IN THE HIGH COURT OF KERALA AT ERNAKULAM
(Original Jurisdiction)

In the matter of the Companies Act, 1956
and
In the matter of M/s.Pact Rubberwood and Allied Products Ltd. (In Liquidation)

M.F.C.A. No.3/2021 in Co.Pet.No.7/2013

Before:
The Honourable Mr.Justice HARISANKAR V.MENON

Monday, the 24th day of March, 2025/3rd Chaithra, 1947

Applicant

The Official Liquidator, High Court of Kerala,
Ernakulam, Representing M/s.Pact Rubberwood
and Allied Products Ltd. (In Liquidation)

Respondents

1. Sri.M.Chacko Mathew,
Muttathottil, Mound Wardha,
Muttambalam P.O., Kottayam District,
Pin – 686 004, Kerala.

2. Smt.Priya Chacko Mathews,
Muttathottil, Mound Wardha,
Muttambalam P.O., Kottayam District,
Pin – 686 004, Kerala.

Misfeasance Application under Section 543 of the Companies Act, 1956 read with Rule 260 of the Companies (Court) Rules, 1959 filed by the applicant above named praying for:-

1. A declaration that the respondents herein who being the Directors and persons controlling the affairs of the company M/s.Pact Rubberwood and Allied Products Ltd. (In Liquidation)with full power to do all acts provided in the Articles of Association of the company. (hereinafter

referred to as the company) at the relevant material time had misapplied retained or become liable or accountable for the money or property of the company or were guilty of misfeasance and breach of trust in relation to the said company for a total sum of Rs.65,96,994/.

2. An order that all necessary enquiries can be made and accounts taken for ascertaining what sums the respondents are liable to contribute to the assets of the company by way of compensation for such misfeasance and breach of trust as aforesaid.

3. An order that the respondents do jointly and severally liable and contribute to the assets of the company and do pay the Official Liquidator all such sums as they may be found liable to contribute so such of assets together with interest on such sums at the rate of 12% per annum as from the several dates when the said sums were respectively wrongfully paid away until the date of repayment.

4. An order that the respondents do pay the cost of and incidental charges of this application.

and

5. Pass such other order or orders as this Hon'ble Court may deem fit and proper in the premises of the case.

This Misfeasance Co.Application coming on for orders on this day upon hearing Sri.K.Moni, Standing Counsel for the Official Liquidator and M/s.Kurian Antony Mathew, Arun Thomas, Veena Raveendran, Karthika Maria, Anil Sebastian Pulickel, Shinto Mathew Abraham, Mathew Nevin Thomas & Joe S.Adhikaram, Advocates for the Respondents, the Court passed the following:

HARISANKAR V. MENON, J.

MFCA No.3 of 2021 in Co. Pet. No.7 of 2013,

Criminal Complaint No.2 of 2021 in Co. Pet. No.7 of 2013

and

Report No.36 of 2024 in Criminal Complaint No.2 of 2021 in Co. Pet. No.7 of 2013

Dated this the 24th day of March, 2025

ORDER

These two connected cases are with reference to the affairs of M/s.Pact Rubberwood and Allied Products Limited, the Company under liquidation. MFCA No.3 of 2021 is filed by the Official Liquidator under Section 543 of the Companies Act, 1956, (hereinafter referred to as the 'Act') read with Rule 260 of Companies (Court) Rules, 1959(hereinafter referred to as 'Rules'), alleging misfeasance on the part of the respondents therein in as many as seven instances. Criminal Complaint No.2 of 2021 is again filed by the Official Liquidator under Section 454(5) read with Section 454(5A) on account of the alleged failure of the respondents to comply with the requirements under

Section 454(1), (2), (3), and (8) of the Act, to file the statement of affairs of the Company.

2. Separate counter affidavits have been filed on behalf of the respondents in the Misfeasance Application and the Criminal Complaint.

3. I have heard Sri.K.Moni, the learned counsel for the Official Liquidator and Sri.Santhosh Mathew, the learned senior counsel instructed by Sri.Kurian Mathew for the respondents.

4. Sri.Santhosh Mathew, the learned senior counsel, would contend that the Misfeasance Application and the Criminal Complaint referred to above have to be rejected at the threshold, even without the need to adduce evidence, insofar as no offence warranting invocation of the provisions are made out. He would also rely on various judgments in support of the afore contention.

5. *Per contra*, Sri.Moni, the learned Standing Counsel for the Official Liquidator, would contend that the question of closing the applications presented by the Official Liquidator is not arising

without adducing evidence. He would also rely on some judgments in support of the afore proposition.

6. Insofar as the Misfeasance Application is filed on the basis of the Statement of Affairs presented by the respondents herein and the Criminal Complaint is with reference to the delay in filing of Statement of Affairs, I propose to take up the Criminal Complaint for consideration at first.

7. The Criminal Complaint, as already noticed, is filed by the Official Liquidator pointing out that the accused were the Directors of the Company under liquidation, which was ordered to be wound up as per order dated 23.11.2016 in C.P. No.7 of 2013. The complaint further proceeds to state that under Section 454 of the Act, the accused were liable to furnish a Statement of Affairs within 21 days of the winding-up order, which was not done by them. The complaint states that show cause notices issued to the accused herein were returned with the postal endorsement "addressee left". It is in the afore circumstances, the Criminal Complaint was filed seeking the

accused to be summoned and punished under Section 454(5) and (5A) of the Act.

8. A counter affidavit has been filed on behalf of the accused.

9. Sri.Santhosh Mathew, the learned senior counsel, would point out that the management could not access the factory premises for a considerably long period of time and hence, a Statement of Affairs was prepared and was submitted before the Official Liquidator as seen from Ext.R1(d) produced along with I.A.No.1 of 2024. The fact that such a Statement of Affairs was presented is also admitted in Report No.36 dated 30.05.2024 filed on behalf of the Official Liquidator. In the said report, it is noticed that the Statement of Affairs presented as above was defective and hence cannot be accepted. The report again states that the same was sought to be sent back to the Ex-manging Director, and the same was returned with the endorsement "unclaimed". The report concludes by seeking permission of this Court to return the same to the counsel for the Ex-manging

Director of the Company. It is noticed that as per the order dated 25.07.2024 in Report No.36 of 2024 referred to above, the submission made on behalf of the former Directors seeking six months' time is seen recorded. Later, a revised Statement of Affairs has also been produced as seen from Ext.R1(p).

10. It is in the light of the above, the submissions made by either side are to be considered.

11. The provision of Section 454 of the Act requires the presentation of the Statement of Affairs to the Official Liquidator. Sub-section (3) requires the Statement of Affairs to be submitted within "21 days" or "within such extended time" to be permitted by the Court or the Official Liquidator. The provisions of sub-sections (5) and (5A) under which the Criminal Complaint is filed, read as under:-

> "(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to [one thousand rupees] for every day during which the default continues, or with both.

> 5A) The Tribunal by which the winding up order is made or the provisional liquidator is appointed, may take cognizance of an offence under sub-section (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure, 1898 (5 of 1898), for the trial of summons cases by magistrates."

A reading of the afore provision would show that it is not every default in complying with the provisions of Section 454, which attracts the punishment. For attracting the rigours under Section 454, the default has to be one "without reasonable excuse". At this juncture, reference may also be made to the provisions of the Rules, wherein Rule 9 provides as under:-

> "**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."

Thus, this Court is having inherent powers to ensure that the ends of justice are met, so as to prevent abuse of process of law.

12. Rule 128 of the Rules empowers any person who is required to submit the Statement of Affairs under Section 454 to seek for extension of time and sub-rule (2) permits the person to seek an extension from this Court. Rule 132 provides as under:-

> "**132. Default in complying with section 454**.-Any default on the part of any person in complying with the requirements of section 454 shall be reported to the Court by the Official Liquidator, and the Court may thereupon pass such orders or give such directions as it may think fit."

In the light of the afore, I notice that if there was any default in complying with the requirements under Section 454, it was obligatory on the part of the Official Liquidator to have reported the same to this Court. On the other hand, it is noticed that the Official Liquidator has straight away sought to launch a Criminal Complaint. This, in my opinion, was totally incorrect and against the statutory prescription. When that be so, there is no requirement to proceed with the matter since the Criminal Complaint would not lie.

13. Further, I notice that the accused has since presented the revised Statement of Affairs as noticed above. The Official Liquidator has no case that the same is defective in any manner.

14. On the basis of the afore, I am of the opinion that in exercise of the inherent powers of this Court, the question as to whether the Criminal Complaint is required to be proceeded further, arises for consideration.

15. As already noticed, it is not every default which attracts the rigours of Section 454 (5) and (5A). I am of the opinion that the complainant has not at all established that the accused has acted "without reasonable excuse" to launch the Criminal Complaint. In this connection, I am of the opinion that reference to the judgment of the Madras High Court in **P.V.R.S. Manikumar V. Official Liquidator [(2013) SCC OnLine Mad 320]** is apposite wherein the requirements to prove the ingredients of Section 454 (5) and (5A) are held as under:-

> "23. Since the requirement of absence of reasonable excuse is an essential ingredient of an offence punishable under sub-section (5) of 454 of the Act, the initial burden

is on the Official Liquidator to prove the said fact. The burden of proof would shift to the accused only in case the complainant discharges the primary requirement of the provision regarding absence of reasonable excuse. The liability being one of criminal in nature, the onus is on the complainant to prove the case. Therefore, it is the duty of the prosecution to prove that in spite of the availability of relevant records, the accused failed to submit the statement of affairs and there was no reasonable excuse for the default.

.....

27. Sub-section (5) of Section 454 has to be read in the light of Section 633 of the Companies Act. Section 633 of the Act permits the Court to consider over ail circumstances of the case and to arrive at a conclusion as to whether the accused has acted honestly and reasonably and the default was beyond his control. In case the Court is satisfied that the accused acted reasonably and there was no dishonesty on his part, necessarily, he should be relieved of the liability subject to reasonable terms.Sub-section (2) of Section 633 also makes the position very clear that the High Court shall have the power to relieve him, as if it had been a Court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub- section (1) of Section 633 of the Companies Act."

To the same effect is the judgment of the Karnataka High Court in **Chamundi Chemicals & Fertilisers Ltd.(in liquidation) v. M.C. Cherian [I.L.R. 1993 KAR 620]**, wherein with reference to the provisions of Section 543 of the Act, inherent powers of the Court and the need to take evidence etc. were considered, finding as under:-

> "14. It is well laid principles of law that any proceeding against delinquent Director in the initial stage can be quashed if on the face of the complaint (application) no mis-conduct viz., misfeasance or breach of trust is constituted. In other words, the test is that taking the allegation in the complaint/application as they are, if no misconduct is made out, then the Company Court will be justified in quashing the proceedings in exercise of its inherent power."

In the light of the afore, I am of the opinion that no case is seen made out by the complainant to proceed against the accused with reference to the Criminal Complaint.

16. I also take note of the judgment cited by Sri.Moni in **Official Liquidator, High Court of A.P., Hyderabad v. S.Haridas and Others [2006 133 Comp Cas 5(AP)]**. That

was a case where no Statement of Affairs were filed and no excuse or cause was pleaded for the failure. It is in that circumstances, the High Court held in favour of the Official Liquidator. In the case at hand, the situation is quite the opposite. The accused have relied on the Statement of Affairs and the lack of the required pleadings so as to attract the provisions of the statute. Therefore, I am of the opinion that the judgment relied on by Sri.Moni is of no avail to him.

17. As regards the misfeasance application, as already noticed, the Official Liquidator has noticed as many as seven instances. The misfeasance application was presented on 22.07.2021, alleging that the Statement of Affairs was not filed providing the full affairs of the assets/liabilities of the Company. Therefore, the application is filed relying on the details available in the balance sheet as on 31.03.2013. However, as already noticed while considering the Criminal Complaint, the respondents have filed the Statement of Affairs originally,

followed by a revised Statement of Affairs. The misfeasance application has not made reference to the afore.

18. Even on the face of the above, I proceed to consider the allegations contained in the misfeasance application.

19. The first allegation is with reference to the alleged shortage of various office equipments/generators, etc., valued at Rs.94,036.50. The respondents have pointed out that the KSIDC took over the factory premises in 2006 and that it might be due to the failure of KSIDC to safeguard the machinery/equipment, the shortage is noticed. I notice that the stand with respect to the control with KSIDC from 2006 is noticed in the misfeasance application itself with reference to the letter dated 02.02.2017 written by the Directors of the Company to the Official Liquidator. Therefore, I am of the opinion that the applicant has not been able to establish the requirement to proceed against the respondents under the statute with respect to the afore allegation.

20. The second allegation is with reference to an amount of Rs.5,75,982/- shown in the asset side of the balance sheet under the head "loans and advances" without providing the details of the security deposit on account of which the Official Liquidator could not issue notice to the parties. However, in response to the afore allegation, it was pointed out that in the revised Statement of Affairs, the nature of the security deposit is specifically shown as one made with KSEB. The Statement of Affairs contains the following notes:-

> "31. Security deposit of Rs. 5,75,982.00 made with the Kerala State Electricity Board (KSEB) towards electricity supply to the Factory Premises of the Company. As on February, 2006, the money was lying with KSEB and was receivable. The erstwhile management of the Company is unaware if KSEB adjusted and, or recovered outstanding dues, if any, against this security deposit lying with it.
>
> 32. Since this fact is not known, to the best of our knowledge and belief, the amount of Rs. 5,75,982,007 is receivable from KSEB and for the purpose of the Statement of Affairs in Form 57, Rs. 5,75.982.00 stands realisable."

In the light of the afore, I am of the opinion that the applicant has not made out any case for proceeding further in the manner.

21. The 3rd instance pointed out in the application is with reference to the failure on the part of the Ex-directors in furnishing the details of various advances, on account of which, notices could not be issued by the Official Liquidator to the parties. The respondents have pointed out that, with respect to the afore, on account of lapse of time, shut down of the operations, etc., the details could not be collected. However, in paragraph 35 of the Notes, forming part of the Statement of Affairs, it is stated that none of the advances were made to any other Directors/related parties.

22. The 4th item of misfeasance is with reference to the failure to share the details of "current investments" of Rs.100/- against mutual funds in paragraphs 21 and 22 of the Note, forming part of the revised Statement of Affairs. It is pointed out that the relevant Scheme documents are not available essentially

on account of lack of access to factory premises, etc. and hence the amount is shown as realized.

23. As regards the 5th item of misfeasance an allegation is with reference to failure to provide details of Rs.46,82,813/- against "work-in-progress". The respondents have pointed out with reference to paragraphs 23 and 24 of the Notes forming part of the Statement of Affairs that the Company had an inventory of raw materials in the form of seasoned rubberwood, which ought to have been stored in the proper manner for which electricity supply was required, and since the electricity supply stood discontinued in 2006, their value stood lost. The afore statement is to be noticed along with the taking over of the premises by KSIDC in 2006, and hence, I am of the opinion that no steps are required to be continued.

24. The 6th allegation is with reference to an amount of Rs.53,097/- towards "trade receivables", details having not been furnished by the respondents. Here also, the respondents have referred to paragraphs 25 and 26 of the Notes forming part of

the Statement of Affairs to show that it was with reference to 31.03.2006 afore amount was shown, on account of afflux of around 18 years, as not realizable.

25. The last allegation is with reference to a sum of Rs. 11,801/ under the head "cash and bank balances", the details not being provided by the respondents. Here also, the stand taken is with reference to the takeover of the Company by KSIDC in 2006 on account of which details are not available.

26. I also notice that the Official Liquidator has been permitted to appoint security personnel to safeguard the assets of the Company in the factory premises only during 2017, as per an order dated 30.03.2017. This all the more supports the case of the respondents herein.

27. In the light of the afore, the applicant has not established the case for proceeding against the respondents for misfeasance.

28. Further the judgment of the Karnataka High Court in **Chamundi Chemicals** (*supra*) would apply to the case at hand

also. This Court notices that many of the allegations against the respondent herein are with reference to the takeover of the Company by KSIDC on account of which the respondents failed to have any control over it. I am of the opinion that the Official Liquidator has failed to prove any breach of trust committed by the Directors to maintain an application of misfeasance.

In the result:

i. MFCA No.3 of 2021 in Co.Pet.No.07 of 2013 is dismissed.

ii. Criminal Complaint No.2 of 2021 in Co.Pet.No.07 of 2013 is also dismissed.

iii. In view of the order of this Court dated 25.07.2024, no further orders are required on Report No.36 of 2024. Hence, Report No.36 of 2024 in Criminal Complaint No.2 of 2021 in Co.Pet.No.7 of 2013 is closed.

Sd/-

HARISANKER.V. MENON, JUDGE

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