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

Company Application (CAL) No. 31 of 2025
IN
Company Petition No. 3 of 2010
[Sanjay Bhayyaji Nimbulkar and ors. Vs. M/s Mahadeo Land Developers Pvt. Ltd. (in liqn.)]

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr. D. V. Dhondarkar, Advocate for the petitioners
Mr. N. R. Dawda, Advocate for the Official Liquidator with Mr. Deepak Parsoya, Official Liquidator
Mr. Pushkar Ghare, Advocate for Mr. Pramod Agrawal (present in person), Ex-Director of Mahadeo Land Developers Pvt. Ltd.
Mr. Anand Parchure, Advocate for Income Tax Department
Mr. A. M. Joshi, AGP for the State
Ms. Radhika G. Bajaj, Mr. Y. N. Sambre, Mr. R. R. Deo and Mr. Abhishek Kapoor, Ms. A. R. Sharma, Mr. S. I. Mulik, Advocates for the creditors

CORAM: ANIL L. PANSARE, J.

DATED : 18th JULY, 2025

1. Leave to delete prayer clause Nos.3, 4 and 5 granted. The prayers be deleted forthwith.

2. The challenge is to the orders dated 23.06.2025. By the first order, the official liquidator has accepted the claim of Rs. Sixty Three Crores and odd as unsecured creditor and by the second order the claim of Rs.320 Crores and odd has been rejected. As such, the applicant made application before the official liquidator under Section 530 of the Companies Act, 1956, claiming priority / preferential disbursement of tax liability. The official liquidator rejected the request on the ground that the taxes were not due and payable within 12 months next before winding up.

3. The winding up order has been passed on 04.04.2014. Twelve months next before the said order would mean that the claim that would be due and payable between 05.04.2013 to 04.04.2014 will be eligible for preferential payment. In the present case, the claim put-forth by the applicant were prior to the said date and accordingly the request has been rejected.

4. The argument of the applicant is that the payment due and payable is something which has a continuous cause and, therefore, will fall within the parameters of Section 530 of the Act of 1956.

5. The argument is without any substance. Presuming that there is a continuous cause, it is one thing to say that there is a recurring cause to recover money and it is another thing to say that the payment became due and payable on a particular day. To seek preference in payment, the tax liability must become due and payable within twelve months next before the winding up order. Such is not the case here and therefore, the applicant cannot claim priority in payment.

6. The second limb of argument is that the official liquidator has rejected the component of interest and penalty saying that the said component is not the tax liability as referred to in Section 530 (1)(a) of the Act of 1956.

7. On this point, the Hon'ble Supreme Court in the case of ***Harshad Shantilal Mehta Vs. Custodian and others*** reported in ***(1998) 5 SCC 1*** held as under :

> *"One other connected question remains: whether "taxes" under Section 11(2)(a) would include interest or penalty as well? We are concerned in the present case with penalty and interest under the Income Tax Act. Tax, penalty and interest are different concepts under the Income Tax Act. The definition of "tax" under Section 2(43) does not include penalty or*

> *interest. Similarly, under Section 157, it is provided that when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand as prescribed. Provisions for imposition of penalty and interest are distinct from the provisions for imposition of tax. Learned Special Court judge, after examining various authorities in paragraphs 61 to 70 of his judgment, has come to the conclusion that neither penalty nor interest can be considered as tax under Section 11(2)(a). We agree with the reasoning and conclusion drawn by the Special Court in this connection."*

8. Thus, it was held that the definition of "tax" under Section 2(43) of the Act of 1956 does not include penalty or interest. That being so, there appears no error in the order passed by the official liquidator. However, the counsel for the applicant is seeking time to have research on the point and to make further submissions. Time granted.

9. The counsels appearing for creditors submits that large number of creditors, many of whom are poor persons, are awaiting their dues. Accordingly submits that the Income Tax Department may be requested to waive as adjustment the tax liability so that the payment to the poor creditors could be made.

10. The counsel for the Income Tax Department shall seek instructions and if possible pursue the request made by the creditors which appears to me to be genuine and will serve larger interest in the proceedings. The counsel graciously agreed to take instructions and pursue the request. The tax department may consider the request sympathetically.

11. The official liquidator submits that remaining properties of the company are being demarcated and will be put to auction in due course.

12. The official liquidator shall act expeditiously and proceed further. List on 01.08.20205.

COMPANY APPLICATION (CAL) NO. 29/2025

The counsel for the applicant submits that since similar issue is being considered by this Court in Civil Application (CAL) No. 31/2025, the application is not pressed for order. The application is accordingly disposed of as not pressed for order.

COMPANY APPLICATION (CAL) NO. 30/2025

In view of above, this application does not survive and stands disposed of accordingly.

List Company Petition on 01.08.20205.

(ANIL L. PANSARE, J.)

MP Deshpande