

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 08th DAY OF NOVEMBER 2013

BEFORE:

THE HON'BLE MR. JUSTICE ANAND BYRAREDDY

COMPANY APPLICATION No.1456 OF 2007

IN

COMPANY PETITION No.219 OF 2000

BETWEEN:

Official Liquidator of
M/s. Sharvani Pharmaceuticals Limited
(in liquidation) attached to High Court
Of Karnataka, 'D and F' Wing,
4th Floor, Kendriyasadana,
Koramangala,
Bangalore – 560 034.

... APPLICANT

(By Shri. V. Jayaram, Advocate for Official Liquidator)

AND:

1. Sri. R.G.Sanjay,
No.21, V.T.Road,
Bhatkal – 581 320.
2. Sri. K.G. Raghuv eer,
No.21, V.T. Road,
Bhatkal – 581 320.

...RESPONDENTS

(By Shri. G. Krishna Murthy, Advocate)

This Company Application is filed under Section 543(1) of the Companies Act, 1956 read with Rule 260 of the Companies (Court) Rules, 1959, praying to summon the respondent nos. 1 and 2 in the application for the purpose of examination with regard to the matter specified therein and etc;

This Company Application coming on for Arguments this day, the Court made the following: -

ORDER

This application is filed by the Official Liquidator under Section 543(1) of the Companies Act, 1956 read with Rule 260 of the Companies (Court) Rules, 1959. It is claimed that M/s. Sharvani Pharmaceuticals Limited (in liquidation), was ordered to be wound up by an order of this court dated 28.11.2002 in Company Petition No.219/2000, and the Official Liquidator had taken over the assets of the company in liquidation. As on the date of winding up, it is stated that the following were the Directors of the company.

- a. Sri. Jayaram G. Kollé, (Deceased)
No.21, V.T. Road,
Bhatkal – 581 320.

b. Sri. R.G. Sanjay,
No.21, V.T. Road,
Bhatkal-581 320.

c. Sri. K.G. Raghuveer,
No.21, V.T. Road,
Bhatkal-581 320.

Insofar as one Mr. Kalle is concerned, he had expired as on 1.3.2005 as per the death certificate produced. It is therefore, the two other Directors who are proceeded against under the present application. The company was manufacturing basic drugs, mixtures and derivatives and compounds used in the pharma industries and agricultural chemicals. The respondents were the Directors of the company and were jointly and severally responsible to account for the assets, the properties and effects of the company. Therefore, after obtaining the details from the Registrar of Companies as to the affairs of the company, letters had been issued by the Official Liquidator to the ex-Directors to submit statement of affairs and to hand over the books of accounts and other statutory records of the company, in response to which

statement of affairs and balance sheet was filed as on the date of winding up order, namely 28.11.2002 and a criminal complaint filed in this regard was accordingly disposed of on 11.08.2006. The claim is with reference to the balance sheet dated 28.11.2002 and the Bank balance was shown for a sum of Rs.5,456.15/- which the applicant claims could not be realized and hence, they are liable to make good the said loss with interest at 18% per annum and that further, there were loans and advances shown in a sum of Rs.34,95,189.83/-, which remained without being recovered. Therefore, non-recovery of loans and advances was on account of non-availability of the whereabouts of the borrowers and unavailability of supporting documents. Therefore, the applicant claims that he could not realize the said amounts and the ex-Directors are therefore liable to make good the loss together with interest at 18%. It is also claimed that inventories show a sum of Rs.1,61,22,550/- as being the value of finished goods and raw materials and stocks. These materials and goods could not be recovered and it is seen from the mahazar drawn up at the time of

winding up that the assets in question were taken over by M/s. KSIIDC under Section 29 of the State Financial Corporation Act and the said entity has been permitted by this court to sell the assets of the company and as seen from the valuation report furnished by TECSOK, a State Government undertaking, that only land, building, plant and machinery were valued at a sum of Rs.52.89 lakhs and that the valuation report did not include the goods and assets worth Rs.1,61,22,550/-. Therefore, it is claimed that the respondents are liable to account for the same with interest at 18% per annum and the respondents are answerable, as they were holding a fiduciary possession and were trustees on their part in respect of the said properties. Hence, the total claim is in respect of a sum of Rs.1,96,23,195.98/-, together with interest. Accordingly, have sought for the respondents being summoned before this court and to hold them responsible and to account for the aforesaid sums.

The respondents on their appearance through counsel, have filed their statement of objections to contend that insofar as the

Bank account was concerned, it was a current account in which the balance was said to be found and the Bank had closed the Account in view of the fact that it was inoperative for a long time and if there is any amount remaining in deposit, the applicant is free to recover it from the Bank and therefore, the claim was unsustainable. Insofar as the claim of Rs.34,95,189.83/- being loans and advances extended by the company in liquidation, that the same could not be recovered on account of the Banks not being known and the documents supporting the loans also not being available in this regard. The following details regarding loans and advances are furnished by the respondents:

“(i) Rs.4,13,622.00: Payable by KEB to the Company. The said amount is towards deposit made for HT installation. The property was auctioned along with the HT installation. Therefore, the amount has to be recovered from the purchaser who has been utilizing the said connection.

(ii) Rs.28,200.00: The said amount was deposited with Telecommunication Department towards availing phone connections. The said connections have also been made available to the purchaser. Hence the same has to be claimed from the party, who has purchased the property.

(iii) Rs.90,000/-: The said sum is towards part-payment of technical know-how fee paid to M/s. Spectrum Consultants, Mumbai from whom the company availed consultancy services at the time of installation of second unit. The said amount was paid by cheque bearing No.656767 dated 25.09.1996 drawn on State Bank of India. The encashment of the said cheque was shown in the statement of affairs, which is available in the records. Copy of receipt is produced herewith and marked Annexure R2. Original is in the file. Therefore, the amount shown ought to have been adjusted in the balance sheet. Due to closure of the unit, the same is continued in the balance sheet and shown as advance. Hence the amount is not an advance but it is part-payment towards consultancy fees paid to the aforesaid company.

(iv) Rs.16,090/-: This is towards Income Tax advance payment. The company owe Income tax and the same was adjusted by the Department. However, the same has been carried forward in the balance sheet, which ought to have been shown as Payment towards income-tax.

(v) Rs.13,42,901/-: A sum of Rs.11,29,601/- was paid as advance to the suppliers. The said amount was paid by opening L.C. in favour of M/s. Padwarth Co. Limited, China. Further, a sum of Rs.2,13,300/- was paid to one M/s. Sino-Chem Ningbo Imp & Exp Corp., 11-12/FL / HUALIAN BLDG, 21, Jiangxia St. Ningbo 315000, P.R. OF CHINA. The said companies have dispatched shipment to Mumbai. The company had no money to get the consignment released by paying custom duty, etc. In view of the same, Company requested the Bank to render financial assistance to get the goods released, but the same has not been considered by the Bank. The customs authorities have auctioned the goods for non-payment of customs duty and also demurrages. The same was challenged before the Hon'ble High Court,

Mumbai in W.P.No.378/1998. The Hon'ble High Court permitted the company to pay the charges and take delivery of the goods. Copy of the order passed in the said WP is produced herewith and marked Annexure R-3. Unfortunately, the company could not mobilize the funds. Hence the goods were re-auctioned. The suppliers have encashed the L.C. Copy of the Bank credit statement is produced herewith and marked Annexure R-4. While filing the statement of affairs, the amount paid to the suppliers has not been taken note of and still it is shown as advance to the suppliers. The description is not correct. It should have been shown as payment made to the suppliers. Hence the claim is not maintainable.

(iv) Rs.16,04,396.83: (Other Advances):

(a) Shri Jairam G. Kolle has borrowed a sum of Rs.7,07,937/- from his friends and relatives to meet the day-to-day affairs of the company. The respondents were only the nominal Directors who have not involved in any of the day-to-day affairs of the company. The said amount has also not been repaid to them. However, the amount

received by the Company has been shown as other advances. In fact, it is not an advance paid by the company but it is the amount received by the Company. Showing the same as advance is by mistake. The amount received from the Directors and paid to others is clearly shown in the accounts book of the company. The same is very much available with Official Liquidators. Hence, the amount is not liable to be paid.

(b) Rs.19,000/- has been paid towards car booking advance to purchase a Siphony Car from M/s. Syphony Automobiles Limited. The said company closed its operation and therefore, the amount could not be received from them by the company. Copy of the letter given by M/s. Siphony Automobiles is produced herewith and marked Annexure R-5.

(c) Rs.11,075/- is towards cylinder deposit. The company owe money towards purchase of ammonia gas from M/s. Bharat Enterprises, Mangalore. They have not repaid the same and the

company adjusted the said amount towards their dues. Hence it cannot be considered as advance.

(d) PLA deposit & Modvat credit: (Rs.792.92 + Rs.23.91): The said amount being a small amount, no action has been taken.

(e) Rs.1,05,600/-: This amount was paid as foreign loan upfront fees. The said amount is towards External Commercial Borrowing paid to Mr. Praveen Srivastava, New Delhi. Copy of counterfoil of Bank Challan for having paid the commission to purchase the DD is produced herewith and marked Annexure R-6. Copy of the voucher available is also produced herewith and marked Annexure R-7.

(f) Rs.7,59,948/-: This sum is towards salary advance, paid to the workers and employees as salary. The company could not paid entire amount to them and as such paid advance pending payment of final dues. As such, this ought to have treated as non-refundable advance. In view of the closure of the company, the said amount has not been

adjusted entirely. Hence the amount is not recoverable by the company. All the vouchers have been produced to the Official Liquidator on 25.01.2006. Copy of the letter dated 25.1.2006 is produced herewith and marked Annexure R-8.

5. Rs.1,61,32,550/-: The averments that the ex-Directors have not handed over finished goods, raw-materials, and stocks to the Official Liquidator and the details of the goods have not been shown in the Mahazar drawn by the KSIIDC and therefore, the directors are liable to pay the amount with interest, etc. are unsustainable in view of the following facts:

(i) Finished goods worth Rs.26,18,550/- is shown in the balance sheet. The said goods are Chloroquine Phosphate, Amodiaquine, Norfloxacin, Nalidixic Acid; Nitro Phthalic Acid Amodiquine, Halquinol, etc. These goods are manufactured using imported chemicals as raw-materials. These drugs are having expiry dates. In view of the seizure of the unit and also closure of the unit, the potency period expired. Hence these

drugs have become expired drugs and the value has been taken as "NIL".

(ii) Further, a sum of Rs.1,35,04,000/- is the value of raw materials and stores. The raw-materials and stores are consisting of imported chemicals, solvents and acids and derivatives. These raw-materials were also having expiry period and in view of the closure of the unit the materials have become waste and lost its validity."

It is further pointed out that the auditors had taken the above facts into consideration and it is after scrutinizing the records that they had furnished their report stating that the aforesaid items insofar as their claim towards Rs.1,61,32,500/- is concerned, it is pointed out that the value pertains to finished goods worth about Rs.26,18,550/-, as reflected in the Balance Sheet and the goods are Chloroquine Phosphate, Amodiaquine, Norfloxacin, Nalidixic Acid; Nitro Phthalic Acid Amodiquine, Halquinol, etc. These goods were manufactured using imported

chemicals as raw materials and the drugs had a short shelf life and bore expiry dates. In view of the seizure of the unit and the closure of the unit, the potency period of the drugs had expired, therefore they had no value beyond the expiry date, and would have to be destroyed. Further, a sum of Rs.1,35,04,000/- is shown as the value of raw-materials and stores which consisted of acids and derivatives. These were also perishable and would have expired on the expiry date indicated against each of those items and in view of the closure of the unit and the materials lying without salvaged, had become waste and therefore, were of no value. Therefore, the respondents' claim of the value of goods and assets at Rs.1,96,23,195.98/-, was misleading, as it related to perishable goods and chemicals, potency of each would be expired on the date of expiry indicated therein and would have become waste and required to be destroyed. It is for this reason that nothing is reflected in the records by the KSIIDC which took possession of the building along with the said material and the report by the TEKSOC does not make reference to these goods

and assets which had become useless. It is also pointed out that the auditors had taken note of these circumstances and have referred to the items as being expired drugs and chemicals and the value being zero and could not have been characterized as scrap, since scrap would have a value. This aspect of the matter is completely overlooked by the Official Liquidator in making a claim in respect of as huge an amount which is shown as being recoverable from the respondents. It is also pointed out that the Chairman and Managing Director one Jairam G. Kollé was the man who was managing the entire affairs of the company and the present respondents were mere nominal Directors who had lent their names and therefore, are only in a position to answer the allegations with reference to the records that are available and hence, seek that the proceedings be set at naught.

Evidence having been tendered in respect of the defence that was set up, the statement of objections in effect have been reiterated by recourse to an affidavit by way of evidence and the deponent has been subjected to cross-examination at length.

However, it is to be noticed that insofar as the substantial claims, namely a sum of Rs.34,95,189.83/- being loans and advances which were not capable of being recovered and the value of the loss in a sum of Rs.1,96,23,195 98/- is concerned, though the amounts have been explained in the tenor as found in the statement of objections by way of evidence, the cross-examination does not seriously dispute the contentions raised, in which event, the explanation offered in respect of all the three major items would have to be accepted.

Consequently, it cannot be said that the Official Liquidator has made out a case of damages having occasioned to the company in liquidation on account of any acts of misfeasance or breach of trust by the respondents – Directors, in relation to the company. Therefore, the evidence tendered is plausible and quite tenable in the light of other material that is made available, especially the Auditor's report which does reflect the defence sought to be taken up by the respondents. Insofar as the amount in deposit with the Bank, which account is said to have been closed,

it is open for the Official Liquidator to seek recovery of any amount that may be lying in the account, by making representation to the Bank in question. The application stands disposed of accordingly.

**Sd/-
JUDGE**

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