



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

Company Application (CAL) No. 70 of 2002
in

Company Petition No. 1 of 1997

[Official Liquidator & Liquidator of Mid India Oils & Export Ltd. (in liqn.) High Court of Mumbai Bench
at Nagpur Vs. Mr. D. K. Audikesavulu and 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, Advocate for Official Liquidator along with
Mr. Dharamnath Prasad, Company Prosecutor
Mr. Masood Shareef, Advocate for respondent no. 1
Ms. R. G. Bajaj, Advocate for L.Rs of respondent no. 6 and 7

CORAM : ANIL L. PANSARE J.

DATED : 02-08-2024

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.

2. In *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.

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. Dr. Anjan De, learned Counsel for Official Liquidator submits that the proceedings under Sections 542 and 543 of the Companies Act, 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 fixed in terms of the provisions under Sections 542 and 543 of the Act of 1956.

5. Learned counsel of respondent no. 1 joined by learned counsel for respondent no. 6 and 7 submit that legal representatives of the Ex-directors, except one, are being prosecuted, which is not permissible.

6. In view thereof, the Company Application No. 70/2002 is disposed of, as not maintainable.

7. The Official Liquidator shall submit present status of the company along with the statement of assets and liabilities for further consideration.

8. Stand over to 16-8-2024.

(Anil L. Pansare, J.)