IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR
COMPANY APPLICATION NO.51/2002 IN
COMPANY PETITION NO.14/1994
Official Liquidator .Vs. Subir Roy, Calcutta & Ors
AND
COMPANY APPLICATION NO.6/2005 IN
COMPANY PETITION NO.14/1994
Official Liquidator .Vs. Subir Roy, Calcutta & 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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Dr. Anjan De, Advocate for Official Liquidator.
Ms A. Paunikar, Advocate instructed by Mr. S. V. Sirpurkar, Advocate for respondent Nos. 1, 3(b) and 5
Ms Kirti Satpute, Court Commissioner.

CORAM : ANIL L. PANSARE, J.
DATE : 21.06.2024

Heard.

2. The Official Liquidator has made two prayers. One is to take cognizance of the offences committed by the ex-Directors under Section 454 (5) of the Companies Act, 1956 and the other is to issue summons under Section 542 and 543 of the Act.

3. Counsel for the Official Liquidator has invited my attention to the investigation report, by which the Chartered Accountant has opined that all the ex-Directors are liable for the losses caused to the creditors, etc. and are accountable for the said loss. They have violated certain statutory requirements. The Chartered Accountant has then vaguely opined that the ex-Directors of the company have misapplied the funds of the company and are thus liable for commission of misfeasance and breach of trust with regard to the affairs of the company.

4. Dr. De, learned counsel for the Official Liquidator rightly points out that except for quoting the words used under the provisions of the Sections 454, 542 and 543 of the Companies Act, 1956, the Chartered Accountant has failed to ascertain specific role of ex-Directors in order to fix the liability and proceed against such Director, in terms of provisions of the Act of 1956.

5. 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 Act of 1956.

6. In the case of ***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.

7. In the case of ***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.

8. As could be seen, a consistent view has been taken that the Official Liquidator should come up with a specific allegation/charge against the persons named under Section 543 of the Act of 1956 as regards misapplication, retainer, misfeasance or breach of trust committed by an individual/s. The Official Liquidator has not come up before the Court with such positive and specific evidence and pleadings in respect of the individual director.

9. In other words, on the basis of an investigation report filed by the Chartered Accountant, which does not disclose the specific role played by the ex-Directors, the proceedings under Section 543 of the Act of 1956 are not maintainable.

10. As regards proceedings under Section 542, it is not the case of the Official Liquidator that ex-Directors have, in the course of winding up of company, carried on the business of the company with intend to defraud the creditors of the company. In view thereof, the proceedings under Section 542 of the Act of 1956 are not maintainable.

11. So far as the proceedings under Section 454 (5) of the Act of 1956 is concerned, this proceeding is pending without any fruitful progress for last 22 years. In the meantime, accused no.4 – Shailendra Roy, accused No. 2 – Sushil Porwal have expired. The names of accused Nos. 3 and 6 have been deleted for the reason that accused No.3 had expired and accused No.6 has been discharged. Thus, out of seven accused, four have

either expired or discharged. The remaining three are pretty old.

12. Considering the above status, which includes that the investigation report and which does not render a specific finding against any ex-Director as regards misappropriation of amount or breach of trust, no fruitful purpose will be served by continuing the proceedings under Section 454 (5) of the Act of 1956, which provides for punishment with imprisonment for a term up to two years. This is, therefore, a fit case wherein powers under Section 258 of the Criminal Procedure Code, 1973 should be invoked. Accordingly, the proceedings under Section 454 (5) of the Act of 1956 stands stopped.

13. Put all together, there is no substance in these applications. All the applications are accordingly disposed of. The Court Commissioner stands discharged. Her fees be quantified and paid, in accordance with rules.

14. Company Application Nos.95/2009, 618/2017 and 414/2022, do not survive and stand disposed of accordingly.

(Anil L. Pansare, J.)

Kahale