

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	26.08.2025
Orders Pronounced on	16.09.2025

CORAM

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

Comp.A.Nos.397 to 400 of 2024**and 86 to 88 of 2025****in Comp.A.No.276 of 2024****in C.P.No.255 of 2014****Comp.A.Nos.397 to 400 of 2024**

N.Srinivasan (CDC Nominee)
Currently residing at 22-01, Tribeca, 60,
Kim Seng Road, Singapore-239491.

Previously at D.32, Nizamudehin Post,
New Delhi-110013,
Represented by his power of attorney
Mr.Arun Prakash Srinivasa Rao Korati,
433, 8th cross, near Madhavan Park,
Jayanagar 1st Block,
Bangalore South, Bengaluru,
Karnataka-560011.

..Applicant

Vs

1. The Official Liquidator
High Court, Madras as the Provisional Liquidator
of M/s. First Leasing Company of India Limited,
(In Provisional Liquidation),



No.29, Corporate Bhavan, 2nd floor, Rajaji salai,
Chennai-600 001.

2. Farouk M. Irani, S/o. Merwan Rustom Irani,
(Managing Director of FLCIL), DIN 00174018,
Address: La Reve, 10, River View Road,
Kotturpuram, Chennai-600 085.
3. Maharaj Jai Singh,
S/o.Maharaja Sawai Manisingh
(Director of FLCIL) DIN 00041513,
Address : Bungalow No.12, Civil Lines,
Jaipur-06.
4. Shri. A.C.Muthiah,
S/o.Muthaiah Chidambaram Annamalai,
(Chairman of FLCIL) DIN 00041905,
Address : H.No. Adyar Villa, Kotturpuram,
Chennai-600 085.

Dhanasekar (Deceased)
S/o.Saravanabavanantham, Vallajah,
(Director of FLCIL), DIN:00211656, Address:32, South
Boag Road, T.Nagar, Chennai-600 017.
5. A.L.Vadivelu, S/o.Alagappa Chettiyar,
(Director of FLCIL), Address: H.No.10, 1st
Floor, MAC Sunny Side, Dr.Alagappa Road,
Chennai-600 084. M.D.Narayan (Deceased)
(Director of FLCIL), Address : H.No.60, 9th
Main Road, Raja Mahal Vilas,
Bangalore-560 080.
Vice Admiral Rustom Khushro Gandhi
(deceased), 6A, Dolphin plot,
Bander Road, Colaba, Mumbai-400005.



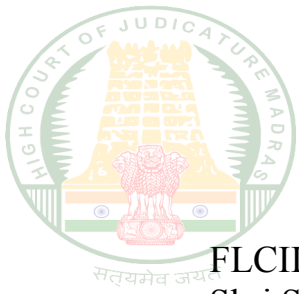
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Comp.A.Nos.397 to 400 of 2



& 86 to 88 of 2022

6. V.Sreenivasulu, S/o.V.Subbaiah,
(CDC Nominee), Address : H.No.14/1,
Kanakapura Road, Near Lalbagh West Gate,
Bangalore South, Basavangudi-560 004.
7. Babu K Varghese, S/o.K.Joseph Verghese,
(Director of FLCIL) DIN.00046699,
Address : H.No.492, 3rd South Main Road,
Kapaleswar Nagar, Neelankarai, Chennai-41,
Address also at: No.10, Ranganattan Avenue,
Uthandi, Chennai-600 119.
8. Vishwanath Tumu, S/o.Seetharam Das Tumu,
(Director of FLCIL), DIN.02031020,
Address : H.No.10-2-289/74, Shanthi Nagar,
Humayun Nagar, Hyderabad-28.
9. Sathishkumar Anavangot,
S/o.Nair Annikath Sethu Madavan
(Director of FLCIL) DIN.00087283,
Address: H.No.B002, Keshav Dugar, 1/30,
East Avenue, Kesavapuram, Chennai-28, Address
also at: H.No.102, Casa Grand Vitaliya,
Palaniswamy Street, Race Course,
Coimbatore-641 018.
- 10.Mr.Dilliraj, S/o.Kuppaswamy Somasundaram,
(Sr.Vice President (Treasury) and acting CFO of



FLCIL), Address. H.No.Flat No.202,
Shri Sudarshna Apartments, Srinagar Colony,
Hyderabad-500 073.

- 11.L.Sivaramakrishnan,
(Chief Financial Officer of FLCIL)
Address: H.No.A-4, 20, Venkatesanagaram,
Extension 1st Virugambakkam,
Chennai-600 092. Address also at: H.No.9A,
Baskar Nagar, Nehru Nagar, Saligramam,
Chennai-600 093.
- 12.V.Balaraman, S/o.K.V.Raman,
(Company Secretary of FLCIL),
Address. H.No.Flat No.A-2, 32,
Jambulingam Street, Chennai-600 034.
- 13.S.Hari Prasad, S/o.S.Sridhar,
(Company Secretary of FLCIL),
Address.H.No.B-3, Narayani Apartments,
Velian Nagar, Valasaravakkam,
Chennai-600 087.
- 14.Deepa Chellam, D/o.B.Ruthnaswamy,
(Company Secretary of FLCIL),
Address. H.No.T-27, G. Block,
TNHB Church Road, Mylapore,
Chennai-600 004.
- 15.N.Kumar, S/o.Natarajan Nagarajan,
(Company Secretary of FLCIL),
Address: H.No.Old No.3, New No.13,
VGN Street, Dasarathapuram, Saligramam,
Chennai-600 093, Address also at No.1E,
B.S.Apartments, Sayee Nagar, Virugambakkam,
Chennai-600 092.



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Comp.A.Nos.397 to 400 of 2

& 86 to 88 of 2025



..Respondents

Comp.A.Nos.86 to 88 of 2025

V.Sreenivasulu
S/o.V.Subbaiah, (CDC Nominee),
Address: H.No.14/1, Kanakapura Road,
Near Lalbagh West Gate, Bangalore South,
Basavangudi-560004.

..Applicant

Vs

1. The Official Liquidator
High Court, Madras as the Provisional Liquidator of
M/s.First Leasing Company of India Limited, (In Provisional Liquidation),
No.29, Corporate Bhavan, 2nd floor, Rajaji Salai, Chennai-600 001.

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(Managing Director of FLCIL), DIN 00174018,
Address: La Reve, 10, River View Road,
Kotturpuram, Chennai-600 085.

3.Maharaj Jai Singh,
S/o.Maharaja Sawai Manisingh
(Director of FLCIL) DIN 00041513,
Address : Bungalow No.12, Civil Lines,
Jaipur-06.

4.Shri. A.C.Muthiah,
S/o.Muthaiah Chidambaram Annamalai,
(Chairman of FLCIL) DIN 00041905,
Address : H.No. Adyar Villa, Kotturpuram,
Chennai-600 085.



Dhanasekar (Deceased)

S/o.Saravanabavanantham, Vallajah,
(Director of FLCIL), DIN:00211656, Address:32,
South Boag Road, T.Nagar, Chennai-600 017.

5.A.L.Vadivelu, S/o.Alagappa Chettiyar,
(Director of FLCIL), Address: H.No.10,
1st Floor, MAC Sunny Side, Dr.Alagappa Road,
Chennai-600 084.

M.D.Narayan (Deceased)
(Director of FLCIL), Address : H.No.60,
9th Main Road, Raja Mahal Vilas,
Bangalore-560 080.

Vice Admiral Rustom Khushro Gandhi (deceased),
6A, Dolphin plot, Bander Road, Colaba, Mumbai-400005.

6. N.Srinivasan (CDC Nominee)
D.32, Nizamudehin Post,
New Delhi-110 013.

7. Babu K Varghese, S/o.K.Joseph Verghese,
(Director of FLCIL) DIN 00046699,
Address : H.No.492, 3rd South Main Road,
Kapaleswar Nagar, Neelankarai, Chennai-41,
Address also at: No.10, Ranganattan Avenue,
Uthandi, Chennai-600 119.

8. Vishwanath Tumu, S/o.Seetharam Das Tumu,
(Director of FLCIL), DIN 02031020,
Address : H.No.10-2-289/74,
Shanthi Nagar, Humayun Nagar, Hyderabad-28.

9.Sathishkumar Anavangot,
S/o.Nair Annikath Sethu Madavan



(Director of FLCIL) DIN 00087283,
Address: H.No.B002, Keshav Dugar,
1/30, East Avenue, Kesavapuram, Chennai-28,
Address also at: H.No.102, Casa Grand Vitaliya,
Palaniswamy Street, Race Course, Coimbatore-641 018.

10.Mr.Dilliraj, S/o.Kuppaswamy Somasundaram,
(Sr.Vice President (Treasury) and acting CFO of FLCIL),
Address. H.No.Flat No.202,
Shri Sudarshna Apartments, Srinagar Colony, Hyderabad-500 073.

11.L.Sivaramakrishnan,
(Chief Financial Officer of FLCIL)
Address: H.No.A-4, 20, Venkatesanagaram,
Extension 1st Virugambakkam,
Chennai-600 092. Address also at: H.No.9A,
Baskar Nagar, Nehru Nagar, Saligramam,
Chennai-600 093.

12. V.Balaraman, S/o.K.V.Raman,
(Company Secretary of FLCIL),
Address. H.No.Flat No.A-2, 32,
Jambulingam Street, Chennai-600 034.

13.S.Hari Prasad, S/o.S.Sridhar,
(Company Secretary of FLCIL), Address: H.No.B-3,
Narayani Apartments, Velian Nagar, Valasaravakkam,
Chennai-600 087.

14.Deepa Chellam, D/o.B.Ruthnaswamy,
(Company Secretary of FLCIL),
Address. H.No.T-27, G. Block,
TNHB Church Road, Mylapore,
Chennai-600 004.



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15.N.Kumar,

S/o.Natarajan Nagarajan,
(Company Secretary of FLCIL),
Address:

H.No.Old No.3,

New No.13,

VGN Street, Dasarathapuram,

Saligramam,

Chennai-600 093,

Address also at

No.1E,

B.S.Apartments,

Sayee Nagar,

Virugambakkam,

Chennai-600 092.

... Respondents

Prayer in Comp.A.No.397 of 2024: Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Order I Rule 10 of the Code of Civil Procedure, 1908 and Rules 9 & 11(b) of the Companies (Court) Rules, 1959, to pass an order to strike out the name of the applicant / respondent No.9, being N.Srinivasan from the list of respondents in Company Application No.276 of 2024 in Company Petition No.255 of 2014.



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Prayer in Comp.A.No.398 of 2024: Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Section 151 of the Code of Civil Procedure, 1908 and Rules 9 & 11(b) of the Companies (Court) Rules, 1959, to pass an order, pending the hearing and final disposal of the present Application, to stay all further proceedings (including, interlocutory applications, if any) in company application No.276 of 2024 in company petition No.255 of 2014 as against the Applicant / respondent No.9.

Prayer in Comp.A.No.399 of 2024: Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 and Rules 9 & 11(b) of the Companies (Court) Rules, 1959, to vacate the order dated 09.08.2024 passed by this Hon'ble Court in company application No.276 of 2024 in company petition No.255 of 2014 as against the Applicant / respondent No.9 in toto.

Prayer in Comp.A.No.400 of 2024: Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Order VII Rule 11 of the Code of Civil Procedure, 1908 and Rules 9 & 11(b) of the Companies (Court) Rules, 1959, to pass an order to dismiss the company application No.276 of 2024 in company petition No.255 of 2014 as against the Applicant / respondent No.9.

Prayer in Comp.A.No.86 of 2025: Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Rules 9 & 11(b) of the Companies (Court) Rules, 1959, to stay all further proceedings in C.A.No.276 of 2024 in C.P.No.255 of 2014 against the Applicant/Respondent No.8, pending final hearing of the present application.



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Prayer in Comp.A.No.87 of 2025: Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Rules 9 & 11(b) of the Companies (Court) Rules, 1959, to pass an order to strike out the name of the Applicant / Respondent No.8, being V.Sreenivasulu, from the list of Respondents in Company Application No.276 of 2024 in Company Petition No.255 of 2014.

Prayer in Comp.A.No.88 of 2025: Application is filed under Order XIV Rule 8 of the Original Side Rules Read With Rules 9 & 11(b) of the Companies (Court) Rules, 1959, to vacate the order dated 09.08.2024 passed by this Hon'ble Court in Company Application No.276 of 2024 in C.P.No.255 of 2014 as against the Applicant/Respondent No.8 in toto.

For Applicant in Comp.A.Nos.397 to 400 of 2024 :

Mr.J.Sivanandaraj, senior counsel

for Ms.Preeti Mohan

Ms.Ridhima Sharma

Mr.Rajendra Barot

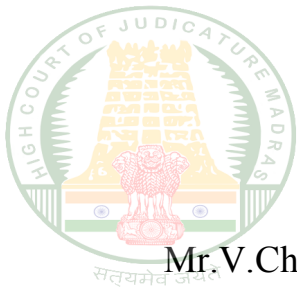
Ms.Priyanka Shetty

For Applicant in Comp.A.Nos.86 to 88 of 2025:

Mr.P.Giridharan

Mr.Karthik Murali

For 1st Respondent/Official Liquidator in all company applications:



Mr.V.Chandrasekaran, SPC,

WEB COPY assisted by Mr. R.Hariprasad

COMMON ORDER

The Official Liquidator filed Comp.A.No.276 of 2024 under Section 542 of the Companies Act, 1956 (CA 1956) seeking a declaration that the respondents conducted the business of the First Leasing Company of India Limited (FLCIL)/ company in liquidation (the Company) fraudulently and that they are personally liable without any limitation of liability for all the debts of the Company. In particular, a declaration has been sought that the respondents are jointly and severally liable to contribute Rs.1,302/- crores, which is due and payable to the creditors of the Company as per the report of the Special Fraud Investigation Office (SFIO) with interest thereon at 12% per annum from the date of provisional liquidation. Various interim orders were prayed for in the said application. By order dated 09.08.2024, the respondents were restrained from mortgaging or creating a charge or lien or third party interest over or alienating movable and immovable properties owned by them until further orders. They were further restrained from operating their respective bank



accounts and the Central Depository Services Limited (CDSL) and National Securities Depository Limited (NSDL) were directed to freeze the securities owned or held by the respondents in any companies/societies until further orders. This order was modified by order dated 30.08.2024 in respect of respondents 1, 2, 5, 8, 10, 12, 14, 16 and 18 by suspending the order restraining operation of their respective bank accounts until further orders. By subsequent order dated 04.09.2024, the benefit of order dated 30.08.2024 was extended to the 9th respondent.

2. Eighteen respondents were arrayed in Comp.A.No.276 of 2024. The applicant in Comp.A.Nos.397 to 400 of 2024, Mr.N.Srinivasan (Srinivasan), is the 9th respondent therein and the applicant in Comp.A.Nos.86 to 88 of 2025, Mr.V.Sreenivasulu (Sreenivasulu), is the 8th respondent therein.

3. By these applications, the respective applicant seeks to: vacate the order dated 09.08.2024 insofar as it pertains to the respondent concerned; strike out the respective applicant from the array of respondents in Comp.A.No.276 of 2024 or dismiss the said application insofar as it pertains to such applicant; and pending consideration of such request, stay further proceedings in Comp.A.No.276 of 2024.



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4. In the affidavit in support of the applications filed by Srinivasan, it is stated that the Commonwealth Development Corporation, a statutory corporation of the Government of the United Kingdom, which was later converted into a public limited company called CDC Group plc (CDC), had invested in the Company. It is further stated that he was the nominee of CDC on the board of directors of the Company and served as a non-executive director of the Company from 2001 to mid 2002. The name of CDC is said to have been changed thereafter to British International Investment plc (BII), and he states that he is currently the Managing Director and Head of Asia of the said entity.

5. Since he was not a part of the management and was not in-charge of the day-to-day affairs of the Company, it is stated therein that Section 542 of CA 1956 cannot be invoked against him. It is further stated that the allegations in Comp.A.No.276 of 2024 are lacking in particulars; that not a single instance of wrong doing by him has been cited therein; and that this is not in conformity with pleading requirements when fraud is alleged. Therefore, it is stated that there is no cause of action against him; that the application is liable to be rejected against him by invoking Order VII Rule 11 or Order I Rule 10 of the Code of Civil Procedure, 1908 (the CPC).



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6. In the affidavit of Sreenivasulu, he asserts that the requirements for the grant of an *ex parte* order were not satisfied in this case and that even a copy of such order was not provided to him, thereby contravening Order XXXIX CPC. After stating that his life savings have been invested in mutual funds and debt securities managed by a wealth manager, he states that the freezing of his demat account has a significant adverse impact on his corpus and hampers his access to liquidity. He also states that he was a nominee non-executive director between 19.03.1999 and early July 2020. The other averments in his affidavit are substantially similar to those in the affidavit of Srinivasan.

7. The Official Liquidator filed counter affidavits in both sets of applications. In such counters, it is stated that the applicants were admittedly directors of the Company; that fraudulent activities were carried out by the management of the Company during the said period; and that all the directors participated in board meetings wherein relevant decisions were taken. As members of the board, the Official Liquidator states that the applicants were duty bound to act in good faith and prevent the misuse of funds by the promoters. In view of the failure to discharge fiduciary duties, it is asserted that they are liable for prosecution. Therefore, the Official Liquidator states that no

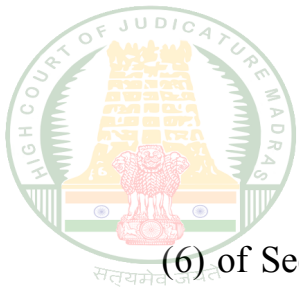


case is made out by the applicants and that all the applications are liable to be dismissed.

Counsel and their contentions:

8. Oral arguments on behalf of the applicant in Comp.A.Nos.397 to 400 of 2024 were advanced by Mr.J.Sivanandaraj, learned senior counsel, assisted by Ms.Ridhima Sharma, learned counsel. Oral arguments on behalf of the applicant in Comp.A.Nos.86 to 88 of 2025 were advanced by Mr.P.Giridharan, learned counsel. Mr.V.Chandrasekaran, learned SPC, assisted by Mr.R.Hariprasad, learned counsel, advanced arguments on behalf of the Official Liquidator. The respective applicant submitted written submissions also.

9. The first contention of Mr. J.Sivanandaraj was that the only charges in the SFIO report relating to Srinivasan were charge nos.3.1, 3.2 & 5. Charge no.3.1 relates to the falsification of the financial statements of FLCIL/the Company for financial years 1997-1998 to 2011-2012. He submitted as follows in this regard. The charge was framed under Section 211 read with Sections 628 of CA 1956. Section 211 deals with the contents of the balance sheet and profit and loss account, and makes reference to the persons referred to in sub-section



(6) of Section 209. Section 209(6) makes the directors of a company liable for non-compliance with the requirements of Section 209 only if such company does not have a Managing Director or Manager. Since the Company had a Managing Director, Srinivasan, who was only a nominee non-executive director, cannot be made liable in respect of alleged falsification of financial statements. Charge no.3.2 pertains to falsification of board reports for financial years 1997-1998 to 2011-2012. Section 217 of CA 1956 was invoked in relation to this charge. Srinivasan did not sign the balance sheet or profit and loss account of the Company during the period when he was a nominee director. The Company had a Managing Director and a whole-time secretary. Therefore, the responsibility cannot be foisted on Srinivasan for the alleged contravention of Section 217. Charge no. 5 relates to unauthorised contribution as donation to the MAC Public Charitable Trust (the MAC Trust) and to the exercise of powers by the board of directors without the consent of the Company in a general meeting. Sections 293 and 629A were invoked in relation to this charge. Section 293 deals with restrictions on the powers of the board of directors, including in relation to contribution to charitable funds not directly related to the business of the company. As in the case of other charges, this charge cannot be foisted on a non-executive director unless such person played an active role in the relevant transaction.



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10. After pointing out that the role of Srinivasan is dealt with at pages 241 to 243 of the SFIO report, learned senior counsel submitted that even the tenure of directorship is erroneously mentioned in the report. He also submitted that the report noticed letter dated 10.01.2022 from Srinivasan stating that he was not involved in the day-to-day management of the affairs of the Company and that he does not have cogent material to respond to questions put to him. Apart from recording that a nominee director cannot escape from the fiduciary responsibilities of corporate governance, learned senior counsel contended that no specific allegation has been made against Srinivasan in the said report. During his term as nominee director, learned senior counsel submitted that Srinivasan attended only 3 board meetings held on 20.08.2001, 26.12.2001 and 28.03.2002, wherein financial statements, board reports and donations to charitable trusts were not discussed.

11. In this factual context, by referring to precedents, learned senior counsel proceeded to contend that: there is no basis to invoke Section 542 of CA 1956 against Srinivasan; that the said provision may only be invoked on the basis of specific allegations that the respondent concerned had knowingly participated in carrying on the business fraudulently; there is no cause of action



against him thereby justifying rejection of the application under Order VII Rule

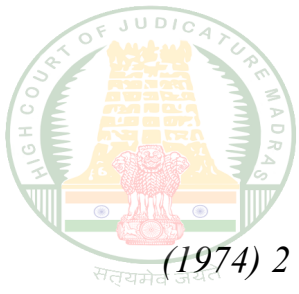
11 CPC; and Srinivasan is neither a necessary nor proper party thereby justifying deletion under Order I Rule 10 CPC.

12. The following judgments were relied on by him in support of the above contentions:

(i) *Chintalapati Srinivasa Raju v. Securities and Exchange Board of India*, (2018) 7 SCC 443, particularly paragraphs 2, 5, 19 to 25 & 29, regarding the limited role played by a non-executive director and that such individual cannot be made responsible for actions taken by those in the management of Satyam Computer Services Limited.

(ii) *Security and Finance Pvt. Limited v. B.K.Bedi and others*, 1990 SCC OnLine Del 102, particularly paragraphs 1 & 31 to 33 thereof, regarding the requirement of providing particulars in an application under Section 542.

(iii) *Official Liquidator, High Court, Madras v. Gautham Dhiraj Mal Ranka & others*, 2007 SCC OnLine Mad 888 (*Gautham Dhiraj Mal Ranka*), particularly paragraphs 13 & 14 thereof, wherein this Court followed the judgment of the Supreme Court in *Official Liquidator v. Raghawa Desikachar*,

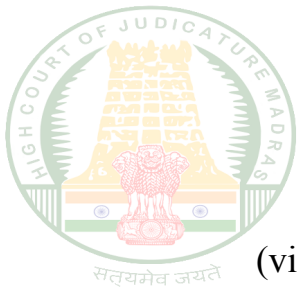


(1974) 2 SCC 741, and held that the burden of proving misfeasance rests on the Official Liquidator.

(iv) *Official Liquidator, High Court, Calcutta v. Padam Kumar Khaitan and others*, 2008 SCC OnLine Cal 508, particularly paragraphs 9 to 20 thereof, for the proposition that an application to delete the name of a party from the array of parties in an application under Section 443 of CA 1956 may be allowed in cases where the application contains no allegations against such applicant.

(v) *Official Liquidator Milan Chit Fund & Finance P. Ltd. v. Joginder Singh Kohli and others*, 1977 SCC OnLine Del 43, wherein the Delhi High Court concluded that an application under *inter alia* Section 542 of CA 1956 cannot be sustained on the basis of vague non-specific allegations against all the directors.

(vi) *Official Liquidator of Shubh Laxmi Savings and Finance P. Limited (in liquidation) v. Brij Mohan Gogna and another*, 2006 SCC OnLine Raj 111, particularly paragraphs 8, 9 and 11 thereof, with regard to the requirement of specific acts of commission or omission on the part of each director.

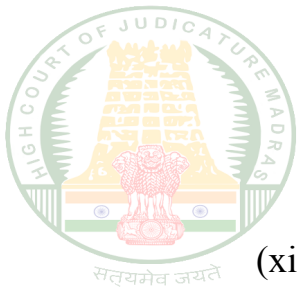


(vii) *National Sugar Mills Limited (In liquidation)*, 1975 SCC OnLine Cal 303, particularly paragraphs 15 to 17 thereof.

(viii) *The Official Liquidator v. Raghava Desikachar and others*, (1974) 2 SCC 741(Raghava Desikachar), particularly paragraph 7 thereof, wherein the Supreme Court held that a misfeasance action against the directors is a serious charge and that the burden of proving the same rests on the Official Liquidator.

(ix) *T.S. P.L.S. Thinnappa Chettiar v. Official Liquidator, Oriental Investment Trust Ltd.*, 1944 SCC OnLine Mad 273, wherein a Division Bench of this Court dealt with the difference between a Managing Director and an ordinary director with regard to responsibility.

(x) *Faridabad Rubber Soles Private Limited (In liquidation) v. S.L.Chopra & another*, 1994 SCC OnLine P & H 543, wherein the Court concluded that liability cannot be imposed under Sections 542 & 543 merely on the ground that action was not initiated to recover the debts of the company in liquidation.



(xi) *Official Liquidator, High Court, Madras v. L.G.Varadarajulu & others*, 2010 SCC OnLine Mad 5624 (*Varadarajulu*), particularly paragraph 25 thereof, regarding the requirement of *mens rea* to sustain an application under Sections 542 & 543 of CA 1956.

(xii) *Union of India v. H.C.Tandon*, 2007 SCC OnLine All 1557, particularly paragraph 14 thereof, regarding the requirement of establishing that the party made respondent in an application under Section 543 should have benefitted from the transaction.

(xiii) *Official Liquidator v. Nagin B. Parikh & others*, MANU/WB/0910/2011, particularly paragraph 20 thereof, to the effect that an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (the CPC) is maintainable in respect of an application under Section 542 of CA 1956.

(xiv) *Official Liquidator, High Court, Madras v. V.Selvaraj and others*, 2009 SCC OnLine Mad 2929 (*Selvaraj*), particularly paragraph 17 thereof, regarding the requirement of *mens rea* on the part of the ex-director and the further requirement that fraud or breach of trust should be specifically pleaded.



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(xv) *Re Maidstone Buildings Provisions Limited, 1973 (3) All ER 363* (*Maidstone Buildings*), particularly at pages 368 and 369, for the proposition that the expression 'party to the carrying on of a business' does not cover everyone who is aware that the business of the company is being carried on fraudulently.

(xvi) *Kamalkishor Shrigopal Taparia v. India Ener-Gen Private Limited & another, 2025 SCC OnLine SC 321*, regarding the non-liability of a non-executive director for the dishonour of a cheque under Section 141 of the Negotiable Instruments Act, 1881 (the NI Act).

(xvii) *Sunita Palita & others v. Panchami Stone Quarry, (2022) 10 SCC 152*, particularly paragraph 42 thereof, for the proposition that a non-executive director is not involved in the day-to-day affairs of the company or in the running of its business.

(xviii) *Om Prakash Khaitan v. Shree Keshariya Investment Limited and others, ILR (1977) II Delhi 470*, particularly paragraph 5 thereof, for the proposition that it is necessary to make a distinction between directors in



effective control of the management and affairs of the company and nominee directors.

(xix) *K.Ramakrishnan v. Income Tax Department, Crl.O.P.Nos.16082 to 16084 of 2018 and connected petitions, order dated 25.10.2019*, particularly paragraphs 9 to 11 thereof, regarding the unsustainability of prosecuting a non-executive nominee director without foundation.

(xx) *Chanakya Bhupen Chakravarti and another v. Rajeshri Karwa, 2018 SCC OnLine Del 12968*, particularly paragraphs 7 & 8 thereof, regarding the position and status of a non-executive director.

(xxi) *K.S.Mehta v. M/s. Morgan Securities and Credits Private Limited, 2025 INSC 315*, particularly paragraphs 17 & 18 thereof, for the proposition that financial liability cannot be imposed on a director merely on the ground of such director having attended board meetings.

13. Mr. P.Giridharan, learned counsel for Sreenivasulu, who is the applicant in Comp.A.Nos.86 to 88 of 2025, contended that the power under Section 633 of CA 1956 may be exercised to relieve a nominee

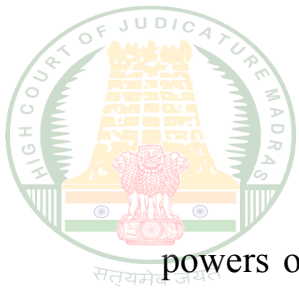


non-executive director from liability for misfeasance. He also submitted that the misfeasance application is liable to be rejected because it is not based on the independent opinion of the Official Liquidator that the business of the Company had been carried on with intent to defraud creditors or for any other fraudulent purpose. Instead, he contended that the Official Liquidator appears to have acted mechanically on the basis of recommendations in the SFIO report. Finally, he contended that Sreenivasulu should be deleted from the array of parties in Comp.A.No.276 of 2024 on account of the absence of any specific allegations against him in the affidavit in support of such application. He referred to and relied upon Order VI Rule 4 of the CPC in this regard.

14. In support of his contentions, he referred to and relied on the following judgments:

(i) *Official Liquidator & Liquidator of Wopolin Plastics Ltd. v. Hargovind Gangabisan Bajaj & others*, MANU/MH/2522/2021, particularly paragraph 9 thereof, with regard to the requirements of proving breach of trust and pecuniary loss to the company in an application for misfeasance.

(ii) *Reserve Bank of India v. Kubar Mutal Benefits Limited*, 2023 SCC OnLine All 3948, particularly paragraphs 44 & 45 thereof, regarding the wide



powers of a liquidator under Section 457 of CA 1956 and for the proposition that an investigation under Chapter XIV of the Companies Act, 2013 should not be initiated in a matter where a winding up order has been passed under CA 1956.

(iii) *Official Liquidator, High Court, Madras v. V.Selvaraj & others*, 2009 SCC OnLine Mad 2929, particularly paragraph 14 thereof.

(iv) *Official Liquidator, High Court, Madras v. L.G.Varadarajulu & others*, 2010 SCC OnLine Mad 5624.

(v) *Madhavan Nambiar v. Registrar of Companies*, MANU/TN/0766/2001, particularly paragraphs 23, 26 & 30 thereof, regarding the power to relieve an officer of liability under Section 633 if such officer had acted *bona fide* and not committed wilful omission or commission.

(vi) *Vidya C.G. & others v. Serious Fraud Investigation Office*, MANU/KA/1358/2024, particularly paragraph 61 thereof, to the effect that the initiation of proceedings under Section 36 read with Sections 447 & 448 of the



Companies Act, 2013 lacks legal authority in relation to alleged offences committed when CA 1956 was in force.

15. Mr. V.Chandrasekaran responded on behalf of the Official Liquidator. His first contention was that Section 542 of CA 1956 is wider in ambit than Section 141 of the NI Act. Consequently, he contended that the determination that the applicants are not liable cannot be made at the pre-trial stage. After pointing out that each applicant attended about three or four board meetings, he also made reference to letter dated 25.06.2001 from M/s.Fraser & Ross, Chartered Accountants, to the board of directors of the Company with reference to financial irregularities. After further submitting that paragraphs 4.6.14 of the SFIO report draws reference to this letter, he contended that Srinivasan was inducted on the board on 25.06.2001. By referring to paragraph 19 of the SFIO report and paragraph 16 of the affidavit in support of Comp.A.No.276 of 2024, learned counsel contended that an allegation has been made against all the directors of the Company regarding the fraudulent conduct of the affairs of the Company and regarding their participation in board meetings with knowledge thereof. After further submitting that Section 542 requires fraudulent intent to be established and that such intent is capable of being established only by



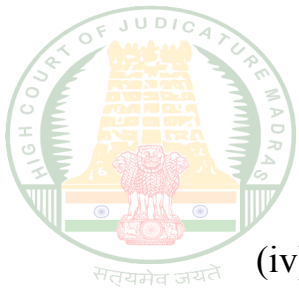
leading evidence during trial, he contended that these applications cannot be allowed at this juncture.

16. He placed reliance on the following judgments:

(i) *Official Liquidator, Supreme Bank Limited v. P.A.Tendolkar (Dead) by legal heirs & others*, MANU/SC/0005/1973, particularly paragraphs 37 to 41 thereof, for the proposition that a director cannot shut his eyes to what must be obvious to anyone who examines the affairs of the company even superficially.

(ii) *Jagjivan Hiralal Doshi and others v. Registrar of Companies*, MANU/MH/0009/1989, particularly paragraphs 12 & 23, for the proposition that the law does not make a distinction between part-time directors and whole-time directors and that their liability depends on the facts and circumstances of each case.

(iii) *G.D.Bhargava & others v. Registrar of Companies & others*, MANU/UP/0099/1970, particularly paragraphs 7 to 9 thereof, regarding the discretionary nature of the power under Section 633 of CA 1956.



(iv) *Official Liquidator v. Ram Swarup & others, MANU/UP/0011/1997*, particularly paragraph 11 thereof, for the principle that ex-directors of the company cannot succeed on the bald plea that they were only nominee directors and they were not in-charge of affairs of the company.

(v) *Kothari (Madras) Ltd. v. Myleaf Tobacco Development Co. Pvt. Ltd. and others, MANU/KA/0008/1984*, particularly paragraphs 12 & 17 thereof, for the principle that all directors of a company stand on the same footing and their duties, responsibilities and obligations are uniformly controlled by the provisions of CA 1956 and the articles of association of the company.

17. By way of rejoinder, Mr.J.Sivanandaraj, learned senior counsel, submitted that Section 542 requires pleadings that each respondent was knowingly a party to the carrying on of business fraudulently. He pointed out that the principal financial fraud or irregularity complained of in the SFIO report relates to loans and transactions with satellite companies of the Company, and that Srinivasan has not been charged with any offence relating to such transactions with satellite companies. He further submitted that Srinivasan was appointed as a director on 25.06.2001 and was merely an invitee at the relevant board meeting on 25.06.2001. In conclusion, after reiterating that there is no



material against Srinivasan either in the SFIO report or in the affidavit in support of the application under Section 542, he submitted that Srinivasan is entitled to the relief claimed. He also contended that in the absence of even a *prima facie* case against Srinivasan, the interim orders against him are also liable to be vacated.

Discussion, analysis and conclusion:

18. By order dated 05.07.2016 in Comp.A.No.238 of 2015, this Court directed the SFIO to undertake an investigation to ascertain whether the funds of the Company were diverted to the companies referred to in the schedule appended to the Judge's summons. Pursuant thereto, the SFIO submitted investigation report dated 31.01.2022 and corrigendum dated 24.05.2022. Comp.A.No.276 of 2024 under Section 542 of CA 1956 was filed upon receipt of the above mentioned report and letter dated 05.07.2022 from the Ministry of Corporate Affairs. On perusal of the affidavit in support of Comp.A.No.276 of 2024, it is noticeable that the Official Liquidator has relied heavily on the SFIO report, which appears to be the sheet anchor of the application.

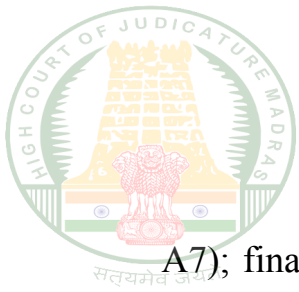
19. The pleadings in Comp.A.No.276 of 2024 are not complete as on date because several respondents have not filed their counters. It is, therefore,



needless to say that trial has not commenced. Both the sets of applications have been lodged at this preliminary stage.

20. Both the applicants, i.e. Srinivasan and Sreenivasulu, were nominee directors on the board of the Company representing an entity previously known as CDC and currently known as BII. CDC/BII had invested in the Company in the year 1995 and exited in the year 2002. Sreenivasalu was a nominee director of CDC on the board of the Company between 19.03.1999 to about 07.07.2000 and Srinivasan was a nominee director from 25.06.2001 to 10.06.2002.

21. Both Srinivasan and Sreenivasulu contend that the SFIO report and Comp.A.No.276 of 2024 do not contain specific allegations against them. In support of this contention, they relied upon the sections of the SFIO report dealing with their involvement. Therefore, the observations and findings in the SFIO report and the minutes of board meetings held when the respective applicant was a director warrant consideration. While the SFIO report is on record, it is incomplete inasmuch as the annexures are unavailable, but for Annexure D-13, the letter from M/s Fraser & Ross, Chartered Accountants. The SFIO report lists 4 types of annexures at the foot thereof: orders (annexures A1-

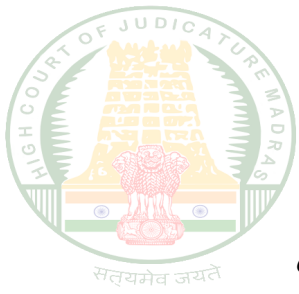


A7); financial statements (annexures B1-B15); statements (annexures S1-S49);
and documents (annexures D1-D80).

22. The role of Srinivasan is dealt with at paragraph 4.86 of the SFIO report. The tenure of directorship mentioned therein does not tally with the records. It is stated therein that Srinivasan was a director in financial year 1999 – 2000, whereas the record shows that he became a director on 25.06.2001. The minutes of the board meeting held on 25.06.2001 may be referred to regarding his appointment and that of 03.07.2002 regarding his withdrawal. The operative portion of the report relating to Srinivasan is set out below:

“4.86.2 Being part of Board Meetings he has been privy to all fraudulent transactions taken place during his tenure viz., Formation of satellite companies and granting of loans thereof; Creation of fictitious assets and inflating profits; Falsification and Concealment of facts in Board Reports and Audited Financial Statements; Loan availments from Banks/Financial Institutions, lendings to related parties, appointment of Auditors; Approval of donations to MAC Public Charitable Trust; Unlawful declaration of dividends out of false profits leading to unauthorised money transfers for personal enrichment of promoters and group etc.

4.86.3. Being a member of the Board, in addition to protecting the interests of CDC, Mr.N.Srinivasan was



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expected to serve the best interest of sound public policy and bring about higher levels of corporate governance. Further, his presence on the Board also entailed a close monitoring of the affairs of FLCIL by working assiduously towards observance of good corporate governance practices in the company with due regard to the legitimate interests of the various stakeholders, attending the Board meetings regularly and actively participate in the proceedings of the Boards apart from duly safeguarding the interest of CDC and also ensure proper utilisation of investment made in FLCIL and prevent any misuse/diversion of funds by the promoters/management of the companies.

However, it was observed that vide his letter 10/1/2022, Mr.N.Srinivasan stated he was not involved in the day to day management of the affairs of FLCIL as he was a Non-Executive Director and that presently, he did not have any cogent material in relation to the questionnaire issued in this specific case. Further he also mentioned that as a Non-Executive Director, representing a government owned Developmental Financial Institution, having been on the Board of FLCIL, with a minority investment and having resigned more than 20 years back, there has been no assets or properties acquired pursuant to his association with FLCIL. He also informed that as a matter of good corporate governance, CDC cooperates with any lawful regulatory



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investigation. However, also expressed apprehension about documents related thereto being available or lost or have destroyed given the passage of almost 20 years since CDC exited the Company.

Since the entire Board of Directors is responsible for the governance of its Company, every member of the Board is expected to contribute for the well being of the organisation through adoption of best practices for Corporate Governance, failing which he remains liable for prosecution.

Donning the cap of a Nominee Director cannot make one escape from his fiduciary responsibilities of Corporate Governance, all the more in a listed company. Hence Mr. N.Srinivasan is privy and therefore liable for all fraudulent actions of FLCIL as a Nominee Director during his tenure with FLCIL. ”

23. The role of Sreenivasulu is dealt with in paragraph 4.85 of the SFIO report. As in the case of Srinivasan, his tenure of directorship is wrongly mentioned in the report. He was a director from 19.03.1999 till 31.07.2000. The first two paragraphs extracted above from the section of the report dealing with Srinivasan are identical to those in the section of the report dealing with Sreenivasulu. Thereafter, the report records as under regarding Sreenivasulu:



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“4.85.4 However, it was observed that vide his responses dt 6/1/2022, he was not forthcoming with the actual happenings in the company and was evasive and does not provide any information. He repeatedly stated that he was only a junior nominee director on the Board who did not have any decision making responsibilities on behalf of CDC given his junior role, age, lack of experience and no accounting knowledge. As regards promoters, he stated that Mr. Farouk Irani was the full time MD and Mr.Muthiah was the Chairman and promoter of FLCIL. He also attributed the passage of a long time of 25 years and feigned ignorance about the whole issue.

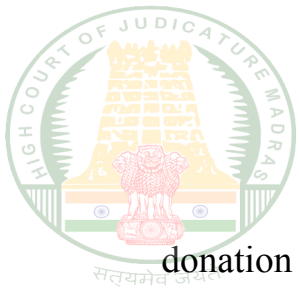
4.85.5 Since the entire Board of Directors is responsible for the governance of its Company, every member of the Board is expected to contribute for the wellbeing of the organisation through adoption of best practices for Corporate Governance, failing which he remains liable for prosecution. During his tenure, he failed to discharge his duties and responsibilities and therefore he is liable for penal action. ”

24. As discussed while narrating the contentions, the SFIO summarised the charges against the directors and officers of the Company. As regards both Srinivasan and Sreenivasulu, they are shown as accused in relation to charge no.3.1 (falsification of financial statements of FLCIL), charge no.3.2



(falsification of board report) and charge no.5 (unauthorised contribution towards donation to the MAC Trust). A recommendation has been made to charge them with carrying on the business of FLCIL fraudulently and also with an intent to defraud creditors. They are not listed as accused persons *inter alia* in the charges relating to grant of loans to satellite companies under the same management and the charges of unlawful declaration of dividends or failure to make qualifications by statutory auditors.

25. The SFIO report specifically dealt with donations to the MAC Trust at paragraphs 4.77-4.77.6 thereof. Details of these donations aggregating to Rs.303 lakhs are set out in paragraph 4.77.4 along with the dates of board meetings at which such donations were approved. The second board meeting mentioned therein is the meeting on 28.06.1999, which is during the period when Sreenivasulu was a director. Minutes of board meetings held in the years 2000-2003 and the minutes of meetings attended by Sreenivasulu and Srinivasan were filed by learned counsel for the Official Liquidator. On examining the same, I find that the minutes of meeting held on 28.06.1999 are unavailable. In fact, I find that the documentation is incomplete and that minutes of meetings referred to in some minutes are also not available. On comparing the data set out in paragraph 4.77.4 with the available minutes of board meetings, it appears that a



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donation of Rs.25,00,000/- to the MAC Trust was approved by the board at the meeting on 27.03.2000. This donation is not referred to in paragraph 4.77.4. Sreenivasulu was a director during this time, but leave of absence was given to him. In the absence of the notice, agenda and his request for leave of absence, it is not possible to ascertain, whether he was informed of the proposed donation in the agenda and, if so, his response thereto. Similarly, the available minutes include minutes of meeting held on 28.06.2001 when a donation of Rs.25,00,000/- to the MAC Trust by approved by the board. Srinivasan was a director during this period but requested for and was granted leave of absence. As in the case of Sreenivasulu, in the absence of material documents, at this juncture, it is not possible to ascertain, whether he was informed of the proposed donation in the agenda and, if so, his response thereto.

26. The SFIO report discusses the discrepancy between the business done report and the audited financial statements at paragraph 4.65. According to the SFIO, this reveals that the directors were aware of the actual state of affairs. On correlating this section of the report with the available minutes, it appears that a report of business done in the preceding quarter was placed before the board of directors at most board meetings. For instance, as per the relevant minutes, at board meetings held on 28.03.2002 and 26.12.2001, both of which were



attended by Srinivasan, the business done reports for the preceding quarters were placed before the board as per the minutes. Similarly, the minutes of meeting held on 04.05.2000, which was attended by Sreenivasulu, records that the business done in the previous quarter was disclosed in a report. In paragraph 4.6.14 of the SFIO report, the letter dated 25.06.2001 of Fraser & Ross is referred to. On perusal of the minutes of the board meeting held on 25.06.2001, it appears that Srinivasan attended the meeting and was inducted on the said date as a director. The minutes do not refer to the letter but make general reference to points raised by the auditors. In the light of even the minutes of meetings being incomplete, a definitive conclusion cannot be reached as to whether the letter from M/s Fraser & Ross was discussed at a subsequent meeting.

27. The minutes of available meetings reveal a couple of more aspects of relevance. Both minutes of meetings held on 28.03.2002 and 26.12.2001, which were attended by Srinivasan, disclose that the list of loans disbursed in the preceding quarter were placed before the board. The minutes of meeting on 24.12.1999, which was attended by Sreenivasulu, reveals that the loan register was placed before the board and that all the directors noted the loan register and approved the loans and investments of the Company.



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28. On perusal of the affidavit in support of Comp.A.No.276 of 2024, it is noticeable that the SFIO report is extensively referred to and several paragraphs thereof have been reproduced in the affidavit. Thereafter, at paragraph 19, it is stated as under:

“19) The SFIO report revealed fraudulent conduct of business of the company under liquidation by the respondents to defraud creditors (Bankers) of the Company. The company under liquidation obtained loans from consortium member Bankers amounting to Rs.1302.00 crores by deceiving them as such the respondents are liable for the same. The SFIO report recommended the Official Liquidator to take action against Shri.Farouk Irani, the Ex-Managing Director, and other Directors of FLCIL and persons responsible for fraudulent conduct of the business under section 542 of the Companies Act, 1956 and recover the dues payable to the company in liquidation. It is to submit that as per section 542 of Companies Act, 1956, if the business of the company is conducted with an intent to defraud the creditors of the company, then parties knowingly carrying out the business shall be made personally responsible for the liabilities of the company.”

Paragraph 21 is also of some relevance and reads as under:



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“21) That it is further submitted that the individual Respondents were associated and responsible for conduct of affairs of the Company in provisional liquidation, during the period when fraudulent acts were committed. Therefore, the corporate veil of these corporate entities is required to be lifted and fraud committed through the “directing mind and will” of the companies is brought to the kind attention of this Hon'ble Court. ”

29. The conclusion that follows upon examination of the above material is that no specific allegations have been made against either applicant in the SFIO report or the affidavit in support of this application. The general allegation that both the applicants were on the board of directors and that they were consequently privy to all fraudulent transactions during their respective tenure has been made. On the basis that each applicant herein failed to discharge the fiduciary duty to the Company, the SFIO recommended that proceedings for misfeasance be initiated against them.

30. By relying on Order VI Rule 4 of the CPC and several judgments, it was contended that non-executive nominee directors cannot be made liable



especially in the absence of specific allegations against them. Order VI Rule 4 of the CPC is set out below:

“4. Particulars to be given where necessary— In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading.”

Rule 3 of Order VI prescribes that the forms in appendix A shall be used for all pleadings, including by making requisite changes to conform as closely as possible to the forms in Appendix A. Rule 4 refers to the necessity to go beyond the forms and provide necessary particulars in cases where an assertion/allegation of misrepresentation, fraud, breach of trust, wilful default or undue influence is made. The object and purpose is not far to seek. The self-evident rationale is that these are serious allegations and the counter party concerned should have a reasonable opportunity to refute such allegations once the said allegations are made known with particularity.

31. Unlike the typical applicant for relief before a Court, the Official Liquidator is at a distinct disadvantage inasmuch as the Official Liquidator is dependent on materials made available when custody is taken of the records and affairs of the company concerned. The law requires that the Official Liquidator



should call upon the ex-directors of the company in liquidation to submit the statement of affairs, which is then the starting point for further action by the Official Liquidator. This case is atypical to the extent that this Court directed the SFIO to undertake an investigation and submit a report thereon. Even so, it should be recognised that the Official Liquidator does not have an independent machinery for investigation and would be constrained to resort to measures such as the examination of officers and others associated with the company in liquidation under Section 477 and related provisions of CA 1956. While this does not mean that the law on pleadings relating to misrepresentation or fraud is made inapplicable to pleadings by the Official Liquidator, some latitude should be extended albeit by safeguarding the rights of persons accused of fraud and the like. In the circumstances, after gathering evidence, if the Official Liquidator intends to make any specific allegation against either or both applicants, an appropriate balance may be struck by directing the Official Liquidator to file an additional affidavit and by providing an opportunity to the applicant concerned to file a reply thereto before evidence is recorded.

32. Not only the SFIO report but the minutes of the board meetings of the Company disclose that the two applicants participated in a few board meetings during the period of alleged financial irregularity. As is also evident from



discussions in the preceding paragraphs, while the available material does not lead to the inference that they were actively involved in wrong doing, their knowledge of such wrong doing and participation in meetings wherein material decisions were taken cannot be ruled out at this juncture. In spite of being specifically called upon to provide the investment agreement or analogous agreement relating to the terms and conditions on which CDC/BII made investment in the Company, neither the Official Liquidator nor the respective applicant submitted the same. Given that Srinivasan is currently the Managing Director of BII Asia, he should have been in a position to file the same. Typically, such agreement would specify the quantum of investment and the corporate actions requiring the consent of the investing company. It would also more broadly indicate the extent of control exercised by the investing company in the affairs of the investee company. In other words, if such control existed in respect of key decisions, the responsibility of the investee company and, by extension, its nominee, for decisions made by the investing company would be greater. In the absence of relevant material, it is not possible to make an assessment on this issue at this juncture.

33. The allegations against the management of the Company are grave. Section 542 of CA 1956 is intended to enable the Court to declare that persons



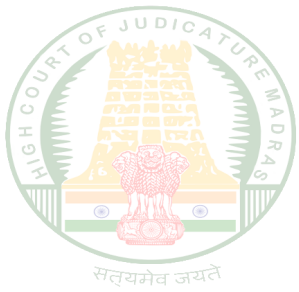
who were knowingly parties to the carrying on of the business of the company with intent to defraud the creditors of the company or any other persons or for any fraudulent purpose are personally liable for the debts or liabilities of the company. Section 542 reads as under:

“Liability for Fraudulent Conduct of Business

*542. (1) If in the course of the winding up of a company, it appears that any business of the company has been carried on, with intent to defraud creditors of the company or any other persons, or for any fraudulent purpose, the Court, on the application of the Official Liquidator, or the liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that **any persons who were knowingly parties to the carrying on of the business in the manner aforesaid** shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court may direct. (emphasis added)*

On the hearing of an application under this sub-section, the Official Liquidator or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) (a) Where the Court makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.



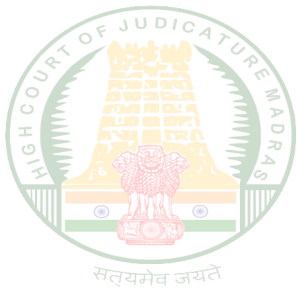
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(b) In particular, the Court may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf.

(c) The Court may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(d) For the purpose of this sub-section, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to [fifty] thousand rupees, or with both.



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(4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.”

Sub-section (1) extends liability to 'any persons who were knowingly parties to the carrying on of the business'. If the intention were to confine liability only to persons who were in management of the company, the relevant phrase would have been framed as 'any persons who were knowingly carrying on the business'. Instead, the expression 'knowingly parties to the carrying on of the business' is used and this phraseology, in my view, expands the scope of sub-section (1) to take within its fold all persons who were parties to the carrying on of the business of the company with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, even if such persons were not formally part of the management.

34. The interpretation placed on sub-section (1) of Section 542 in the preceding paragraph is entirely in line with the interpretation of the *pari materia* provision in the UK Companies Act, 1948 and the UK Insolvency Act, 1986 (UK Insolvency Act). Section 213 of the UK Insolvency Act reads as under:



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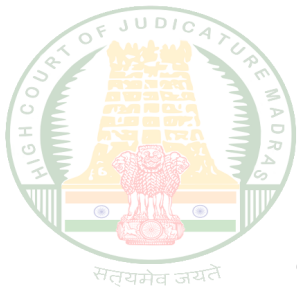
“(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud the creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.

*(2) The Court, on the application of the liquidator may declare that **any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned** are to be liable to make such contributions (if any) to the company's assets as the Court thinks proper.” (emphasis added)*

As is noticeable from the above extract, Section 213 of the UK Insolvency Act, like Section 542(1) of CA 1956, uses the expression 'any persons who were knowingly parties to the carrying on of the business'. Therefore, the provisions are *in pari materia*.

35. The Chancery Division of the English Court in *Re Bank of Credit and Commerce International SA & another Banque Arabe Internationale D' Investissement SA v Morris & others* interpreted Section 213(2) of the UK Act and held as under:

“First, as a matter of ordinary language, the ambit of S.213(2) is not limited to those who perform a managerial or



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controlling role within the company concerned. Although I accept that the language of S.213(2) is a little unusual, it appears to me that the concept of being 'parties to the carrying on' by a company of a type of business, or of a business in a certain way, is not limited to the person who actually directs or manages the business concerned. If anything it is a more natural reference to people who are not employed by the company at all, but who are third parties to the company."

The Court also noticed the decision in *Maidstone Buildings*, which was relied on by Mr.J.Sivanandaraj, but concluded that the said judgment dealt with an employee of the company, who was merely carrying out orders.

36. The respective applicant herein was undoubtedly a director of the Company during specific financial periods when it is alleged that financial irregularity was committed. As directors, they would fall within the scope of persons carrying on the business of the company concerned. While it may be legitimate to exempt non-executive directors, including nominee directors, from liability after detailed assessment of the facts and circumstances, it cannot be said as a general rule that non-executive directors, including nominee directors, are not persons carrying on the business of the company while they are directors. Effectively, even if Section 542(1) were not interpreted as embracing



persons who are not a part of the management, the respective applicant would fall within the scope thereof. Because a large number of judgments were cited, it is profitable to examine a few of them before drawing conclusions.

37. The two applicants relied on a large number of cases. Most of these cases were final disposals of misfeasance applications. It is sufficient to discuss a few of them. In *Raghava Desikachar*, the Supreme Court held that the burden of proof in a misfeasance application rests on the Official Liquidator and that such burden had not been discharged merely by relying on evidence recorded in course of public examination. On perusal, it is clear that it was a post-trial judgment wherein evidence was recorded. In *Gautham Dhiraj Mal Ranka*, this Court relied on *Raghava Desikachar* and held that the application for misfeasance was not sustainable in the factual context *inter alia* of allegations that the assets did not fetch the value indicated by the ex-directors and failure to recover debts. It appears from the order that evidence was not adduced, but it is a final order in the misfeasance application. *Selvaraj* is also a final order in a misfeasance application in the factual matrix of a debt of Rs.97000 becoming time barred and the Official Liquidator not pressing the charge that there were dues of Rs.19,89,038 to unsecured creditors by admitting there were no such creditors. In *Varadarajulu*, the principal allegation was that only Rs.14 crores



could be realised from the assets against the stated value of Rs.26.67 crores and the explanation of the respondents was that all assets, except land, had depreciated in value over time. In those facts and circumstances, the misfeasance application was rejected. Thus, these orders were issued rejecting the misfeasance application upon an assessment of the facts and circumstances in exercise of discretionary jurisdiction. Hence, these judgments do not advance the cause of the two applicants for rejection of the misfeasance application at the threshold merely on the ground of non-specificity of pleadings.

38. Given the fact that the respective applicant would fall within the ambit of Section 542(1) even on a more restrictive interpretation thereof than the interpretation placed by me on the said provision, the follow on question would be: what should be the standard for determining whether an application for misfeasance against such person is liable to be rejected at the threshold? Put differently, in the case of a person who is not part of the management of a company, such as a non-director employee or a third party transacting or being otherwise involved with the company, it may be relatively easy to consider and decide, at the pre-trial stage, whether an application under Section 542 is maintainable against such person. On the contrary, as regards a person who clearly falls within the ambit of Section 542(1), in my view, any application for



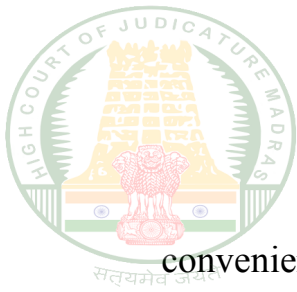
rejection of misfeasance proceedings at the pre-trial stage against such person should be tested on *ex facie* basis. In other words, if the unequivocal conclusion that flows from the material at the preliminary stage is that such person could never be knowingly a party to the carrying on of the business with intent to defraud creditors or any other persons or for any fraudulent purpose, the application for misfeasance would be liable to be rejected at the threshold. In all other cases, the respondent concerned would have to await trial.

39. Although no specific allegations were made against the respective applicant either in the SFIO report or the affidavit in support of Comp.A.No.276 of 2024, the general allegation that they participated in board meetings at which material decisions were taken and that they failed to discharge their fiduciary obligation was made. Sub-section (1) of Section 542 expressly provides that the Official Liquidator is entitled to depose personally or call upon witnesses to establish misfeasance. Upon consideration of the material on record at this juncture, including by noticing the incompleteness thereof, I conclude that it is sufficient to warrant a trial but insufficient to draw any conclusions on the role of the respective applicant, as a representative of CDC/BII, which was the investor. Therefore, notwithstanding the generic nature of pleading against the respective applicant, I conclude that it cannot be said *ex facie* that there is no



case under Section 542 against the respective applicant. It is, nonetheless, possible that there is no evidence against the respective applicant even after the Official Liquidator adduces evidence. In such event, the respective applicant is granted leave to reapply for the remedies declined at this juncture.

40. The respective applicant also contended that a *prima facie* case does not exist warranting continuance of *ex parte* order dated 09.08.2024, as modified by orders dated 30.08.2024 and 04.09.2024, as against such applicant. By order dated 09.08.2024 as modified, all the respondents, including the respective applicant, have been restrained from mortgaging, creating a charge or lien over, or alienating their movable or immovable properties. They have also been restrained from dealing with securities owned or held by them in demat accounts under the custody of CDSL and NSDL. These orders are evidently drastic in nature and would cause grave prejudice to the respective applicant. Indeed, Sreenivasulu expressly averred that his life savings are in mutual funds and debt securities and that the order has a significant adverse impact on his corpus and on his access to liquidity. At this juncture, in the absence of any specific allegations or any documentary evidence indicating their complicity in financial irregularity or fraud, a *prima facie* case has not been made out against the respective applicant. For reasons discussed above, the balance of



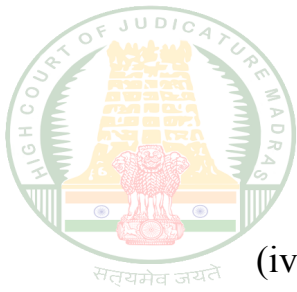
convenience is not in favour of continuing the interim order against these persons and such order is likely to cause great hardship to them. Therefore, the interim order issued on 09.08.2024 is vacated insofar as respondents 8 & 9 in Comp.A.No.276 of 2024 are concerned.

41. For reasons aforesaid, these applications are disposed of on the following terms:

(i) The interim order dated 09.08.2024 is vacated in respect of each applicant;

(ii) The request to strike off the name of the respective applicant from the array of respondents or to dismiss the application for misfeasance or stay proceedings for misfeasance against them is rejected;

(iii) After the Official Liquidator collates evidence, if it is intended to make specific allegations against either or both applicants broadly within the scope of the general allegations made in the affidavit in support of Company Application No.276 of 2024, the Official Liquidator shall file an additional affidavit and the applicant(s) concerned shall be entitled to reply thereto before evidence is recorded;



(iv) After evidence is adduced by the Official Liquidator, if the respective applicant forms the reasonable opinion that there is no evidence against him, leave to re-apply for remedies rejected by this order is granted.

(v) There shall be no order as to costs.

16.09.2025

Index : Yes/No

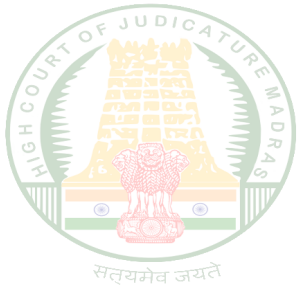
Internet : Yes/No

Neutral Citation : Yes/No

kj

To

The Official Liquidator
As the Provisional Liquidator of
First Leasing Company of India Ltd.
(In Provisional Liquidation)
No.29, Corporate Bhavan, 2nd Floor,
Rajaji Salai, Chennai-600001.



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Comp.A.Nos.397 to 400 of 2

& 86 to 88 of 2025



SENTHILKUMAR RAMAMOORTHY J.

kj

Pre-delivery orders in
Comp.A.Nos.397 to 400 of 2024
and 86 to 88 of 2025
in Comp.A.No.276 of 2024
in C.P.No.255 of 2014.

16.09.2025