

**IN THE HIGH COURT AT CALCUTTA
ORDINARY JURISDICTION
ORIGINAL SIDE**

BEFORE:

The Hon'ble Justice Ravi Krishan Kapur

CA/1/1996
CA/2/1997
CA/4/1999
CA/6/2022
CA/7/2023
CA/8/2023
CA/9/2023
CA/10/2023
CA/11/2023
CA/12/2024
In
CP/117/1979

CHRESTIEN MICA INDUSTRIES LIMITED
VS
OFFICIAL LIQUIDATOR

For the applicant in CA/10/2023	: Mr. Debnath Ghosh, Senior Advocate Mr. Manoj Kumar Tiwari, Advocate Mr. Sarosij Dasgupta, Advocate Mr. Biswaroop Mukherjee, Advocate Ms. Arpita Dey, Advocate
For the applicant in CA/9/2023	: Mr. Subhankar Nag, Advocate Mr. Avishek Guha, Advocate Mr. Ankush Majumdar, Advocate Mr. A. K. Pandit, Advocate
For the Official Liquidator	: Ms. Tanushree Dasgupta, Advocate Ms. A. Chowdhury, Advocate
For SBI	: Mr. Debashis Saha, Advocate Mr. Avirup Roy Sanyal, Advocate
For the Special Officer Mr. A.C. Kar	: Mr. Jayanta Kumar Mitra, Senior Advocate Mr. Jaydeep Kar, Senior Advocate Mr. Samrat Sen, Senior Advocate Mr. Anirban Kar, Advocate Mr. Munshi Ashiq Elahi, Advocate Ms. Vedantri Bhattacharya, Advocate
For the Special Officer Mr. Arun Kumar Agarwala	: Ms. Akanksha Mukherjee, Advocate
For the applicant in CA/6/2022, CA/7/2023, CA/8/2023, CA/11/2023	: Mr. Swatarup Banerjee, Advocate Mr. Shaunak Ghosh, Advocate Mr. Sariful Haque, Advocate Mr. Rajib Mullick, Advocate Mr. Biswaroop Ghosh, Advocate

For the applicant in CA/12/2024 : Mr. Anirudha Chatterjee, Senior Advocate
Reserved on : 19.08.2025
Judgment on : 20.11.2025

Ravi Krishan Kapur, J.:

1. By consent of the parties and in view of the common questions of fact and law involved, all these applications were taken up for hearing analogously. These applications pertain to Chrestien Mica Industries Limited (presently in liquidation).
2. M/s. Chrestien Mica Industries Ltd. was incorporated under the provisions of the Companies Act 1913 and was a publicly held company. The company since 1958 had been owned, controlled and closely held by six brothers belonging to one Agarwala family namely, Ram Kumar Agarwala, Om Kumar Agarwala, Manoharlal Agarwala, Ram Gopal Agarwala, Ramanand Agarwala and Badri Prasad Agarwala. Prior thereto, it appears from the available records that the company had as far back as in 1937, taken over the business of M/s. F.F Christian and Company Limited. In the course of business, the company by two separate agreements for sale dated 17 July 1946 and 19 September 1946 respectively acquired several assets including plant, equipment, machineries and immovable properties, rioty lands, pattas, surface and mining rights of mica situated at Hazaribag, Giridi, Kodarma and Ranchi now in the State of Jharkhand. In addition, the company through a vast corporate structure comprising of 47 group companies secured additional mining rights in respect of land approximately 1,75,000 acres. From a

bare reading of the Trust Deeds it appears that, there was a sizeable land bank which the company was holding either through itself, its associates, sister concerns and subsidiaries.

3. In or about 1973, in respect of credit facilities obtained by the company, a suit was filed against the company by Punjab National Bank being Title Suit No.579 of 1993 before this Court. Subsequently, one of the secured creditors being the State Bank of Indore filed this company petition praying for winding up of the company on the ground that the company was unable to pay its debts.
4. By an order dated 5 November 1979, the company was directed to be wound up and the Official Liquidator appointed in respect of the assets and properties of the company. In an appeal preferred against the winding up order dated 5 November, 1979, the operation of the winding up order was initially stayed. Ultimately, by an order dated 21 April 1983, the Hon'ble Division Bench dismissed the appeal and confirmed the order dated 5 November, 1979. During the interregnum, another suit being CS No.33 of 1982 had been filed by the Punjab National Bank, before the appropriate Civil Court at Hazaribagh.
5. In the liquidation proceedings, an order dated 12 December 1991 came to passed by a Co-ordinate Bench as follows:

The Court Mr. A.C. Kar, Learned Advocate appeared on behalf of the Official Liquidator. He has no objection to the following order being passed.

The Notice of this application was served upon Punjab National Bank but nobody appeared when the matter was called on or to oppose.

By consent the order is passed as follows:-

1. *The winding up order dated November 5, 1979 and all proceedings there under is stayed until further orders of this Court.*

2. The Official Liquidator is restrained from taking any further steps in this liquidation proceedings in pursuance of the winding up order dated November 5, 1979,

3. The Official Liquidator is directed to pay out of the funds in his hand a sum of Rs. 1,00,000/- to other with all accrued interest on the said sum at the agreed rate of 4% per annum upto November 30, 1991 to State Bank of Indore, the petitioning creditor, in full payment of its dues.

4(a) The Official Liquidator is directed to pay out of the funds in his hands a sum of Rs.48,46,610/- to Punjab National Bank being the amount claimed in the suit filed by the said Bank against inter alia, the company being suit No. 579 of 1973 (Punjab National Bank Vs Christian Misc & Industries Ltd. in liquidation & Ors.) The said sum may at its discretion be accepted by Punjab National Bank in full satisfaction of all its claim against the company in liquidation subject to the question of interest to be decided in the said suit.

(b) The said suit No. 579 of 1973 and the Mortgage suit be placed in the list for final disposal of the application herein is given liberty, to intervene in the said suit.

(c) The Bank shall furnish Xerox copies of the Title Deeds and/or Mortgage Deeds in its possessions the special officers appointed herein subject to further orders to be passed in the suit. The expenses for obtaining such Xerox copies shall be borne out of the funds in the hands of the official Liquidator.

8. Mr. Arun Kumar Agarwala and Sri A.C. Kar, Advocates are appointed Special Officers whom will be jointly for purpose of-

taking possession of all the assets of the company including landed properties and Mica Mines;

(ii) taking possession of all the movable properties wherever situate and the books and records of the company;

(iii) collecting compensation moneys from the Claims Commissioner payable to the company upon nationalization of Bengal Nagpur Cotton Mill Limited.

6. The Official Liquidator is directed to hand over possession of the assets, books, records and documents of the company of which he has taken possession (vide para 3 of his report dated September 12, 1990) to the said Special Officers. The Official Liquidator will also hand over possession of the Company's factory premises situate at Shibpur Sagar, Domcharch, Lakshi, District Hazaribagh and the factory premises and properties situate at Tisri, Giridih, Bihar and Mica Scraps lying at Tisri, Giridih, Bihar and the buildings etc. lying at Kodarma, Giridih, Bihar and "Hotel Ashoka" at Kodarma (Vide Clause 4 of the said Report).

The Official Liquidator also will hand over the unsold Mica stocks in his hand to the Special Officers. Before handing over possession of such assets, books and records, the Official Liquidator will prepare an inventory of the same.

7. The Special Officers shall be at liberty to run the mines of the company and to apply to the appropriate authorities including the Government of Bihar Central Government for the working of the company's mines and/or revival of the mining lease if so certified to in accordance with law.

8. The Special Officers shall also be at liberty on behalf of the company to file appropriate proceedings including application for revision before the appropriate authorities including Central Government Authorities. The Special Officers shall be entitled to run the business of the company.

9. The Special Officers also shall seek direction from this Hon'ble Court with regard to convening holding and conducting of an Extra-Ordinary general Meeting of the share holders of the company for purpose of constituting a Board of Directors of the company to whom they shall ultimately hand over charge and possession.

10. The Special Officers are directed to submit report to this Hon'ble Court with regard to the state of affairs of the company within a period of six months from the date of this order.

6. Pursuant to the above, the assets, properties and funds of the company were handed over to the Special Officers. It also appears that by a letter

dated 30 July 1993 the Official Liquidator also handed surplus funds amounting to Rs.72,00,000/- to the Special Officers. Significantly, the directions of the Court with regard to convening and conducting an Extra Ordinary General Meeting were never complied with. There were other directions pertaining to the assets and properties which were not adhered to. Thereafter, diverse orders dated 11 June, 1993, 18 June, 1993 and 28 June, 1993 respectively were passed by the Company Court, which for convenience are set out below:

11.6.1993

The Court : A/O is to be filed by 25.6.93, A/R is to be filed by 2.7.93. The matter is adjourned till 5.7.93. Judge's Summons be signed as of today. There will be an interim order in terms of prayersta and 'b' of the Judge's Summons.

All parties to act on a signed copy of the minutes of this order on the usual undertaking.

18.6.1993.

The Court: This application is disposed of by the following order:-

The order made on 11.6.93 is confirmed.

There will also be an order in terms of prayers (c) and (d) of the petition. Members of the Board of Management or either of them shall act jointly and/or severally and shall also be at liberty to act in terms of the prayers (c) and (d) of the petition

All parties to act on a signed copy of the minutes of this order on the usual undertaking.

28.6.1993

The Court: This application is disposed of by the following Order:-

The order made on 11.6.1993 is confirmed.

There will also be an order in terms of prayers (c) and (d) of the petition. Members of the Board of Management or either of them shall act jointly and/or severally and shall also be at liberty to act in terms of the prayers(c) and (d) of the petition.

All parties to act on a signed copy of the minutes of this order on the usual undertaking.

Sd/ Illegible

30.6.93

Asst. Registrar, High Court,0.3. Calcutta.

Prayers :

(a) An order be made for the appointment of a Board of Management/Committee of Management consisting of Mr.Susanta Dasgupta... Mr. S.K.Palit and Mr. Amit Hazra for the purpose of running the business of the Company and for taking over the possession of the funds and bank balances from the Special officer/officers and the other assets of the Company including the various landed properties of the Company situate at Giridih and Hazaribagh and to sell the surplus landed properties of the Company.

*(b) Board of Management to be appointed herein be directed to run the day to day business and affairs of the Company **but the Special Officer/officers will have a right to supervise the functioning of the Board off Management as and when found necessary. (emphasis added)***

(0) An order be made directing the Official Liquidator to hand over books, records and papers of the company to the Board of Management after making an inventory thereof and to hand over the assets and properties of the Company in terms of the order dated 12th December, 1991 to the Special officer and/or Board of Management/Committee of Management after making the inventory thereof including its Registered office at 4, Lyons Range along with its furnitures and fixtures.

(d) Board of Management and/or Committee of Management will tako necessary steps to hold a meeting of the shareholders and constitute a Board of Directors as and when possible after issuing notice to the shareholders by post or by publishing such notice once in Business Standard.

7. A report dated 25 August 1992 filed by the Special Officers suggests that the Official Liquidator had handed over the assets, properties and funds of the company to the Special Officers. Thereafter, innumerable correspondence has been issued by one of the Special Officers i.e. Mr. Arun Kumar Agarwal with different statutory authorities, banks and other institutions whereby the said Arun Kumar Agarwal acting singly has been representing the company (in liquidation).
8. The underlying complaint in all these applications is one of *fraud*. It is alleged that the said Arun Kumar Agarwal as Special Officer has manipulated and orchestrated affairs to get exclusive and absolute control and management of the company (in liquidation) and also dealt with its assets and properties to the prejudice of the company and all other stakeholders.
9. During the interregnum, in terms of a letter issued by Punjab National Bank, (a secured creditor of the company) Nomura Investment and Financial Limited has become a beneficiary of a transaction dated 17 March 2011 whereby an asset belonging to the company which was mortgaged to Punjab National Bank was transferred to Nomura at a pittance. The constitution of Nomura Investment and Financial Limited are Rosario Peter, Pradip Choudhury and Anju Choudhury. Admittedly, Pradip Kumar Choudhury is the brother-in-law of the said Arun Kumar Agarwal while Anju Choudhury is the sister of the said Arun Kumar Agarwal. The said Pradip Choudhury is also one of the shareholders of Nomura. Other shareholders of Nomura include Amit Choudhury and Ankit Choudhury who are also related to the said Pradip Kumar

Choudhury. Anshuman Agarwal being the son of the said Arun Kumar Agarwal is also a shareholder of Nomura. None of the above allegations have been controverted by Arun Kumar Agarwal or by any of the parties. In such circumstances, it is apparent that the Nomura Investment and Finance Limited is an alter ego of said Arun Kumar Agarwal and is owned, controlled and managed directly or indirectly by him, his close relatives, his family members, employees and stooges. In fact, Mr. Arun Kumar Agarwal is himself a shareholder of one of the companies which is a shareholder of Nomura. Nomura has no revenue income and as per the Balance Sheets & Profit & Loss Account is carrying on no business. As a result, the proceedings before the Debts Recovery Tribunal are being contested by Mr. Arun Kumar Agarwal on both sides, i.e, as the applicant and the respondent/opposite party company (in liquidation). Although, Punjab National Bank is the plaintiff *eo-nomine*, the debt has been assigned to Nomura. As appears from the affidavit filed in C. A. No. 1838 of 2021, the defendant/opposite party no. 1, in the DRT proceeding is the company (in liquidation), and service on its behalf is being received by Mr. Arun Kumar Agarwal, as Special Officer. In such circumstances, there is an obvious question of conflict of interest and duty of Arun Kumar Agarwala and this goes to the root of the veracity of the above transactions.

10. Mr. Arun Kumar Agarwala is also one of the directors of Reliance Firebrick & Pottery Company Limited which had during the pendency of these proceedings purchased shares of the company (in liquidation). Mr. Arun Kumar Agarwala holds substantial shares in Reliance Firebrick & Pottery

Company Limited and had resigned as director from that company only on 18 March, 2020. However, the list of shareholders would inter alia, show that all the family members of the said Mr. Arun Kumar Agarwala including himself are the shareholders of the said company. In such circumstances, Arun Kumar Agarwala has during the pendency of these proceedings being a Special Officer clandestinely become the single largest shareholder and the single largest creditor of the company (in liquidation) through himself, his associates, family members, relatives and stooges. Any transfer or dealing by the Special Officer is not only in conflict of interest but also demonstrates self-dealing and misuse of powers as Special Officer.

11. There has been no compliance with the directions contained in the order dated 12 December 1991. There is no accountability of the assets and properties whether moveable or immovable belonging to the company (in liquidation) which were specifically mentioned in the order dated 12 December 1991. The specific allegations against the said Arun Kumar Agarwal are that Mr. Arun Kumar Agarwala has wrongfully and illegally sold the entire plants, machineries, sheds and the like of Indian Malleable Castings Limited which was a subsidiary company of the company and which was an established casting unit. Mr. Arun Kumar Agarwala has also sold around 10 acres of land out of a total estimated 22 acres of land of Indian Malleable Castings Ltd., a subsidiary of the company situated at 5, M.M. Feeder Road, Belghoria, Kolkata by way of plotting and the sale proceeds remain unaccounted for. Mr. Arun Kumar Agarwala has also manipulated the sale of approximately 15,000 to 32,000 metric tons of

mica scrap and machineries and arranged to sell the same through Vinayaka Mica Exports and to others valued at crores by representing the company (in liquidation) as a Special Officer and arranging for the said purchasers to lift additional scrap/machineries in excess of 14,040 tons. Mr. Arun Kumar Agarwala as a Special Officer has also dealt with large portions of the hypothecated/freehold land of the said company at Koderma/Hazaribagh/Giridih etc., held as mortgage under the Registered Debenture Trust deeds and charged towards the credit facilities extended to the company (in liquidation) and has not accounted for the same. Mr. Arun Kumar Agarwala has also sold vehicles and other scrap and machineries of the company (in liquidation) situated at Koderma/Hazaribagh/Giridih. Mr. Arun Kumar Agarwala has not taken any steps to claim compensation in terms of the order dated 12 December 1991. There is also no accountability insofar as the remaining assets and properties of the company (in liquidation) as stipulated in the order dated 12 December 1991 are concerned.

12. For convenience, the prayers made in the different applications are set out hereinbelow:

C. A. No. 6 of 2022 (application filed by the shareholders of the company namely Kailash Chandra Agarwala, Umesh Chandra Agarwala, Ratan Kumar Agarwala And Anand Kumar Agarwala)

- A) Leave may be granted to the applicants to file the instant proceedings with the short cause title;*
- B) An order be passed directing the official liquidator to examine the conduct of Mr. Arun Kumar Agarwala in accordance with law and, if found guilty compel him to repay or restore the money or property or any part thereof with interest at such rate as this court thinks just to the company or to contribute such sum to the assets of the company by way of compensation;*
- C) An order be passed discharging Mr. Arun Kumar Agarwala to act as special officer of the company abovenamed with immediate effect;*

- D) *An order be passed directing Mr. Arun Kumar Agarwala to immediately hand over assets of the company abovenamed to the official liquidator and/or any other person which this court may deem fit and proper,*
- E) *An order be passed forming a committee of management by appointing all petitioners along with others family members if required take all necessary steps to revive the said company and to run the said company;*
- F) *Ad interim orders in terms of the above prayers;*
- G) *Such further or other order orders be passed and/or direction or directions be given s this Hon'ble Court may deem fit and proper.*

C.A. No. 7 of 2023- (application filed by the shareholders of the company namely Kailash Chandra Agarwala, Umesh Chandra Agarwala, Ratan Kumar Agarwala And Anand Kumar Agarwala)

- A) *Leave may be granted to the application to file the instant proceedings with the short cause title.*
- B) *An order may be passed quashing the report issued by one of the special officer namely Arun Kumar Agarwala appointed by this Hon'ble Court in the instant matter;*
- C) *An order may be passed directing the Special Officers appointed by this Hon'ble court to submit a report before this Hon'ble court regarding the accounts of the company and the statutory returns filed by the company on and from 1981;*
- D) *Costs of and incidental to this application be paid by Arun Kumar Agarwala;*
- E) *Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble court may deem fit and proper.*

C.A. No. 8 of 2023- (application filed by the shareholders of the company namely Kailash Chandra Agarwala, Umesh Chandra Agarwala, Ratan Kumar Agarwala And Anand Kumar Agarwala)

- A) *leave may be granted to the application to file the instant proceedings with the short cause title;*
- B) *The special officers appointed by this Hon'ble court may be directed to submit a report before this Hon'ble court, which should specifically contain the accounts of the company from December, 1991 till date and should further contain the statutory compliances made by the special officers in respect of the company or and from December, 1991;*
- C) *The members of the alleged committee of management of the company namely Mr. Sushanta Dasgupta, one Mr. S. K. Pal and one Mr. Amit Hazra may be called before this Hon'ble court by issuance of a sub peona;*
- D) *The alleged committee of management of the company namely Mr. Sushanta Dasgupta, one Mr. S. K. Pal and one Mr. Amit Hazra may be directed to file a report before this Hon'ble court, which should specifically contain the accounts of the company from the date if any alleged committee was formed till date and should further contain the statutory compliances made by the special officers in respect of the company on and from the date if any alleged committee was formed;*
- E) *An order may be passed directing examination and cross examination of the special officers appointed by this Hon'ble court in regard to the report filed by them before this Hon'ble court and in regard to the assets and the accounts of the company during their tenure as special officers of the company;*
- F) *An order may be passed directing examination and cross examination of Mr. Sushanta Dasgupta, one Mr. S. K. Pal and one Mr. Amit Hazra in regard to the assets and the accounts of the company during their tenure as the alleged committee of management of the company, if any formed;*

- G) *The registrar of companies may be directed to file a report containing the statutory compliances of the company and the shareholding of the company till December 1991;*
- H) *The registrar of companies may be directed to file a report containing the statutory compliances of the company, which has been made after December, 1991 and the shareholding of the company till date;*
- I) *The Calcutta Stock exchange and the Bombay Stock exchange may be directed to file a report in regard to the statutory compliances made by the company on and from December, 1991 and the present shareholding of the company;*
- J) *The Special Officers appointed by this Hon'ble Court in regard to the company may be discharged and the management of the company may be transferred back to the shareholders of the company;*
- K) *The alleged Committee of Management of the company consisting of Mr. Sushanta Dasgupta, one Mr. S. K. Pal and one Mr. Amit Hazra may be discharged if any and the company may be transferred back to the shareholders of the company;*
- L) *Ad interim orders in terms of the above prayers;*
- M) *Costs of and incidental to this application be paid by Arun Kumar Agarwal;*
- N) *Such further or other order orders be passed and/or direction or directions be given s this Hon'ble Court may deem fit and proper.*

C.A. No. 9 of 2023 (Application filed by the shareholder of the Company namely Sanjay Kumar Agarwala)

- A) *Leave may be given to the applicant to file the instant proceedings with the short cause title;*
- B) *Leave may be given to the applicant to intervene in the instant proceedings being impleaded as a necessary party;*
- C) *An order be passed directing the Official Liquidator to examine the conduct of Mr. Arun Kumar Agarwala in accordance with law and, if found guilty compel him to repay or restore the money or property or any part thereof with interest at such rate as this Court thinks just to the Company or to contribute such sum to the assets of the Company by way of compensation;*
- D) *An order be passed discharging Mr. Arun Kumar Agarwala to act as Special Officer of the Company above-named with immediate effect;*
- E) *An order be passed directing Mr. Arun Kumar Agarwala to immediately hand over assets of the Company above-named to the Official Liquidator and/or any other person which this Court may deem fit and proper;*
- F) *An order be passed forming a Committee of Management by appointing the petitioners along with others family members if required take all necessary steps to revive the said Company and to run the said Company;*
- G) *Ad-interim order in terms of above prayers;*
- H) *Such further and/or other orders be passed, direction and/or directions be given as Your Honour may deem fit and proper.*

C.A. No. 10 of 2023 (Application filed by the Intervenor Munish Kumar Agarwala)

- A) *Leave may be given to the applicant to file the instant application with the short cause title;*
- B) *An Order be passed that Arun Kumar Agarwal, who has accepted service on behalf of the Company (In Liquidation), be directed to furnish the information and documents, requested for in the letter dated 19th April, 2022;*
- C) *The applicant, Munish Kumar Agarwala, the son and legal heir and/or representative of Ram Kumar Agarwala, be permitted to examine Arun Kumar Agarwala in accordance with law, and in the event he is found guilty, to compel him to repay or restore the money or property along with*

interest as this Hon'ble Court may deem fit and proper, and to contribute such sums to the assets of the Company (In Liquidation) by remuneration;

- D) An order may be passed directing examination and cross examination of the Special Officers appointed by this Hon'ble Court in regard to the report filed by them before this Hon'ble Court and in regard to the assets and the accounts of the company during their tenure as special officers of the company;*
- E) An order may be passed directing examination and cross examination of Mr. Susanta Dasgupta, one Mr. S. K. Palit and one Mr. Amit Hazra in regard to the assets and the accounts of the company during their tenure as the alleged Committee of Management of the company, if any formed;*
- F) An order may be passed directing the Central Government or any investigating agency of the Central Government to investigate the offences and actions committed by the said Mr. Arun Kumar Agarwala as a special officer, in relation to the Company concerned, alongwith all such powers of investigating the affairs of the Company as provided under the Companies Act, 1956, with respect to winding up of the said corporation.*
- G) The Registrar of Companies may be directed to file a report containing the statutory compliances of the company which has been made after December, 1991 and the shareholding of the company till date;*
- H) Arun Kumar Agarwala be discharged and be directed to hand over the assets, properties and funds of the Company (In Liquidation) to the shareholders of the Company (In Liquidation), or any other person as this Hon'ble Court may deem fit and proper, alongwith other allied and/or consequential reliefs;*
- I) Ad interim order in terms of prayers above;*
- J) Such further and/or other orders be passed and/or direction and/or directions be given as Your Honour may deem fit and proper.*

C. A. No. 11 of 2023- (Application filed by the shareholders of the Company namely Kailash Chandra Agarwala, Umesh Chandra Agarwala, Ratan Kumar Agarwala and Anand Kumar Agarwala)

- A) An order may be passed directing Arun Kumar Agarwala, being one of the Special Officers, appointed by this Hon'ble Court to disclose the Annual Returns of Reliance Firebricks and Pottery Company Limited from the Financial years 1990-91 till the financial year 2014-2015.*
- B) An order may be passed directing Arun Kumar Agarwala, being one of the Special Officers, appointed by this Hon'ble Court to disclose the shareholding of Chrestien Mica Industries Limited held by Reliance Firebricks and Pottery Company Limited, from 1990-1991 till 2014-2015.*
- C) An order be passed directing Arun Kumar Agarwala, being one of the Special Officers, appointed by this Hon'ble Court to disclose a true and faithful copy of the accounts of Chrestien Mica Industries Limited during the time, he was the Special Officer of Chrestien Mica Industries Limited;*
- D) An order may be passed that the said Arun Kumar Agarwala may be publicly examined and cross examined as to the conduct of the business of the company, or as to his conduct and dealings as an officer thereof,*
- E) An order may be passed sentencing the said Arun Kumar Agarwala to prison in accordance with Section 540 of the Companies Act, 1956 for having committed fraud on the said company;*
- F) An order may be passed such that the Special Officer cannot transfer and/or alienate the property of the Chrestien Mica Industries Limited to any third party during the pendency of this instant proceedings;*
- G) An order may be passed directing the Central Bureau of Investigation and/or the Serious Fraud Investigation Organization to investigate into the activities of Arun Kumar Agarwala during the period, when he was acting as the Special Officer of the company and submit a report in respect thereof, before this Hon'ble Court.*
- H) Ad-interim orders in terms of prayers above;*

- I) Costs of and incidental to this application;*
- J) Such further or other order or orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper.*

13. The Special Officers were represented separately in these proceedings. On behalf of Arun Kumar Agarwala, it was submitted that all these applications were barred by limitation and have been filed after a delay of more than 30 years. Thus, on the ground of inordinate and unexplained delay all these applications were liable to be dismissed. It is further contended that the Company Petition as reflected in the website of this Court stood dismissed and this Court has no jurisdiction to hear these applications. It is also urged that pursuant to orders of Court, a Committee of Management had been appointed and they have been handed over all the funds which were in the hands of the Special Officers and neither of them are aware as to how the Committee of Management has utilized the money. The locus of the applicants in all these applications has also been challenged. It is contended that the applicants had full knowledge of all the steps taken pertaining to the company (in liquidation) and all these applications have been filed with oblique purpose.

14. On behalf of the other Special Officer Mr. A.C. Kar, Advocate, it is contended that there is undue delay in the filing of these applications. It is submitted that payment of Rs.72 lacs by the Official Liquidator was never received by him. The Special Officer has no recollection of opening any joint bank account. All funds, properties and documents were always in the hands of Mr. Arun Kumar Agarwala. In fact, there were disputes and differences between the two Special Officers inasmuch as Mr. Arun Kumar

Agarwala was exclusively running the affairs and management of the company keeping him in the dark. There is no specific allegation of wrongdoing against this Special Officer. In this connection, the Special Officer relies on correspondence to suggest that Mr. Arun Kumar Agarwala was single handedly representing the company (in liquidation) and individually taking all steps. For such reasons, there is no negligence nor wrongdoing which is attributable to this Special Officer and all the allegations of fraud are directed only against Mr. Arun Kumar Agrwala.

15. None of the above allegations have been denied nor controverted by Mr. Arun Kumar Agarwala in any of the affidavits or reports filed by him in these proceedings. The excuse of these transactions having occurred a long time ago is simply not available to either of the Special Officers who were and still remain in a position of *trustees*. The Special Officers being officers of Court were bound to ensure that the assets, properties, records, documents and funds of the company are preserved in a proper manner and the accounts of the company were also maintained and regular accounts submitted to this Hon'ble Court and by not doing so have perpetrated fraud on Court. The Special Officers have not only failed to comply with the order dated 12 December 1991 but have failed to account for any of the assets and properties of the company (in liquidation).

16. Reports filed by Arun Kumar Agarwala in his capacity as Special Officer are distorted and only to mislead this Court. The purported Committee of Management consisting of Susanta Dasgupta, S.K. Palit and one Amit Hazra was an obvious sham and all three persons were employees and

stooges of Mr. Arun Kumar Agarwala who remained untraceable despite orders of Court. In any event, the supervisory control of the Special Officers over any such Committee or Board of Management of the company (in liquidation) cannot possibly absolve either of the Special Officers. No details of appointment were ever filed by Mr. Arun Kumar Agarwala with the Registrar of Companies, Ministry of Corporate Affairs as directed by the order dated 12th December, 1991. No Annual General Meeting has been conducted of the company (in liquidation). The last available directors/shareholders/is only available as of 2 August, 1972. There are no available records maintained with the Registrar of Companies (ROC) or Ministry of Corporate Affairs (MCA). No Director Identification Numbers (DIN) is available for any of the directors. In effect, there have been no statutory filings with the Registrar of Companies or with any other authority for more than four decades as would be evident from the Report filed by the Registrar of Companies.

17. Strangely, despite orders of this Court, the Special Officer Mr. Arun Kumar Agarwal and his son Mr. Anshuman Agarwal chose not to appear personally before this Court. The company Nomura Investment and Financial Ltd. participated in these proceedings and had also filed an application being CA 12 of 2024. Reliance Firebricks & Pottery was also represented and had participated in these proceedings. Mr. Arun Kumar Agarwala was represented through different Advocates throughout these proceedings. Several charges against Mr. Arun Kumar Agarwala were not dealt with on merits and an omnibus plea of delay was taken to feign ignorance of matters which admittedly occurred during his tenure of

Special Officer. It is to be remembered that the charges against Mr. Arun Kumar Agarwala were directed *qua* Special Officers appointed by Court which demanded the utmost degree of honesty, good faith and fairness. The Courts have always imposed a duty to act with caution and prudence on fiduciaries.

18. There is simply no accountability nor trace of Rs. 72 lakhs which was handed over to the Special Officers pursuant to orders of Court. On the one hand, Mr. Arun Kumar Agarwala in his report has stated before this Court that the amounts received by him from the Official Liquidator were deposited in a joint account opened by the Special Officers. On the other hand, Mr. A. C. Kar, the other Special Officer in his letter dated 29th April, 2022' has categorically stated that "I never have signed any papers relating to the operation of any bank account as Special Officer". The inconsistency and falsity in the stand of the respective Special Officers is preposterous. The entire action of Mr. Arun Kumar Agarwala in creating a sham Committee of Management, showcasing the shareholders of the company, acting through Reliance Firebrick & Pottery Co Ltd and acting on behalf of the Punjab National Bank through his shell company Nomura Investment and Finance Limited amounts to fraud on all the stakeholders of the company and on this Court. Significantly, any dues insofar as the Punjab National Bank ought to have been paid in full by virtue of the order dated 12th December, 1991. In the alternative, the matter should at least have been brought to the attention of this Court. The selective compliance with the order dated 12 December 1991 is without any justification.

19. Mr. Arun Kumar Agarwal has and continues to wrongfully and illegally hold himself to be the person in charge and in exclusive control of the company (in liquidation). By a letter dated 19th April, 2022, the Advocates for the applicant in CA 10 of 2023 had requested the Special Officers, to provide necessary documents and information pertaining to the company (in liquidation), including particular information relating to compliance with the order by which they had been appointed dated 12 December 1991. Mr. Arun Kumar Agarwala has sought to rely upon his alleged medical conditions i.e. vascular dementia and Parkinson's, to shield himself from non-compliance with the orders and directions of this Court. Strangely, the said Mr. Arun Kumar Agarwala had continued to participate regularly before the Hon'ble High Court at Jharkhand, which would be apparent from the orders dated 5th May, 2022 passed in *SBI v. Premlata Devi & Ors. S.A. No. 135 of 2007* and *S.A. No. 165 of 2007 with Christian Mica Industries Ltd., through its Special Officer Arun Kumar Agarwala, Kolkata v. Smt. Premlata Devi & Ors.*. There has been conscious attempt to mislead, suppress and conceal material documents and information from Court by Mr. Arun Kumar Agarwala. The actions of both the Special Officers who were in the position of trustees cannot be condoned. There is a deliberate and intentional failure by both of them to perform a manifest duty cast on them and there has been reckless disregard of the consequences. It is true that there are no specific allegations of wrongdoing against Mr. A.C. Kar. Nevertheless, inaction or shirking to such an extent (having voluntarily accepted the appointment) is unacceptable and cannot be described as an innocent misjudgment. On

the other hand, the actions of Mr. Arun Kumar Agarwala are calculated, ill motivated and can only be described as deceitful.

20. Fraud is a thing apart. It vitiates judgments, contracts and unravels all transactions. No Court will allow a person to keep an advantage which he or she has obtained by fraud. Fraud avoids all judicial acts, ecclesiastical or temporal. Any judgment or decree obtained by playing fraud on the Court is a nullity and *non est* in the eye of the law or decree and can be challenged in any Court even in collateral proceedings. Recently, in *Vishnu Vardhan @ Vishnu Pradhan vs. The State of Uttar Pradesh* 2025 SCC OnLine SC 1501, the law has been summarized as follows:

61. *"In decisions abound, the Courts have consistently nullified orders obtained through fraudulent means. Key excerpts from some of these decisions read thus:*

a. In United India Insurance Co. Ltd. v. Rajendra Singh (2000) 3. SCC 581, this Court reiterated that fraud unravels everything:

3. "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant) is a pristine maxim which has never lost its temper over all these centuries. Lord Denning observed in a language without equivocation that "no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything" (Lazarus Estates Ltd. v. Beasley, [[1956] 1 Q.B. 702 : [1956] 1 All ER 341 : [1956] 2 WLR 502 (CA)]).

b. In Shrisht Dhawan (Smt) v. Shaw Bros (1992) 1 SCC 534, it was held:

Fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It is a concept descriptive of human conduct. Michael Levi likens a fraudster to Milton's sorcerer, Comus, who exulted in his ability to, 'wing me into the easy-hearted man and trap him into snares'. It has been defined as an act of trickery or deceit. In Webster's Third New International Dictionary fraud in equity has been defined as an act or omission to act or concealment by which one person obtains an advantage against conscience over another or which equity or public policy forbids as being prejudicial to another. In Black's Legal Dictionary, fraud is defined as an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or surrender a legal right; a false representation of a matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury.....

c. In A.V. Papayya Sastry v. Govt. of A.P. (2007) 4 SCC 221, this Court held:

21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:

“Fraud avoids all judicial acts, ecclesiastical or temporal.”

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

23. ***

24. In *Duchess of Kingstone*, *Smith's Leading Cases*, 13th Edn., p. 644, explaining the nature of fraud, *de Grey, C.J.* stated that though a judgment would be *res judicata* and not impeachable from within, it might be impeachable from without. In other words, though it is not permissible to show that the court was “mistaken”, it might be shown that it was “misled”. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment.

25. It has been said: *fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).*

21. Since fraud affects the solemnity, regularity and orderliness of proceedings of the Court and also amounts to an abuse of the process, all Courts are bestowed with inherent powers to set aside an order obtained by fraud practiced upon Court. No judgment of a Court, no order can be allowed to stand if it has been obtained by fraud. This power is necessary for the orderly administration of the Court's business. All Courts especially of superior jurisdiction have inherent powers to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and to punish unseemly behaviour. If this were otherwise, the entire foundation of the system would be shaken. [*Takhar v. Gracefield Developments Ltd. & Ors. (2019) UK SC 13* and *National*

Insurance Company Ltd. vs. Maya Devi & Ors. (2024) SCC OnLine SC 4086].

22. Ordinarily, companies are limited liability companies. The special feature of limited liability of human agencies is prone to abuse and wrongdoing. Upon a company being wound up by the Court, the Official Liquidator becomes the custodian, under section 456 of the Companies Act, 1956 of the company's properties. Such proceedings are *in rem* and bind all the stakeholders, creditors and contributories. To this extent, the Company Court acts as a trustee for all the creditors insofar as the company (in liquidation) is concerned. The statute requires the Official Liquidator to be promptly apprised of the company's business and assets and there is a duty cast on the officers of the company upon an order being made to file statements before the Official Liquidator and ensure that all of the wound-up company's assets are placed in his hands. The stringency is necessary at the end of the company's run i.e. in the liquidation proceedings in order to ensure that business ventures floated with limited liability by the human agencies are not deliberately run aground and their assets fraudulently dissipated before the company is sent into liquidation. [*Official Liquidator vs. Samdev Dasgupta & Ors. 2007 SCC OnLine Cal 751, Ganapati Commerce Ltd. (In Liquidation) vs. Recovery Officer, Debts Recovery Tribunal & Ors. 2007 SCC OnLine Cal 576, Stiffel Und Schuh (India) Ltd. & Ors. vs. Samdev Dasgupta & Ors. (2008)146CompCas119 (Cal) and Oriental Civil Engg. Co. Ltd. (In Liqn.) vs. Sree Ram Bagla & Ors. 2012 SCC OnLine Cal 6626 and*].

23. The separate legal personality of a limited liability company was firmly established by the House of Lords in the leading case of *Solomon vs. Solomon & Co. Ltd.* [1897] AC 22. To this extent, a company is a body of bodies, technically an artificial person composed of natural persons. It is true that Courts for reason of policy disregard this personality in a number of exceptional cases. However, the principle of separate corporate personality continues to remain the bedrock of company law. Now what did Arun Kumar Agarwala achieve by virtue of orders of the Court?
24. The company was put into liquidation. Thereafter, the Official Liquidator was side-lined after having taken practically no steps for close to a decade. Subsequently, Special Officers were appointed and there was a stay of the winding up order. Arun Kumar Agarwala was an interested party and had a direct interest in the affairs and management of the company. His multiple roles as a legal heir of Late Ramanand Agarwala (who was a shareholder and director of the company) as well as guarantor *per se* disentitled him from acting as a Special Officer. This fact was suppressed from Court which in effect, permitted Arun Kumar Agarwala to operate solely and exclusively for decades unchecked. During the interregnum as Special Officer, the said Arun Kumar Agarwala has surreptitiously and in a clandestine manner purported to become both the single largest creditor and majority shareholder of the company (in liquidation). In *International Coal Corporation vs. Pure Sitalpur Coal Concern Ltd.* AIR 1972 CAL 45, it has been held as follows:

“14. The position and the powers of a Special Officer have not been provided either in the Companies Act, 1956 or under any other law. It is settled law that to run the affairs of the company such as this, a Receiver should not be appointed. In order to

remove a deadlock in a company this Court often had to resort to the appointment of a Special Officer of the company so that the affairs of the company could be run most beneficially by way of interim measure through the said Special Officer under the supervision. Of the Court in the pending matter. It is admitted by and on behalf of all the parties herein that since quite some time past a practice has grown up in this Court to make such appointments, in a suitable case if the Court so thinks fit and proper solely with a view that there might not be any deadlock in the company and so that the affairs of the company might be conducted in a suitable manner through such Special Officer. As to what would be the powers and functions of such Special Officers have not been laid down in any of the decided cases of this Court.

15. In my opinion, the powers and functions of a Special Officer must vary in accordance with the facts of each case but such powers and functions must be such so as to enable him to run the affairs of the company in the best interest of the company and its members and under the supervision of the Court. Accordingly, it is always desirable and, I should say, incumbent upon the Special Officer to take directions from time to time from the Court appointing him as such Special Officer so that the interest of the company might be, protected in the best possible manner. In any event, his powers and functions should not be, and indeed cannot be, such so that he would be in a position to achieve his own end or that of his group by sacrificing the existing interests of the other group of shareholders without an order from Court to that effect. Being the sole Special Officer he cannot have that unlimited power in respect of the Company unless the Court specifically clothes him with such powers. Being an Officer of the Court if he would do that, that would be a misuse of his powers. He must not, without an order of the Court do such things that the interest of the company would suffer in his hands and his acts would, in any way, be prejudicial to the interest of the shareholders or creditors or contributories of the company. In my opinion, for the purpose of deciding this case it is not necessary for this Court to say anything more about the powers and functions of the Special Officer. Suffice it to say, that in exercising powers as such Special Officer and in functioning in that position such Officer shall always look to the interest of the company and whenever any step has to be taken by him which would be likely to be of controversial nature, the said Officer is bound to take directions of the Court and to act in accordance with such directions As a sole Special Officer his position and powers are much lesser than that of the board of directors which runs the business of the company in accordance with the powers entrusted to it by the Memorandum and the Articles of the Company and by the Statute. A Special Officer being an Officer of the Court remains answerable to the Court for his acts and conduct and as such must obtain the necessary directions from the Court appointing him to clothe himself with special powers. In that respect his position and powers are different from that of a director or of a board of directors. He cannot have the full powers of a director unless the Court vests him with such powers."

25. Thereafter, the appointment of a Committee of Management of persons at the behest of Arun Kumar Agarwala was equally ill-motivated and illegal. These persons were obviously name lenders, employees and henchmen of Mr. Arun Kumar Agarwala and were untraceable notwithstanding orders of Court. The Special Officers were bound to exercise supervisory control

over the Committee of Management in terms of the order dated 28 June 1993. In effect, Arun Kumar Agarwala managed to create a mask or shield whereby he single handedly and exclusively without any lawful authority continued to control and manage all the affairs of the company (in liquidation).

26. On a conjoint reading of sections 291, 292, 293 in Chapter VI of the Companies Act 1956, it is ordinarily the Board which is to function on behalf of the company in a specified manner and on certain specified conditions and restrictions. The Committee of Management or the Special Officers could not have greater powers unless specifically conferred by the Court in the order appointing the Committee of Management giving it such unrestricted powers. Whether the Committee of Management or the Special Officers, neither of them were permitted to deal with the assets or properties of the company (in liquidation) without the permission of the Court. Strangely, having obtained the initial order of appointment, neither of the Special Officers nor the Committee of Management ever approached this Court for any order kind of approval, sanction or ratification. There have been no filings of any kind whatsoever by either of the Special Officers. [*Pramod Kumar Mittal vs. Andhra Steel Corporation Ltd. & Ors. (1985) 58CompCas 772 (Cal)*]

27. Where a receiver is appointed manager, he can carry out all acts which are only necessary in terms of the orders of Court. When a Court appoints a manager of a business or undertaking, it in effect assumes the management into its own hands; for the manager is the servant or the

officer of the Court and upon any question arising as to the character or details of the management, it is the Court which must act, decide and direct where appointed by Court, the Special Officer become responsible to Court. Similarly, a Committee of Management always acts under the superintendence and direction of the Company Court. No Special Officer nor Committee of Management has an unchartered license to do whatever he or they like. Significantly, there is nothing on record to demonstrate that the matter was ever subsequently placed before the Company Court after the appointment of the Special Officers or the Committee of Management or that any permission, sanction or ratification of any of their acts pertaining to the company (in liquidation) was ever sought for.

28. The wrongdoings and illegalities of Mr. Arun Kumar Agarwala are innumerable and all this has unfortunately been done in the garb as Special Officer. One comes to Court to redress a grievance. The legal process cannot be utilized for an unfair advantage or for collateral purposes. These proceedings demonstrate a calculated scheme to abuse the process of Court. [*Ebbvale Limited vs. Andrew Lawrence Hosking (Trustee in Bankruptcy of Andreas Sofroniou Michaelides 2013 UKPC 1)*]. The directions issued pursuant to the order dated 12 December, 1991 for convening an Extraordinary General Meeting of the company were never complied with. There was no handover of the assets or accountability to the shareholders or directors of the company as mandated by the Court. On the contrary, Mr. Agarwala wrongfully and illegally retained possession and control of the company for approximately four decades using his appointment as Special Officer as a cloak or guise to defeat the rights of

all stakeholders including keeping all the statutory authorities at bay. Any appointment as Special Officer could only have been for a limited duration. Nevertheless, Mr. Agarwala continued to exercise authority and control of the company till date and represent the company before various authorities. There is nothing to demonstrate that the unsold stocks of mica were ever accounted for. The company had leasehold rights over several mines and substantial reserves in warehousing facilities which were also unaccountable. Similarly, the immoveable properties of the company (in liquidation) have not been accounted for. On the contrary, the Court was misled and material facts suppressed. The effect of the fraud and the abuse of process is so gross that it vitiates each and every act of the Special Officers, some of which are *void ab initio* and others *voidable*. The fraud perpetrated by the said Arun Kumar Agarwala involved not only siphoning off the funds and assets of the company (in liquidation) but also misutilization of his role as Special Officer. [*State of A.P. vs. Suryachandra Rao: (2005) 6 SCC 149, S.P. Chengalvaraya Naidu vs. Jagannath (1994) 1 SCC 1, Indian Bank vs. Satyam Fibres (India) Pvt. Ltd. (1996) 5 SCC 550, T. Vijendradas & Anr. vs. Subramanian & Ors. (2007) 8 SCC 751 and National Insurance Company Ltd. vs. Maya Devi & Others 2024 SCC OnLine SC 4086*].

29. There has also been no attempt by Arun Kumar Agarwal to justify his actions as Special Officer. There is no shred of remorse shown by Arun Kumar Agarwal. Through a chain of ill-designed events and series of wrongdoings and misdeeds, the company has been fraudulently placed in the hands of Arun Kumar Agarwal without any responsibility whatsoever.

It is a rule of universal application that no person having fiduciary duties to discharge far less an officer of Court can be allowed to enter into any transaction or arrangement in which he has or can have a personal interest conflicting or which may possibly conflict with interests of those he is bound to protect. There is ample evidence on record to suggest that this was a clear case of conflict between his duties as Special Officer and his personal interest as a shareholder of the company (in liquidation). Regardless of the delay of the applicants in approaching this Court, such state of affairs cannot be allowed to continue. Moreover, all this has transpired when the assets of the company were admittedly in *custodia legis*. (*M/s. Meghal Homes Pvt. Ltd. vs. Shree Niwas Girni K.K. Samiti & Ors.* AIR 2007 SC 3079, *The Baranagore Jute Factory PLC and Ors. vs. The Official Liquidator* APO 48 of 2020 in CP 2 of 1987 dated 5 August, 2022 passed by the High Court at Calcutta). It is fundamental to our jurisprudence that Courts while enforcing the law shall forbid it from being misused. This is a clear case of abuse of process of this Court whereby the integrity of the legal system has been put at risk. [*Jang Singh v. Brij Lal* AIR 1966 SC 1631, *Busching Schmitz (P) Ltd. v. P.T. Menghani*, (1977) 2 SCC 835, *South Eastern Coalfields Ltd. v. State of M.P.*, (2003) 8 SCC 648 and *Madura Coats Ltd. vs. Dunlop India Ltd.* 2012 SCC OnLine Cal 13214].

30. The last available Annual Reports of the company dated 30 June, 1970 contained in the Report filed by the Registrar of Companies reflects that there were 70 (seventy) shareholders of the company and five directors. Prior to the order of winding up, the applicant in CA/10/2023 was the

single largest majority shareholder of the company. The last balance sheet of the company was filed as on 31 December 1968. From the Report dated 16 January 2023 filed by the Registrar of Companies, it appears that the records pertaining to the company (in liquidation) have not been digitalized and the same remain untraceable.

31. Despite orders of Court, the Committee of Management chose not to appear before this Court. It is true that under the inherent powers which the Company Court possess, the sky is the limit when it comes to protecting and preserving the assets of the company but the appointment of any such Committee may in the pretext of revival emasculate the liquidation machinery and nullify the object and purpose of the Act. There is simply no accountability nor justification for any such Committee or the Special Officers and all this is done in the garb of revival of the company under section 466 of the Act.

32. Rule 9 of the Company Court Rules 1959 provides as follows:

R.9. Inherent powers of Court - Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

On a plain reading of Rule 9, the powers of widest amplitude have been bestowed on the Company Court. The only discretion which the law recognizes is discretion *in accordance with law*. The exercise of any discretion must always be in good faith, fairly, for the purpose for which the power is being conferred and without exceeding the limits of such power. No discretion can be legally unfettered nor unconstrained so as to be potentially arbitrary. The orders dated 12 December 1991 and 28 June

1993 were passed in exercise of the power under section 466 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959. Obviously, any scheme for running of the company has failed and it is in the best interests of all stakeholders that the company be handed over to its shareholders.

33. In view of the considerable long passage of time and the fact that no creditor (secured or unsecured) nor employee nor any third party having approached this Court, there is no question of the company continuing in liquidation. As stated above, the company has sufficient assets all of which were concealed from Court. It is well settled that winding up should be resorted to as the last resort after exhausting all remedies. In this context, on a combined reading of the Reports dated 15 November 2022, 25 November 2022 and 20 December 2022 filed by the Officer Liquidator and the order dated 12 December 1991, there were admittedly immoveable properties which belonged to the company (in liquidation). These are sound reasons as to why the company should no longer be treated to be winding up and the assets and properties which are left or can be traced should potentially benefit the company. All these facts have been concealed from Court at the contemporaneous point of time and do not also find any mention in the order dated 5 November 1979. All that Arun Kumar Agarwala has achieved through suppression, manipulation and the pendency of these proceedings is to ensure that the company remain in his exclusive and absolute control. In any event, Arun Kumar Agarwala could never have acted unilaterally or singly in terms of the order dated 12 December 1991. To this extent, all dealings, transactions or

representations by Arun Kumar Agarwala acting singly are without lawful authority and *non est*.

34. CA 12 of 2024 is an application filed by Nomura Investment and Finance Private Limited as assignee of the erstwhile Punjab National Bank, a creditor of the company (in liquidation) inter alia seeking transfer of this company petition and all connected applications to the National Company Law Tribunal (NCLT). The applicant alleges to have obtained a registered assignment of debt dated 31 March 2011 in its favour from Punjab National Bank being the largest creditor of the company (in liquidation).
35. It is contended on behalf of the applicant that this company petition alongwith all connected applications ought to be transferred to the NCLT on the ground that no sale of assets has yet taken place and in view of the embargo under the Companies Act, 2013, this Court has no jurisdiction to proceed any further with this application. It is also urged that this company petition stood dismissed as appears from the Status Report of the Official Website of High Court as far back as on 15 August, 1947.
36. On behalf of the contributories of the company in liquidation it is contended that, the applicant has no locus to file this application. This application has been filed with oblique, collateral and sinister motive. It is improbable that a petition which was instituted as on 1 January 1979 could have been disposed of on 15 August, 1947. The applicant is seeking to take advantage of a glaring and obvious mistake of the records of this Court. In any event, upon the erroneous entry being discovered, the Department of this Court has since corrected the same and no benefit can

be taken by the applicant. There are serious issues of fraud, suppression and interpolation of the Court records raised in these proceedings which can be only adjudicated upon by this Court. As such, there is no merit in this application and the same is liable to be dismissed with exemplary costs.

37. By an order dated 14 November, 2022, this Court had observed that the records of this proceeding reflected that this Company Petition had been disposed of as far back as on 15 August 1947. This was an obvious mistake in the Court records and subsequently the records have been corrected by the Department of this Court. The status of dismissal was ultimately revoked on 18 July 2023 and the Court records corrected. A petition filed in 1979 could not have possibly been disposed of as on 15 August 1947. This is preposterous. In fact, the diverse orders which have all been passed would demonstrate that this Court has been in *seisin* and the Company Petition is yet to be brought to a logical conclusion.

38. The prayer for transfer of this proceeding to NCLT is equally mischievous. The reason behind seeking such transfer is understandable but cannot be acceded to. In any event, such prayer is inconsistent, irreconcilable and mutually destructive to the plea that the application had been dismissed as far back as in 1947. On the contrary, such recording only goes to demonstrate to what extent the *system* has been penetrated and the process abused. There is also a serious issue insofar as locus of the applicant is concerned. The applicant had been incorporated during the pendency of these proceedings. As stated hereinbefore, the shareholders of the applicant are all closely related and family members of Mr. Arun

Kumar Agarwala. In view of the grave allegations of fraud and abuse of process of this Court which have been made by the contributories any such issue can only be determined by this Court. Notwithstanding the amendment to the Companies Act 1956 and the requirement of transfer to the NCLT, there remains a limited discretion of the Company Court in appropriate cases to retain proceedings with the High Court. [*Action Ispat and Power Pvt. Ltd. vs. Shyam Metalics and Energy Ltd. (2021) 2 SCC 641*]

39. In such view of the matter, CA 12 of 2024 is dismissed as being frivolous and meritless. This is an application filed in desperation to prevent any enquiry into the fraudulent acts pertaining to the company (in liquidation) from scrutiny by this Court. There are serious issues which also go to the *bonafides* of the applicant in filing this application.
40. The original records of these proceedings remain untraceable nor are any current records available with the Registrar of Companies. In view of the absence of the original records and the presumption under section 114(c) of the Evidence Act 1872 all allegations as to the veracity and genuineness of the orders dated 28 June 1993 and 11 June 1993 passed by the Hon'ble Justice Kalyanmoy Ganguly stand rejected.
41. The wrong which has been done is ultimately '*a wrong to the company*' and it is the company which at its general meeting should decide any future course of action and that decision is to be made by the majority of the shareholders. In this context, the company can only act through. the Board of Directors and the majority of the shareholders. The last available admitted and indisputable records reflect that as on 30 June 1970 filed before the Registrar of Companies there were 70 shareholders of the

company and five directors. The applicants in CA 10 of 2023 are the majority shareholders and this would ultimately be decided at the proposed meeting. There are no creditors, employees, nor any third party who has approached this Court for redressal of their grievances. It is true that the period of 30 years cannot be glossed over in granting reliefs but this does not justify the *status quo* continuing *ad infinitum*. Both the Special Officers are of an advanced age and the applicants have undoubtedly been sitting over their rights for a long time. Nevertheless, the subsequent events which have transpired post the winding up order dated 5 November 1979 and the *fraud* perpetrated on Court cannot be ignored. In such circumstances, there must be both a pragmatic and holistic approach in granting reliefs. Accordingly, the following directions are passed:

- a. The orders dated 12 December 1991 and 28 June 1993 respectively stand recalled and vacated.
- b. There shall be a permanent stay of the winding up order dated 5 November 1979.
- c. The Special Officers Mr. Arun Kumar Agarwala and Mr. A.C. Kar and the Committee of Management namely S.K. Palit, Mr. Sushant Dasgupta, Mr. Amit Hazra and the Official Liquidator stand discharged.
- d. The Special Officers, the Committee of Management and the Official Liquidator are directed to hand over any of the assets, properties, books and other records pertaining to the company (in liquidation) to the Board of Directors at the general meeting to be held in terms of the directions below.

- e. Liberty is granted to any of the shareholders, their heirs, legal representatives or assigns on the basis of the last available Register of Members as reflected on 30 June 1970 to convene a meeting and decide on the future management of the company to be re-constituted for the purposes of running the company.
- f. The company is also directed to forthwith reconstitute the Board of Directors preferably with representatives from each of the six groups of the Agarwala family details whereof have been mentioned in paragraph 2 above.
- g. Appropriate steps be forthwith taken for rectification of the Register of Members to reflect the shareholding of the company as on 30 June 1970.
- h. In view of the gross fraud and abuse of process at the hands of Arun Kumar Agarwala, any transfer of shares which has taken place post the winding up order dated 5 November 1979 by Arun Kumar Agarwala is declared to be *void* and should not be taken into account for the purposes of holding the above meeting. In particular, any transfer of shares in favour of Reliance Firebricks and Pottery Company Limited is declared to be illegal, null and void and no effect be given to the same.
- i. As far as Nomura Investment Private Limited is concerned, the company is directed to take a final decision as to further steps to be taken insofar as the assignment of the debt and the dues of the erstwhile Punjab National Bank are concerned and whether to

adopt, ratify or rescind such transaction and all steps taken pursuant thereto.

- j. The company at such meeting is at liberty to take appropriate steps *vis-a-vis* the remaining assets (both moveable or immoveable) of the company and initiate appropriate proceedings for recovery of the same in accordance with law.
- k. The company at such general meeting is also at liberty to initiate appropriate proceedings in accordance with law against the Special Officers and the Committee of Management for recovery of the amount of Rs. 72 lacs alongwith interest and for any other wrong done to the company. The question of limitation in respect of any such proposed action would commence from the date of this order.
- l. Appropriate steps be taken by the company to file all statutory compliances, accounts and update all returns, or seek relaxation thereof in accordance with law. In doing so and for the purposes of limitation, the statutory authorities are to take into consideration the pendency of these proceedings and the orders passed therein.

42. With the above directions, CA/1/1996, CA/2/1997, CA/4/1999, CA/6/2022, CA/7/2022, CA/8/2022, CA/9/2022, CA/10/2022, CA/11/2022, CA/12/2022 and all applications including CP/117/1979 stand disposed of. Interim orders, if any stand vacated. Significantly, the records of CA 1 of 1996, CA 2 of 1997 and CA 4 of 1999 were never produced before this Court. Nor did any of the parties including the Special Officers make any submissions in respect of such applications. In

view of the disposal of main company petition, all the above applications stand disposed of.

(Ravi Krishan Kapur, J.)