IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

OFFICIAL LIQUIDATOR REPORT NO.26 OF 2022

The Official Liquidator Of Morya
Grain Distilleries Pvt. Ltd.
(In Liquidation) ....Petitioner
Versus
Praj Industries Limited ....Respondents

Mr. Ranjeev Carvalho, *Adv. for OL.*

Mr. Chetan Shelke, *Dy.OL.*

Mr. Rohaan Cama *a/w. Mihir Nakrani & D. Shah i/b. One Access, for Respondent Nos.2, 3, 4 & 5.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE : NOVEMBER 4, 2026

ORAL JUDGEMENT:

Context and Factual Background:

1. This Official Liquidator's Report (***"OLR"***) invokes the jurisdiction of the Company Court under Section 542 of the Companies Act, 1956 (***"the Act"***), which empowers the Company Court to declare that persons who were knowingly parties to the carrying on of the business of a company with intent to defraud creditors, or for any fraudulent purpose, are personally responsible,

Aarti Palkar

AARTI GAJANAN PALKAR
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without limitation of liability, for all or any of the debts or other liabilities of the company. The jurisdiction is evidently a remedial one with a civil standard of proof in connection with demonstrated fraud.

2. Morya Grain Distilleries Private Limited (In Liquidation) is the company under liquidation (***"Company"***) pursuant to Company Petition No. 322 of 2015, in which the Company has been wound up. The OLR is directed against the four erstwhile directors of the Company, Jatin Bhupendra Shah, Tulsidas Khimji Patel, Narendra Ramjiyani and Narendra Patel (***"Ex-Directors"***). The Official Liquidator primarily seeks a declaration of findings of fraudulent conduct of business by the Ex-Directors despite winding up having taken place.

3. Union Bank of India ("***Union Bank***") took symbolic possession of the Company's premises under the SARFAESI Act, 2002 on March 5, 2016. It lodged a claim of Rs. ~51.13 crores on July 27, 2018. It sold the Paithan property by e-auction on January 20, 2022.

4. The Liquidator called upon the Ex-Directors to file the Statement of Affairs on March 13, 2018, November 25, 2019 and February 2, 2022. It was furnished on March 8, 2022. Pursuant to an order dated April 12, 2019 of the Appellate Bench, claims were invited on May 31, 2019. No claim was received other than that of Union Bank.

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5. By an order dated January 2, 2025, this Court recorded that the Ex-Directors had been duly served but had not appeared. The Court observed that a *prima facie* case was made out against them under Section 542. The Liquidator was directed to file an affidavit in evidence. An affidavit in lieu of examination-in-chief was filed on his behalf on January 23, 2025. The Ex-Directors have since filed an affidavit in reply.

Contentions of the Parties:

6. I have heard Mr. Ranjeev Carvalho, Learned Advocate on behalf of the Official Liquidator and Mr. Rohaan Cama, Learned Advocate on behalf of the Respondents and examined the record with their assistance.

7. Mr. Carvalho's contentions on behalf of the Official Liquidator may be summarised thus:

A] The Ex-Directors carried on the Company's business after the winding-up order. The Annual Report for the year ended March 31, 2019 was filed on September 16, 2019. The income-tax return was filed on October 15, 2019. Five Board meetings were held between June 19, 2018 and March 26, 2019. The Profit and Loss account records revenue from operations;

B] The Ex-Directors knew of the winding-up order. The Company, through them, was the appellant in Appeal (L) Nos. 170 and 172 of 2018.

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They also knew the Company's financial position. Union Bank's claim stands lodged at Rs. ~51.13 crores. The Annual Report records a loss of Rs.1,41,23,405/- for the year and a total loss of Rs.50,70,12,698/-. There was no reasonable prospect of the creditors being paid. An intent to defraud can therefore be inferred, in reliance on case law[1];

C] The Annual Report is contradictory. The Directors' report states that no significant order had been passed affecting the Company. The auditors' report states that the Company carried on no business and proposed to seek striking off its name.

D] The fixed assets, bank balances and other assets reflected in the financial statements were left out of the Statement of Affairs. The auditors' report puts the fixed assets at approximately Rs.51.93 crores as on March 31, 2019.

E] The business was carried on after the window for lodging claims had closed. Claims were invited on May 31, 2019 and the last date was June 13, 2019. The Ex-Directors approached the Official Liquidator only after Union Bank sold the Paithan property. Their advocate wrote on

[1] *Re William C. Leitch Bros Ltd.,* ***[1932] 2 Ch 71****; South India Paper Mills Pvt. Ltd. v. Sree Rama Vilasam Press and Publications and Others,* ***(1982) 52 Comp Cas 145 : 1980 SCC OnLine Ker 298*** *(Para 3).*

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January 31, 2022 and February 16, 2022. The purpose was to deprive the creditors of being paid[2];

8. Mr. Cama's submissions on behalf of the Ex-Directors may be summarised thus:

A] A charge under Section 542 is a charge of fraud. Fraud must be specifically pleaded and particularised. The OLR makes a bare allegation that the business was continued with intent to defraud. It does not say who was defrauded, how, of what, or by what dishonest act. There is no allegation as to which creditor was defrauded;

B] Apart from the contention that it appears that the Company's business was carried on with intent to defraud creditors, nothing more is stated in the affidavit of evidence filed on behalf of the Official Liquidator. The income-tax return was filed in a bona fide belief. The appeal against the winding-up order was pending. The aim was to avoid non-compliance and penalty under the income-tax law. The revenue shown in the financial statements was revenue received from the sale of scrap. It does not mean that business operations were being carried on;

C] The return for the year 2018-2019 was filed after the winding-up order. The Profit and Loss statement records revenue from operations of

[2] *Official Liquidator v. Ram Swarup and Ors.,* ***(1997) 88 Comp Cas 569 : 1996 SCC OnLine All 217*** *(Pg. 10); Official Liquidator v. R.B. Sangare and Ors.,* ***(2006) 133 Comp Cas 258 : 2005 SCC OnLine Bom 1507*** *(Para 6).*

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Rs.2,58,000/-. At the highest, the Liquidator could have sought an explanation. Between March 8, 2022 and July 7, 2022, the Liquidator sought no clarity on the return or the books for the year ended March 31, 2019. The Liquidator is estopped from raising the issue now;

D] Each Ex-Director must be shown to be a knowing party with a dishonest state of mind. The OLR makes one common allegation against all four. It attributes no separate act or role to any of them. Moreover, intent to defraud means actual dishonesty. The OLR has no averment that the Ex-Directors acted dishonestly, induced anyone to part with money or concealed anything with a dishonest purpose.

E] No creditor has been defrauded. Union Bank, a secured creditor, is the only creditor that proved a claim. No other creditor came forward after the public notice of May 31, 2019. No debt or liability was created after the winding-up order. The sum of Rs.2,58,000/- is revenue received and not a debt owed to any creditor.

F] The Liquidator has failed to make out a case for the exercise of discretion under Section 542. The OLR should be dismissed.

Analysis and Findings:

9. At the threshold, Section 542 of the Companies Act, 1956 must be noticed – it reads thus:

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542. LIABILITY FOR FRAUDULENT CONDUCT OF BUSINESS

(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.

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.

(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

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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.*

(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.

[Emphasis Supplied]

10. On a plain reading of the aforesaid provision, it would become clear that the conduct of business is an essential ingredient, with a further essential ingredient being such conduct being motivated by an intent to defraud, for a declaration to be made under Section 542(1) of the Act. The captioned proceedings essentially seek such a declaration on the strength of the incontrovertible depiction of revenues from operations seen in the financial statements and the tax returns, and indeed the disclosure of Board Meetings having been held and indeed the statement that there has been no order passed that affects the Company during that financial year.

11. Against this backdrop, I have examined the record. It is apparent that the Annual Report reflects revenue from operations amounting to

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Rs.2,79,048/-, which indicates a minuscule level of activity. According to the Ex-Directors, such revenue is attributable to sale of scrap. Therefore, I have examined the income-tax return forming part of the records, which discloses tax deductions at source of approximately Rs.2,100/- This again indicates next to no business activity. It stands to reason that if the Company had conducted business, there would have been deductions of tax at source of some scale. Considering the amounts involved, the explanation by the Ex-Directors i.e. of the minuscule revenues from sale of scrap indeed appears believable and reasonable.

12. Indeed, the core essential ingredient of Section 542 of the Act is that business must have been carried out and with an intent to defraud its creditors or for any fraudulent purpose. While the standard of proof in proceedings of a civil nature is that of preponderance of probabilities, the serious nature of the allegations under Section 542 warrants closer scrutiny and cogent material to substantiate a higher degree of probability to indicate fraudulent conduct.

13. Having regard to the facts and circumstances of the present case, particularly the limited scale of the business activity reflected in the records, I am not satisfied that a case has been made out for invoking the jurisdiction of this Court under Section 542(1) of the Companies Act, 1956.

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14. The provision postulates some nexus between the activity carried out and fraudulent intent, so that liability can be fastened on the directors for the impact of the fraud[3]. In the instant case, the miniscule revenue from the purported sale of scrap is below Rs. 3 lakhs and the tax deducted at source is Rs. 2,100. I am afraid it is not possible to discern any loss being inflicted either on the Company or on any creditor or other person through such conduct by a mere reading of the figures set out in the tax return and financial statements.

15. While the allegations may be founded on documentary proof of some operations having been conducted which is what resulted in "revenue from operations", it is clear from such documents that next to no activity was carried out. Indeed Board Meetings are indicated as having been held and the statement that there has been no order affecting the Company is inaccurate. The Company was indeed in appeal and was aware of the winding up order.

16. In my view, such a statement in the annual report can indeed be held to be untruthful. However, the very same annual report does also indicate that the Company is undergoing serious financial distress. I am not satisfied that the jurisdiction of Section 542(1) of the Act, for purposes of financially remedying any fraud has been attracted. Needless to say, this is not a clean

[3] *K. Nagendra Prabhu v. Popular Bank Ltd.,* ***[1969] 39 Comp Cas 685 : AIR 1970 Ker 120****; Official Liquidator of Milan Chit Fund and Finance P. Ltd. v. Joginder Singh Kohli,* ***[1978] 48 Comp Cas 357 : 1977 SCC OnLine Del 43*** *(Para 9).*

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chit on the misstatement about there being no adverse order, but evidently, such a statement has not been in aid of carrying out any business operations with an intent to defraud.

17. Just to cite one judgement referred to the course of the proceedings, reference may be made to the decision of a learned Single Judge at the Nagpur Bench of this Court in ***Sangare***[4], in which the law declared is that it must be pleaded and proved that business was carried on with intent to defraud. The allegations must be specific and must identify the role of each person proceeded against. General allegations of mismanagement or manipulation of accounts are not enough.

18. Today, submissions were made primarily on Section 542 of the Act.

19. OLR is hereby ***finally disposed of*** without any directions.

20. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

[4] *Official Liquidator of John Galt Laboratories Ltd. (In Liquidation) v. R.B. Sangare and Others* - *(2006) 133 Comp Cas 258 : 2005 SCC OnLine Bom 1507 : (2008) 82 CLA (SN 1) 9 : 2006 CLC 506 : (2007) 74 SCL 129*, *decided on November 18, 2005, Company Application No. 24 of 1994 in Company Petition No. 2 of 1987.*

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