2/1995

In the matter of M/s. Saroj Alloys and Steel Limited (In Liqn.)

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 Official Liquidator.
Mr. A.S. Manohar, Advocate for respondent Nos. 6A to 6E.

CORAM : ANIL L. PANSARE, J.
DATE : SEPTEMBER 20, 2024

In ***Narayan V/s Offcial 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 Gautam 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. The learned Counsel for the Official Liquidator submits that the proceedings under Sections 543 of the Act of 1956, are not maintainable, in as much 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 ascertained in terms of the provisions under Section 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.

In view thereof, Official Liquidator's Report No.46/2000 is disposed of. All other pending applications are also disposed of.

Company Petition No.2/1995

The Official Liquidator shall submit present status of assets and liabilities of the Company under liquidation for further consideration.

Stand over to 27.09.2024.

(Anil L. Pansare, J.)

Kahale