

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL CASE NO. 2 of 2021
In
R/COMPANY PETITION NO. 10 of 2014**

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THE OL OF M/S NEELNANDAN POLYMERS LIMITED (IN LIQN)
Versus
SURESH GOPICHAND KESWANI

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Appearance:

MR PAVAN S GODIAWALA(2936) for the Accused No. 1
NOTICE SERVED for the Accused No. 2,3,4
MR JEET J BHATT(6154) for the Complainant(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

**Date : 05/05/2022
ORAL ORDER**

1. Heard learned advocate Mr. Pavan S. Godiawala for the accused and Official Liquidator of the Company [In Liquidation].
2. This criminal case is filed by the Official Liquidator under section 454 of the Companies Act, 1956 as the accused persons did not file statement of affairs within the stipulated time.
3. Accused Nos. 1 to 4 were the Directors of the Company as on the date of winding up of the Company [In Liquidation] i.e. Neelnandan Polymers Limited.

4. This Court passed an order on 08.02.2018 to wind up the Company pursuant to the communication dated 26.12.2013 addressed by the Registrar of the Board for Industrial and Financial Reconstruction ['BIFR' for short] to the Registrar of this Court stating that having conducted an inquiry under section 16 of the Sick Industrial Companies (Special Provision) Act, 1985 ('SICA' for short), the BIFR has recorded the opinion under section 20(1) of the SICA that it was just and equitable that the Company [In Liquidation] be wound up.

5. The Official Liquidator attached to this Court was thereafter appointed to take over the possession of the Company [In Liquidation] and accordingly, the possession of the assets of the Company [In Liquidation] was taken over by the Official Liquidator on 14.03.2018.

6. Accused Nos. 1 to 4 were required to file the Statement of Affairs of the Company with the Official Liquidator within 21 days from the date of winding up of orders or such time as may be extended by the Official Liquidator not exceeding three months, duly completed in all requirements and contents as stipulated

as per Form No. 57 of the Companies [Court] Rules, 1959.

7. The Official Liquidator also issued the notice to the accused Nos. 1 to 4 on 09.03.2018 by Speed Post A.D. but accused Nos. 1 to 4 failed to file Statement of Affairs with the Official Liquidator as required under section 454 of the Companies Act, 1956.

8. The Official Liquidator also issued a notice dated 09.03.2018 to accused Nos. 1 to 4 for recording their statement under Rule 103 of the Rules, 1959 followed by notices dated 19.03.2020, 04.06.2020 and 14.07.2020. However, accused Nos. 1 to 4 did not respond to the said notices issued by the Official Liquidator to record the Statements under Rule 130 of the Rules, 1959. The Official Liquidator has therefore, filed this complaint under section 454 (5) of the Companies Act, 1956.

9. Pursuant to the process issued by this Court on 18.02.2021 against the accused Nos. 1 to 4, Statement of Affairs of the Company [In Liquidation] is filed on 29.11.2021.

10. Learned advocate Mr. Godiyawala for the accused persons has filed an affidavit of the accused No.1 wherein explanation is given for non-filing of the Statement of Affairs within the stipulated time. The said affidavit of the accused No.1 is ordered to be taken on record.

11. Learned advocate Mr. Godiawala submitted that the registered office of the Company [In Liquidation] was under attachment with the PF Authorities as the Company [In Liquidation] was a sick company. It was submitted that after filing of the criminal case, the accused persons approached the practicing Company Secretary and after getting the relevant papers, filed the Statement of Affairs and there is neither any willful or intentional motive of not filing the Statement of Affairs.

12. It was further submitted there is no reasonable excuse for not filing the Statement of Affairs and therefore, the accused persons should be exonerated.

13. On the other hand, the Official Liquidator submitted that inspite of issuance of various notices since 2018, the accused persons have not remained present even for

recording Statement under Rule 103 of the Rules, 1959. It was also pointed out that the statement of affairs was filed almost after three years from the date of passing of the winding up order by this Court. It was therefore submitted that as per provision of sub-section (5) of section 454, no explanation much less any reasonable excuse is given by the accused persons and while accused persons have committed default in compliance of the requirement of section 454 the accused persons are liable to be punished with imprisonment for a term which may extend to two years or fine which may extend to one thousand rupees for every day during which the default continues and accordingly, the maximum fine of Rs. 13,68,000/- is liable to be levied upon the accused persons for not complying with the provision of section 454 of the Companies Act, 1956. It was submitted that therefore appropriate punishment be given to the accused persons as per the provision of sub-section (5) of section 454 of the Companies Act, 1956.

14. Having considered the submissions made on behalf of learned advocate Mr. Godiawala as well as the Official Liquidator of the Company [In liquidation], it is true that the

accused persons have filed Statement of Affairs after three years. However, taking into consideration the prevailing condition of Covid -19 Pandemic in the year 2020 and 2021, it can be said that the accused persons have committed default for not filing Statement of Affairs for more than one year. The affidavit filed by the accused No.1 on behalf of accused persons giving excuses for not filing Statement of Affairs as the possession of the property was admittedly not with the accused person.

15. Considering the averments made in the affidavit filed today, I am of the opinion that interest of justice would be met if the accused persons are directed to make the payment of Rs. 50,000/- [Rupees Fifty thousand Only] with the Office of the Official Liquidator for not complying the provision of section 454 of the Companies Act, 1956 as the Statement of Affairs is filed belatedly. The amount of fine shall be paid within four weeks from today with the office of the official Liquidator.

16. In view of the above, accused persons are exonerated from any commitment of default under section 454 of the Companies Act, 1956. Criminal Case No. 2 of 2021 is accordingly disposed of.

JYOTI V. JANI

(BHARGAV D. KARIA, J)