

(2014) 08 BOM CK 0182

In the Bombay High Court

Case No : Official Liquidators Report No. 5 of 2013 in Company Petition No. 423 of 2010 and Company Application No. 188 of 2013 in Company Petition No. 423 of 2010

International Asset Reconstruction Company Pvt. Ltd.

APPELLANT

Vs

Phoenix Alchemy Pvt. Ltd.

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Companies Act, 1956 — Section 433(e), 434(1)(a), 454, 454(1), 454(2)

Citation : (2014) 6 BomCR 850

Hon'ble Judges : S.J. Kathawalla, J

Bench : Single Bench

Advocate : Rohit Gupta i/b. V. Deshpande and Co, Advocate for the Appellant

Judgement

S.J. Kathawalla, J.—The respondent company, Phoenix Alchemy Pvt. Ltd. ("the company") was ordered to be wound up, under section 433(e) read with section 434(1)(a) of the Companies Act, 1956 ("the Companies Act"), by an Order of this Court dated 15th June 2012. The admitted claim of the petitioning creditor (IARC) was approximately Rs. 32 crores. The Order also notes the fact that the company is heavily in debt even otherwise. By the same Order, the Official Liquidator was appointed in respect of the company. On 18th December 2012, the Official Liquidator filed OL Report No. 5 of 2013 ("the OL Report") in respect of the company in winding-up. It is this Report that is being considered. The directions sought from the Court are in the following terms:

"(a) Whether the Hon"ble Court would be pleased to permit the Official Liquidator to file the criminal complaint under section 454 of the Companies Act, 1956 against the ex-Directors of the company (In Liquidation) as referred to in para 3 above;

(b) Whether this Hon"ble Court would be pleased to direct Mr. Ganjan (Deepak) R. Kanegaonkar and Mrs. Sulekha (Deepak) Kanegaonkar, ex-Directors to deposit a sum of Rs. 11,30,743/- with the Official Liquidator."

2. The OL Report was re-submitted on 21st January 2014 pursuant to directions issued by this Court on 26th November 2013 (Coram: N.M. Jamdar, J.) to the Official Liquidator to investigate additional aspects of the matter. In the re-submitted Report, the Official Liquidator has sought certain additional directions relating to one of the immovable properties of the company.

3. By this Order I am considering only the directions (set out above) as prayed for in the OL Report as filed on 18th December 2012 and not the directions as prayed for in the re-submitted Report. That will be considered separately when the OL Report is next placed for hearing.

4. In so far as the aforesaid directions as sought in the OL Report are concerned, it is necessary to set out a few facts.

5. On 12th July 2012, the Official Liquidator issued a Notice under section 454 of the Companies Act, to the ex-Director of the company, requiring the ex-Directors to file a Statement of Affairs" of the Company. There was no response to this Notice.

6. On 25th September 2012, the Official Liquidator issued a reminder to the Notice requiring the company to file its Statement of Affairs. There was no response to this Notice either.

7. On 28th September 2012, the Official Liquidator addressed two final Reminder Notices to both the ex-Directors of the company for the filing of the Statement of Affairs of the company in the prescribed form duly verified by an affidavit and containing the particulars as required under section 454(2) of the Companies Act. This Notice also states that if such Statement of Affairs is not filed, the Official Liquidator will proceed with legal action under section 454(5) of the Companies Act.

8. On the Official Liquidator noticing that the Company (through its ex-Directors) was continuing to operate a current account that it held with the State Bank of Patiala, Dadar (W), Mumbai, the Official Liquidator wrote to State Bank of Patiala on 25th September 2012 requesting them to close the account and remit the balance to the Official Liquidator. On 8th October 2012, the Official Liquidator received a Statement of Account from the State Bank of Patiala. On 11th October 2012 the Bank replied and remitted an amount of Rs. 297/-, being the balance lying to the account of the company. On 15th October 2012, the Official Liquidator wrote to both ex-Directors advertng to the correspondence with the State Bank of Patiala and specifically charging the ex-Directors with willfully operating the bank account even after the winding up Order was passed. The ex-Directors were called upon to remit the amount of Rs. 11,30,743/- to the office of the Official Liquidator within 7 days, failing which the matter would be placed by the Court.

9. Thereupon, Official Liquidator Report 5 of 2013 came to be filed on 18th December 2012.

10. This Official Liquidator Report came up for hearing on 4th January 2013 before this Court. The ex-Directors appeared (through an Advocate) before the Court. By an Order of 4th January 2013, the failure of the ex-Directors to file the Statement of Affairs and hand over Books of Account of the company was noted. They were directed to do so by the next date, i.e., 17th January 2013, failing which prayer (a) of the Report would be considered.

11. Significantly, from the Order of 4th January 2013 it is clear that at that time no contention was taken on the part of the ex-Directors that the Books of Account and other records of the company are unavailable to them, for any reason whatsoever, because of which these records and the Statement of Affairs could not be filed as per the directions of the Court.

12. Instead, on 15th January 2013 (mistakenly typed as 15th January 2012), the ex-Directors submitted their response to the Questionnaire under Rule 130 of the Company Court Rules, 1959 ("the Companies Rules"). As regards the Statement of Affairs, the letter expresses an inability to file the same. The reason for this being that, according to the ex-Directors, all the office records were deliberately destroyed when the office of a sister concern, M/s. Vishuddha Rasayanee Pvt. Ltd. (under liquidation), was sold by SICOM. According to the letter, this event took place in December 2010. The letter claims that a Police Complaint was also filed in this regard. Another reason for the inability to file its Statement of Affairs was that, according to the ex-Directors, a large portion of records pertaining to the company are locked inside certain premises, which premises are under attachment of the Sales Tax Department and IARC, the Petitioning Creditor. It is therefore stated that the ex-Directors do not have access to a majority of the records pertaining to the company.

13. The responses to the Questionnaire under Rule 130 are also of some significance as they demonstrate that the company, prior to its liquidation, was not maintaining proper Books of Accounts and at the very least, the accounts were not being audited as required by law. The responses also establish a failure to file Income Tax Returns in accordance with law.

14. It is stated that the last audited Balance Sheet of the company was of the Financial Year 2002-2003 (response to Question 7); the last Income Tax Returns filed were of the Financial Year 2002-2003 (response to Question 18); there are Income Tax cases/proceedings pending (response to Question 19); the arrears of Sales Tax are stated to be in excess of 12 crores (response to Question 20); that the ex-Directors are in the process of filing the Statement of Affairs (response to Question 30); the details as regards cash in hand and cash in the bank are not mentioned, and it is stated that the same would be provided subsequently (responses to Questions 34 and 35); as regards creditors and security deposits it is stated that the ex-Directors are unable to provide such details (responses to Questions 39 and 40).

15. On 14th February 2013, the Official Liquidators Report was listed and

adjourned. On this date the Court recorded the stand of the ex-Directors as to the Books of Account of records of the Company being located at office premises that are in the possession of secured creditors.

16. On 7th March 2013, this Court (Coram: N.M. Jamdar, J.) passed an Order in this Report, which reads as follows:

"This matter is being adjourned from time to time to enable the ex-Directors to file reply. The learned Counsel for the secured creditors had pointed out on the earlier occasion that the ex-directors had operated the bank account without permission of the Court/Liquidator and has taken away substantial monies from the account of the company.

2. The learned Counsel for the ex-directors seeks further time to file reply. The accounts have been operated and amounts have been withdrawn without permission and the oral arguments are advanced justifying the action. However by way of indulgence time is granted to the ex-Directors to file reply, on the assurance of learned Counsel for the ex-Directors, on instructions, that an amount of Rs. 2.5 lakhs will be deposited with the Official Liquidator, with-out prejudice, before the next date i.e. on 21 March 2013.

3. The learned Counsel for the ex-directors states that since the record which is directed to be submitted is in the premises which is in the possession of the Creditors, the Creditors be directed to give access to the ex-directors. The learned Counsel for the creditors states that the documents are not available in the premises. He is however not averse to giving access to the premises to the ex-directors. Accordingly, the Creditors agreed to facilitate inspection of the premises to the ex-directors on the date and time mutually agreed...."

17. IARC has, after this Order, addressed a letter to the then Advocate for the ex-Directors recording that no request for taking inspection of the premises in possession of IARC has been made, despite the Order of 7th March 2013.

18. By an Order of 21st March 2013 (Coram: Ranjit More, J.) yet another opportunity was given to the ex-Directors to comply with the Order of 7th March 2013, and that matter was accordingly stood over.

19. On 4th April 2013, the ex-Directors served their Affidavit in Reply to the Official Liquidators Report. The ex-Directors reiterated the reasons stated in their letter of 15th January 2013 for not being able to file their Statement of Affairs.

20. As regards the operation of the current account of the company with the State Bank of Patiala, the Reply does not dispute that this account was in fact operated after the final Order of winding-up. It seeks to justify it on the basis that various Post Dated Cheques were issued in the months of March April and May 2012 (wrongly typed as "2013") and that it was natural for the company to honour these cheques. The Reply disputes the sum of Rs. 11,30,743/- (which according to the Official Liquidator was debited to the account after the winding-up Order), but, as mentioned, does not dispute the operation of the account and

utilization of funds. This, again, is sought to be justified as being for the purposes of the company.

21. The Reply states that the ex-Directors would take inspection of the records maintained at Plot No. A-211, TTC-Industrial Estate, MIDC, Navi-Mumbai within seven days and submit the cashbook to the Official Liquidator. The record would show that this has not been done. The ex-Directors do not contend otherwise.

22. On 4th April 2013, a Statement of Affairs was filed with the Official Liquidator. It was affirmed on 21st March 2013 by one of the ex-Directors. The "Debts and Liabilities" were provided on the basis of a Provisional Balance Sheet of 31st March 2007, stated to have been provided by a former employee of the company.

23. On 30th April 2013, the Official Liquidator wrote to the ex-Directors in relation to the Statement of Affairs filed by them. The Official Liquidator pointed out the various defects in the Statement of Affairs due to which it could not be taken on record. These defects included the Statement of Affairs: not being in compliance with Rule 127 of the Companies Rules; not being filed with a supporting Affidavit in Form 58; not mentioning the names of bankers, debtors and creditors. The ex-Directors were called upon to file a proper Statement of Affairs, failing which the matter would be reported to the Court.

24. The record would show that there was no response to this letter. The ex-Directors filed no revised Statement of Affairs.

25. On 26th November 2013, this Court (Coram: N.M. Jamdar, J.) heard this Official Liquidators Report. After considering the Affidavit in Reply filed by the ex-Directors, this Court observed that prima facie the ex-Directors have misutilised the property of the company. Observations were also made as to the ex-Directors attempt to delay matters by changing its Advocates. The Official Liquidator was directed to investigate into the affairs of the company with reference to violations alleged in Company Application No. 188 of 2013 filed by IARC.

26. Significantly, the ex-Directors were directed to file a detailed affidavit disclosing all relevant documents in respect of the company for the last five years along with bank statements etc. The affidavit was also to disclose fixed assets, both movable and immovable, current assets, inventories, receivables, bank balance, cash balance etc. Additionally, there were directions and observations in this Order that are germane to the re-submitted Official Liquidators Report (pertaining to the lease of an immovable property of the company). As I am not considering that re-submitted Report, I have not referred to these directions and observations.

27. It is a matter of record that no such affidavit, as required to be filed by the ex-Directors by the Order of 26th November 2013 has been filed. The direction to file the Affidavit and the relevant documents was given by this Court after considering the ex-Directors Affidavit in Reply.

28. On 25th April 2014, this Court (Coram: G.S. Patel, J.) passed an Order in this Official Liquidators Report and in the company application. Yet another opportunity was given to the ex-Directors to file affidavits to comply with earlier Orders and to respond to the Official Liquidators Report. Additionally, a specific direction was given to the ex-Directors (respondents No. 1 and 2) to file supplementary affidavits setting out the precise status of the properties and assets of the company, including all movable and immovable assets. This was to be done by 5th May 2014.

29. This direction too, has not been complied with.

30. On the same day, i.e., 25th April 2014, this Court (Coram: G.S. Patel, J.) considered company Application (L) 26 of 2014 filed by the company for recall of the final Order of winding up dated 15th June 2012. This application sought recall of the winding up Order on the basis that the winding up petition was not maintainable as the same petitioning creditor (IARC) had initiated proceedings under the SARFAESI Act and the RDDBFI Act and had therefore made an election that estopped it from maintaining the winding up petition. By an Order of 25th April 2014, this application came to be dismissed.

31. It is in this background of repeated refusal on the part of the ex-Directors to comply with Orders of this Court and the requirement of section 454 of the Companies Act, which I have to consider the directions sought in the Official Liquidators Report.

32. As far as the filing of a Statement of Affairs is concerned, there can be no dispute that this requirement is mandatory under section 454 of the Companies Act. Moreover, the significance of this requirement being complied with in its fullest is obvious. It is these details in the Statement of Affairs that would facilitate the taking of charge of a company in liquidation by the Official Liquidator. The orderly administration of the affairs of a company in liquidation by the Official Liquidator is in the interest of stakeholders in the winding up of a company, such as creditors, workers and even shareholders.

33. With this objective in mind, section 454 of the Companies Act states:

"(1) Where the Court has made a winding up order or appointed the Official Liquidator as provisional liquidator, unless the Court in its discretion otherwise orders, there shall be made out and submitted to the Official Liquidator a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely:--

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, if any, held by the company;

(b) its debts and liabilities;

(c) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts; and in the case of secured debts,

particulars of the securities given, whether by the company or an officer, their value and the dates on which they were given;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;

(e) such further or other information as may be prescribed, or as the Official Liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who is at that date the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the Official Liquidator, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons--

(3) The statement shall be submitted within twenty one days from the relevant date, or within such extended time not exceeding three months from that date as the Official Liquidator or the Court may, for special reasons, appoint

(4) ...

(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punished 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.

(5-A) The Court 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, 1973, for the trial of summons cases by magistrates.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to copy thereof or extract therefrom

(7) ...

(8) In this section, the expression "the relevant date" means, in case where a provisional liquidator is appointed, the date of his appointment, and in case where no such appointment is made, the date of the winding up order.

34. At present, I have to consider whether a case has been made out to permit the Official Liquidator to file a criminal complaint against the ex-Directors under section 454(5) read with sub-section (5-A) of the Companies Act.

35. The threshold for sanctioning the filing of a criminal complaint, as it were, is to ascertain if the material before the Court, prima facie, establishes a breach of the provisions of section 454 of the Companies Act. This inquiry need not be in

depth or detailed. If such criminal complaint is sanctioned, and upon its filing, the ex-Directors will have the opportunity of a defence in accordance with the aforesaid provision.

36. The aforestated facts show an initial refusal and failure to file any Statement of Affairs despite three Notices from the Official Liquidator.

37. As observed above, at the hearing before this Court on 4th January 2013, the company did not contend that its books of account or records were unavailable or inaccessible to it. On this date the ex-Directors were clearly aware from the Notices issued by the Official Liquidator that they were to file their Statement of Affairs. The ex-Directors were called upon to file this information by the next date. It is only thereafter that the company expressed its inability to do so on the, prima facie, untenable ground that these records were destroyed or inaccessible being locked in premises in the possession of Secured Creditors.

38. The Companies letter of 15th January 2013, curiously, takes inconsistent stands in this regard. At one place it speaks of all records of the company being deliberately destroyed by SICOM. In the next paragraph, the letter states that large portions of the records are locked inside three premises that are in the possession of Secured Creditors. The letter then states that the ex-Directors do not have access to a "majority of the records" pertaining to the company. The letter does not indicate, what, if any, records were nevertheless available with the ex-Directors. The inconsistent stands are self-evident.

39. Further, the reason for not having records and books of account would also appear to be an afterthought, bearing in mind that the first Notice to file the Statement of Affairs was issued by the Official Liquidator on 12th July 2012, i.e., six months prior.

40. IARC has consistently maintained, at the hearing of this Official Liquidator Report as well as at prior hearings, that there are no records of the company or books of account in the premises in its possession. By the Order of 7th March 2013 the ex-Directors were given an opportunity to establish the bona fides of their justification for not filing the Statement of Affairs and relevant records, by being allowed to inspect the premises in the possession of IARC. They have not availed of this opportunity. IARC addressed a letter after this Order that stated that no inspection as allowed has been sought by the ex-Directors. This again is a factor that, prima facie, establishes the lack of bona fides on the part of the ex-Directors and falsifies their excuse for not furnishing books of account and records.

41. A document styled as a "Statement of Affairs" purportedly under section 454 of Companies Act came to be filed on 4th April 2013. This was based on a Provisional Balance Sheet as at 31st March 2007 obtained from an unnamed ex-employee of the company. Clearly, therefore, the information and details contained therein would not be current and cannot be said to be a reflection of the statement of affairs at the time of the Order of winding up.

42. As I am, *prima facie*, not inclined to accept the contention of the ex-Directors as to the records of the company being lost or destroyed or as to their inability to get a hold of and produce the books of account and records of the company, it would necessarily follow that information in the Statement of Affairs (as on 31st March 2007) cannot, *prima facie*, satisfy the requirements of section 454(1) of the Companies Act.

43. The Official Liquidator by its response of 30th April 2013 has indicated three reasons, referred to above, for not taking the above purported Statement of Affairs on record. In the facts of this case, all three reasons appear justified.

44. The ex-Directors have not responded to this letter of the Official Liquidator. Neither have they complied with subsequent directions of this Court for filing affidavits of disclosure, records and books of account.

45. Furthermore, in any view of the matter, given the state of affairs of the company--with no audited Balance Sheets or Tax Returns since Financial Year 2002-2003--it is clear that the company was not in any position to really file a Statement of Affairs with the material and information as required by section 454(1) of the Companies Act.

46. Considering the material before the Court, I am of the opinion that permission ought to be given to the Official Liquidator to file a criminal complaint as prayed for in prayer (a) of the Official Liquidator Report.

47. As regards prayer (b) of the Official Liquidators Report, there does not appear to be any dispute about the fact that the ex-Directors operated the current account of the company with the State Bank of Patiala after the final Order of winding up. The Bank Statement for the relevant period (annexed to the Rejoinder filed by IARC) shows this to be so. The ex-Directors, in their Reply to the Official Liquidators Report, accept this but seek to explain this as being for the business of the company and not for personal expenses. They also say it was necessary so as to honour post dated cheques issued by the company (before the Order of winding up).

48. Once a final Order of winding up is passed the Official Liquidator is to take into its custody the property of the company in liquidation. Section 456(1) of the Companies Act says so. Section 456(2) states that all property and effects of the company shall be deemed to be in the custody of the Court as from the date of the winding up of the company. Section 457(1) of the Act confers power upon the Official Liquidator, with the sanction of the Court, to carry on business in the name of the company for the beneficial winding up of the company. Section 457(2)(iii) empowers the Official Liquidator to draw, accept and endorse any bill of exchange etc. in the name and on behalf of the company. The Official Liquidator can also appoint an agent to do business in the name of the company, if the Official Liquidator is unable to do it himself.

49. It is not necessary to consider whether the bank account was operated for

business or personal purposes. These provisions, amongst others, make it abundantly clear that the ex-Directors had no authority to operate the State Bank of Patiala current account of the company after the final Order of winding up on 15th June 2012. The company was represented at that time and the ex-Directors would have been fully aware of the Order and the appointment of the Official Liquidator. The account could only have been operated by and on behalf of the company through the office of the Official Liquidator. Even if there were business exigencies, the carrying on of business itself being within the domain of the Official Liquidator, these expenses could only have been provided for by the Official Liquidator.

50. Section 536(2) of the Companies Act provides that after the commencement of winding up, any disposition of property (including actionable claims) of the company, unless the Court otherwise orders, would be void. The utilization of cash balance in the bank, in this case, is such a disposition of property by the ex-Directors. The ex-Directors are liable to bring this money back.

51. I am told that after the Order of 7th March 2013, an amount of Rs. 2.5 lakhs has been brought back or paid by the ex-Directors. That leaves an amount of Rs. 8,80,743/-. The ex-Directors are to deposit this money with the Official Liquidator on or before 30th September, 2014.

52. Official Liquidators Report No. 5 of 2013 (as originally filed) is accordingly disposed off as allowed.

53. As regards Company Application 188 of 2013 filed by IARC, it seeks an investigation against the ex-Directors and the company under various provisions of the Companies Act that have alleged to be violated. By the Order of 26th November 2013, the Official Liquidator was directed, inter alia, to investigate into the company application. There is no report of the Official Liquidator in this regard. The Official Liquidator is directed to file a report in relation to the allegations made and directions sought in Company Application No. 188 of 2013 on or before 30th September 2014. A copy of the same is to be then served upon IARC and the ex-Directors with an opportunity to both of them to respond to the report. After this, the report may be placed before the Company Court for appropriate directions.

54. In view of this Order, Company Application 188 of 2013 does not survive and is accordingly disposed off.

55. The Conduct of Mr. Mathew Nedumpara, Advocate for the ex-Directors: This matter was on board before me on 24th July 2014 and 28th July 2014. On 24th July 2014, the matter was initially kept back and then adjourned to 28th July 2014. On 28th July 2014, the Director of German Ink Productions Pvt. Ltd., a group entity of the company, appeared in person and requested for the matter to be kept back as Mr. Nedumpara was on his way back from out of Mumbai. As it was not possible to hear this matter in the afternoon, the matter was again adjourned to 1st August 2014, with a clear understanding that on that date the

Official Liquidators Report would be heard. On neither of these two prior dates did Mr. Nedumpara appear in the matter.

56. When the matter was called out, Mr. Nedumpara sought to raise an objection as to the maintainability of these proceedings. He claimed he had an application ready for raising this issue. Admittedly, on that date none had been filed or served. The Advocate for IARC stated that a similar Application was made before this Court (Coram: G.S. Patel, J.) and disposed off by an Order dated 25th April 2014. I have already made reference to this prior application and the Order.

57. When I told Mr. Nedumpara that he would have his turn to argue after the Advocate for the Official Liquidator, he was adamant and insisted on raising this issue of maintainability. He was addressing the Court in an aggressive, discourteous and offensive manner. This went on for quite a few minutes, during which time I was repeatedly requesting him to take his seat and await his turn. During this time he was not even willing to listen to the Court and kept addressing the Court and making remarks that were most inappropriate and to the effect that he is not getting an opportunity of being heard and that he was used to "insults" from the Court.

58. It was clear to me that this was nothing but a stalling tactic to ensure that the matter on the Official Liquidators Report does not proceed. All through these initial few minutes his demeanour was loud, brash and disrespectful. The Court was crowded and it was almost as if Mr. Nedumpara was playing to the galleries, as much of what he was saying had little to do with the matter or for that matter his point of maintainability.

59. At this juncture I reminded him that the issue of maintainability was really being raised in respect of the company petition itself (on the ground that it could not have been filed as the Secured Creditors had adopted proceedings before the Debt Recovery Tribunal under the DRT Act and the SARFAESI) and that this issue could not be raised after the winding up petition had resulted in a final Order of winding up, from which no appeal had been filed.

60. Then Mr. Nedumpara claimed that it was unfair to proceed with the hearing as the Advocate for the Official Liquidator was relying upon a "List of Dates" tendered to the Court and to the other Advocates. Mr. Nedumpara claimed that he had just got it. This again was no ground to delay the hearing. A "List of Dates" is only meant to facilitate the arguments. It is not a pleading. There is no requirement to give a copy in advance to the other side.

61. Finally, when Mr. Nedumpara was asked to address the Court in response to the Official Liquidators Report, he insisted on addressing the Court only on the issue of maintainability of a petition at the instance of Secured Creditors who had adopted (or as he put it "elected") other remedies. Even during this part of the hearing, Mr. Nedumpara was extremely disrespectful and offensive in the manner in which he addressed the Court. Just because the Court wanted him to address it on the Official Liquidators Report, he repeatedly said how he is not being

heard. His tone and tenor was accusatory, often times breaking into Latin Maxims in the context of his most improper suggestion that he is not being heard or that he was being treated unfairly.

62. This went on again for quite a few minutes during which time he resolutely refused to address even a single query from the Court or address the Court on the merits of the matter/Official Liquidator's Report that was before the Court.

63. Mr. Nedumpara's demeanour was obstructive and to my mind intended to interfere with the administration of justice and lower the dignity and authority of the Court. In a situation such as this, in my opinion, the Court would have been entitled to take note of the conduct of Mr. Nedumpara as contempt in the face of the Court and deal with it summarily and immediately or to direct the issuance of a Show Cause Notice to treat it as "criminal contempt" under the Contempt of Courts Act, 1971, read with the Rules framed thereunder.

64. There is no definition of what constitutes contempt in the face of the Court or conduct intended to interfere with the administration of justice and lower the dignity of the Court. There are, however, precedents, which do clearly establish that this kind of inappropriate behaviour and conduct by Advocates, who are officers of the Court, can amount to an act of contempt.

65. In the case of High Court on its own Motion Vs. Mr. N.B. Deshmukh, a Division Bench of this Court was considering a Show Cause Notice for criminal contempt issued to the Contemnor, an Advocate who was charged with, inter alia, interrupting proceedings using language that was most improper and behaviour that was rowdy and obstructive (at page 293). This Court found that the behaviour of the Contemnor was rowdy and that he had used improper language (at para 27, 29, page 293 - 294). The Court also held that this kind of conduct may also attract action for his conduct unbecoming of an Advocate (though this issue was not gone into by the Court) (at para 31, page 295). The Court then observed (at para 42, page 299) that:

"... The conduct and demeanour of the respondent/Contemnor before the Court was, to say the least, distressing and in fact, resulted in obstruction of Court proceedings. More so, when at the relevant time, the Court was in the midst of hearing some other proceedings. Such behaviour of even an ordinary litigant cannot be countenanced. Nay, even the Statute recognizes the same as constituting criminal contempt. In any case, when such conduct is attributed to a practising Advocate, it is still worst (sic). The Advocates are supposed to be the main benefactors of this Institution. They are said to be the wheel of the chariot of justice. Such behaviour of the Advocate would not only result in undermining or lowering the authority of the Court but also tend to interfere with the due course of the judicial proceeding and obstructing the administration of justice. It would also be conduct unbecoming of a professional."

66. In this case the Contemnor was punished with imprisonment and fine and not allowed to appear before this Court or any Court below this Court until the

contempt was purged.

67. In the case of *Mrs. Hema Ravishankar Vs. K.R. Ravishankar*, a Single Judge of this Court considered whether a Show Cause Notice ought to be issued to the appearing Advocates for the Petitioner for committing contempt in the face of the Court. The acts of contempt alleged were that the Advocates advised the party to address a communication to the Chief Justice of this Court imputing bias and motives against the Single Judge. After the Single Judge received this written complaint, the matter was heard in Court and the Advocates reiterated their stand. In the context of the conduct of the Advocates at the hearing of the matter, it was observed (at para 16, page 153; para 20, page 154; para 24, page 156) that:

"... their intention was pronounced, so as to show distrust and disrespect to the Court. I do not find it necessary to reproduce the arguments made by the Advocates for the Petitioner as it would only burden this judgment. Suffice it to observe that a member of the Bar is an officer of the Court and owes a duty to the Court to uphold the dignity and decorum of the Court. He must not do anything to bring the Court itself into disrepute. When a legal practitioner makes imputation of unfairness or bias against a Judge in open Court, he is guilty of grave professional misconduct, for he would grossly overstep the limits of propriety See *Lalit Mohan Das Vs. Advocate-General, Orissa*, . Scandalizing the Court in such manner tantamounts to polluting the very fount of Justice; such conduct was not a matter between an individual member of the Bar and a member of the Judiciary; it has brought into disrepute the whole administration of justice (See *Lalit Mohan Das*, supra). ..."

In *L.D. Jaikwal Vs. State of U.P.*, . Case (supra), the Apex Court then went on to observe at page 408 (of the S.C.C.) as follows:

"... It will be rather difficult to persuade members of the Bar, who care for their self respect to join the judiciary if they are expected to pay such a price for it. And no sitting Judge will feel free to decide any matter as per the dictates of his conscience on account of the fear of being scandalized and persecuted by an Advocate who does not mind making reckless allegations if the Judge goes against his wishes. If this situation were to be countenanced, Advocates who can cow down the Judges, and make them fall in line with their wishes, by threats of character assassination and persecution, will be preferred by the litigants to the Advocates who are mindful of professional ethics and believe in maintaining decorum of the courts."...

As observed in *In re: Vinay Chandra Mishra* (the alleged contemner), , normally, no Judge takes action for *facie curiae* contempt against the lawyer unless he is impelled to do so. In the present case, it is not the heat generated in the arguments, but the language used, the tone and the manner in which it was expressed and the intention behind using it left no manner of doubt that it was calculated to insult, show disrespect, to overbear and overawe the Court. Both

the Advocates, Mr. K.R. Buichandani and Mr. J.P. Shah, to my mind, exhibited temper and discourteousness during the course of arguments..."

68. These judgments establish that conduct of Advocates, such as has been described by me in the foregoing paragraphs of the Order, can constitute sufficient reason to issue Show Cause Notice for criminal contempt or to be dealt with immediately and summarily as contempt committed in the face of the Court. Having said that, in this case I have done neither. Let this Order be a strict and final warning to Mr. Mathew Nedumpara that the Court will not tolerate this conduct and if such conduct is repeated in the future, the Court may be constrained to act.