

(2001) 03 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Company Application No's. 332, 636 of 1999 and 730 of 2000

M/s. Altos India Limited

APPELLANT

Vs

Shri Dadan Bhai and Others

RESPONDENT

Date of Decision : 22-03-2001

Acts Referred:

Companies Act, 1956 — Section 454

Citation : (2001) 03 P&H CK 0023

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

Bench : Single Bench

Advocate : Amit Sethi, for the Appellant; A.P. Jagga and Ms. Jaishree Thakur, for the Respondent

Judgement

J.S. Khehar, J.—C.A. Nos. 332 of 1999, 636 of 1999 and 730 of 2000, in CP. No. 95 of 1999, are being decided by this common order.

2. CP. No. 196 of 1997 was filed by M/s. Bharti Telecom Limited praying for winding up of M/s. Altos India Limited. C.A. No. 442 of 1997 was also filed by the Petitioner-company for appointing a provisional liquidator. This Court allowed C.A. No. 442 of 1997 on 11.6.1998 by appointing the official liquidator as provisional liquidator of M/s. Altos India Limited. A direction was issued to the provisional liquidator to take over all assets as well as the complete management of M/s. Altos India Limited without any delay. The winding up order in this case was passed on 12.8.1999.

3. A copy of the order dated 11.6.1998, whereby the official liquidator was appointed provisional liquidator, was received by the official liquidator on 3.7.1998. In compliance with the aforesaid order one of the units of M/s. Altos India Limited, 278, Udyog Vihar, Phase II, Gurgaon, was sealed on 7.7.1998; another unit located at 300, Udyog Vihar, Gurgaon, was taken over on 7.7.1998; a third unit located at B-312, Okhla Industrial Area, Phase-I, New Delhi, was sealed on 8.7.1998; another unit of M/s. Altos India Limited located at B-64, Okhla, Industrial Area, Phase I, New Delhi, could not be sealed as the same had

been vacated by the Company on 16.5.1998. On inspection of the said premises the provisional liquidator found some machines/equipments belonging to M/s. Altos India Limited, the said machines/equipments were given on supurdari to the owner of the premises (1B-64, Okhla, Industrial Area, New Delhi) on 15.7.1998. The registered office of M/s. Altos India Limited situated at Agarsen Chowk, Namaul, was sealed on 12.7.1998.

4. In terms of the provisions of Section 454 of the Companies Act, 1956, where an official liquidator is appointed as provisional liquidator, statement of affairs in the prescribed form, duly verified by an affidavit, is required to be submitted within 21 days from the date of appointment of the provisional liquidator (unless the aforesaid date is extended by the Court). Since no statement of affairs was filed in terms of Section 454 of the Companies Act, the official liquidator addressed a communication dated 26.11.1998 calling upon 5 of the directors of the Respondent-company, namely, Sarvshri Dadan Bhai, Stephen Aranha, N.S. Parulekar. N.R. Srinivasan and Smt. Hema Chand to submit the statement of affairs in duplicate duly verified by an affidavit, as on the date of appointment of the provisional liquidator. The aforesaid communication which was dispatched through registered acknowledgement due post, was received back undelivered from two of the directors, namely, Sarvshri Dadan Bhai and Stephen Aranha. The letters addressed to Shri N.S. Parulekar and Smt. Hema Chand were not received back. Even the acknowledgment due cards were not received back. The letter addressed to Shri N.R. Srinivasan was received by him; and he addressed a response thereto dated 5.12.1998.

5. Since the statement of affairs was not being filed, CP. No. 95 of 1999 was filed by the provisional liquidator u/s 454 (5-A) of the Companies Act for taking cognizance against the accused directors for having failed to comply with the requirement of Section 454 by not furnishing the statement of affairs.

6. C.A. No. 332 of 1999 was filed by accused No. 5 Shri N.R. Srinivasan with a prayer for the deletion of his name from the array of accused in CP. No. 95 of 1999. A similar prayer was made in C.A. No. 636 of 1999 at the behest of accused No. 4 Shri Stephen Aranha. Likewise C.A. No. 730 of 2000 was filed by accused No. 3 Smt. Hema Chand again seeking the same relief.

7. Insofar as C.A. No. 332 of 1999 is concerned, it has been brought to the notice of this Court that accused No. 5 Shri N.R. Srinivasan was no longer in the service of M/s. Altos India Limited, as he had resigned from its employment on 5.1.1998. It is claimed that the aforesaid applicant-accused No. 5 was engaged by the company as its company secretary. After his resignation had been accepted, Form No. 32 had been duly submitted with the Registrar of Companies. Along with the application, Shri N.R. Srinivasan, applicant-accused No. 5 has appended a letter dated 5.1.1998, whereby he was informed by M/s. Altos India Limited that his resignation had been accepted by the management and he had been relieved from the employment of the said organisation with effect from the close of the business hours on 5.1.1998. A certificate dated 5.1.1998 has also

been attached, the aforesaid certificate is stated to have been issued by the Managing Director Shri Dadan Bhai, the said certificate confirms that Shri N.R. Srinivasan as company secretary was vested with the responsibility of discharging secretarial function only, it was clarified in the aforesaid certificate that the said Shri N.R. Srinivasan was not responsible for financial matters of the company. On the basis of the aforesaid factual narration, it was submitted that the applicant/accused No. 5 was not liable to furnish the statement of affairs as envisaged u/s 454 of the Companies Act, 1956.

8. C.A. No. 636 of 1999 has been filed on behalf of Shri Stephen Aranha, applicant-accused No. 4. It is submitted that the applicant-accused No. 4 was not associated with M/s. Altos India Limited on 11.6.1998 i.e. the date on which this Court appointed the official liquidator as provisional liquidator. It is acknowledged that the applicant-accused No. 4 was one of the directors of M/s. Altos India Limited, he had, however, submitted his resignation from the aforesaid assignment on 13.4.1998. A certificate issued by Shri Dadan Bhai, Managing Director of the company, on the same date i.e. on 13.4.1998 affirming that Shri Stephen Aranha had been working as director of M/s Altos India Limited till 12.4.1998 and that he had ceased to work as such with effect from 13.4.1998 has been placed on the record of the application. The certificate issued by the Managing Director Shri Dadan Bhai further affirms that Shri Dadan Bhai would henceforth (from 13.4.1998) be responsible for discharging the responsibilities which were earlier vested in Shri Stephen Aranha. It is submitted that the factum of resignation of Shri Stephen Aranha was published in the Hindustan Times, dated 25.4.1998. A copy of Form-32, forwarded to the Registrar of Companies, NCT of Delhi and Haryana along with the covering letter dated 22.5.1998 of the Managing Director Shri Dadan Bhai, has also been placed on the record of the application.

9. C.A. No. 730 of 2000 has been filed by Smt. Hema, Chand, applicant-accused No. 3. It is submitted on behalf of Smt. Hema Chand applicant-accused No. 3 that she was a whole time employee of ICICI Limited) (one of the creditor of M/s Altos India Limited) where she was engaged as Assistant General Manager. She came to be appointed as a nominee director as a consequence of her nomination on the Board of Directors of M/s. Altos India Limited by her employer vide letter dated 17.2.1994. It is claimed that the applicant-accused No. 3 sought voluntary retirement from ICICI Limited on 30.9.1997. whereupon her nomination as nominee director was withdrawn by ICICI Limited with effect from 3.12.1997. On the receipt of notice dated 26.11.1998, u/s 454 of the Companies Act from the provisional liquidator (referred to in the narration of facts above) requiring her to submit a statement of affairs of the company, she forwarded the same to ICICI Limited on account of the fact that she had ceased to be an employee of the ICICI as also on account of the fact that she had ceased to be a nominee director of M/s. Altos India Limited on behalf of ICICI Limited. It is further submitted that ICICI Limited addressed a communication dated 11.10.1999 informing the provisional liquidator that the applicant-accused No. 3 was not involved in the

day-to-day management of the company but was only required to safeguard the interest of ICICI Limited in the meetings of the Board of Directors. Through the aforesaid communication, ICICL also informed the provisional liquidator that the applicant accused No. 3 having ceased to be an employee of ICICI Limited and also a nominee director of M/s. Altos India Limited could not be required to furnish statement of affairs.

10. During the course of arguments advanced by the learned Counsel for the parties, reference has primarily been made to Section 454 of the Companies Act, 1956 and to Rules 125 and 126 of the Companies (Court) Rules, 1959. The aforesaid provisions are being extracted hereunder:

454(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 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 company or an officer thereof, 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 any 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 are at the relevant date the directors and by the person 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:

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the Official Liquidator, capable of giving the information required;

(d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(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) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Liquidator may consider reasonable, subject to an appeal to the Court.

(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 hundred rupees for every day during which the default continues, or with both.

(5A) 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, 1898 (5 of 1898), 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 a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence u/s 182 of the Indian Penal Code (45 of 1860); and shall, on the application of the Official Liquidator, be punishable accordingly.

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

125. Application by Official Liquidator u/s 454(2): The Official Liquidator may apply by summons to the Court for an order directing any person who, in his opinion, is liable to furnish a statement of affairs u/s 454, to prepare and submit such a statement or concur in making the same. Notice of the application shall be served on the person against whom the order is sought. Where the Court makes the order, such order shall be in Form No. 56 with such variations as may be necessary.

126. Preparation of statement of affairs: Any person who u/s 454 is required to submit and verify a statement as to the affairs of the company shall be furnished

by the Official Liquidator with the necessary forms and shall be given such instructions and afforded such reasonable facilities for preparing the statement as the Official Liquidator may in his discretion consider necessary.

11. On the basis of the facts narrated above, the first contention of the learned Counsel for the applicants is that the applicants could not be called upon to furnish statement of affairs u/s 454 of the Companies Act on account of the fact that the applicants had ceased to have any connection with the affairs of M/s. Altos India Limited well before the date of appointment of the official liquidator as provisional liquidator. In this behalf pointed attention of this Court has been invited to Sub-section (2) of Section 454 which mandates that statement of affairs is to be submitted and verified by those who occupy the position of directors, manger, secretary, chief officer etc. on the relevant date. The expression "relevant date" as defined in Section 454 (8) is the date on which the provisional liquidator is appointed, and in case no provisional liquidator is appointed, then it is the date on which the winding up order is passed. Insofar as the present controversy is concerned, undisputedly, "relevant date" for purposes of these company applications is 11.6.1998 i.e. the date, mis Court appointed official liquidator as the provisional liquidator for M/s. Altos India Limited. It is submitted by the learned Counsel for the applicants that on 11.6.1998 accused Nos. 3,4 and 5 were neither the directors of M/s. Altos India Limited nor were engaged in the employment of M/s. Altos India Limited in the capacity of manager, secretary or chief officer and as such they could not be called upon to furnish statement of affairs in terms of the provisions of Section 454. In this behalf, learned Counsel for the applicants have brought to die notice of this Court the decision rendered by mis Court in Pawanta Sahib Cement Works (P.) Ltd. (In Liquidation) Vs. Anil Saini and Others, , reliance therefrom has been placed on he following observations:

Sub-section of Section 454 of the Act requires that a statement as to the affairs of die Company shall be submitted and verified amongst others by one or more of the persons who are at the relevant date die Directors of the Company. The relevant date according to Sub-section (8) of Section 454, means the date on which a provisional liquidator is appointed and in a case where no such appointment is made the date of the winding up order. In die present case no provisional liquidator was appointed and, therefore, March 14, 1991 on which date the company was ordered to be wound up would be the relevant date. On this date, accused 2 to 5 were not the Directors of the Company and, therefore, they were not required to file the statement of affairs. The prosecution had thus, failed to prove that these accused were the Directors of the Company on the date of its winding up. They are, therefore, not guilty of having committed any offence under Sub-section (5) of Section 454 of the Act.

12. Learned Counsel representing the provisional liquidator has submitted that the expression "relevant date" applies only to the first part of Sub-section (2) of Section 454 of the Companies Act. It is submitted that the aforesaid expression

is relevant only for the following portion of Sub-section (2):

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company,....

It is submitted by the learned Counsel for the provisional liquidator that the expression "relevant date" has no applicability vis-a-vis a person called upon by the provisional liquidator to furnish statement of affairs in exercise of powers vested in him in the latter part of Sub-section (2) of Section 454 i.e. part of Sub-section (2) of Section 454 following the portion extracted hereinabove. To substantiate that Sub-section (2) of Section 454 of the Companies Act, 1956 comprises of two distinct aspects, learned Counsel has relied upon *Poomuli Manakkal Anujan Nambudiripad v. Official Liquidator*, (1979) 49 Comp. Cas. 81, and placed reliance on the following observations:

..... Under the first part of Section 454(2) of the Companies Act, persons who were directors on the "relevant date" - date of appointment of provisional liquidator and where no such appointment has been made, date of winding up order-and the person, who on that date was the manager, secretary or other chief officer of the company have perforce to submit and verify to the official liquidator the statement of affairs of the company. The latter part of that Sub-section enables the official liquidator, "subject to the direction of the court" to require he persons mentioned in cls. (a) to (d) therein to submit and verify the statement. The court has, therefore, power to direct the official liquidator to call for such statements from all or any of the persons mentioned in cls. (a) to (d), and the official liquidator is empowered by the section itself to require all or any of them to submit and verify a statement of affairs of the company.

In this behalf it is submitted that the directors, manager, secretary and chief officers of the company by the mandate of Section 454 must ipso facto submit statement of affairs within 21 days from the "relevant date". However, the term "relevant date" does not apply to the latter part of Sub-section (2). It is submitted that the power vested in the official liquidator under Sub-section (2) to require statement of affairs to be furnished by persons envisaged under Clauses (a) to (d) in Sub-section (2) constitute a residuary power vested in the official liquidator in case it is not possible for him to obtain the statement of affairs from the functionaries delineated in the first part of Sub-section (2) of Section 454. In this behalf, it is submitted that since no statement of affairs were furnished to the official liquidator within the stipulated period of 21 days by those envisaged by the first part of the Sub-section (2) of Section 454, the official liquidator addressed a communication dated 26.11.1998 requiring Sarvshri N.S. Parulekar, Dadan Bhai, Stephen Aranha, N.R. Srinivasan and Smt. Hema Chand to furnish the statement of affairs in furtherance of the powers vested in him under the latter part of Sub-section (2). Despite the aforesaid effort of the official liquidator, none of the accused in C.P. No. 95 of 1999 has till date submitted the statement of affairs and as such they were liable to be proceeded against u/s

454(5) of the aforesaid Act.

13. I have examined the first contention. If the argument addressed on behalf of the official liquidator is to be accepted, it must be concluded as a matter of fact that all the accused in C.P. No. 95 of 1999 had been called upon to submit their statement of affairs in terms of the power vested with the official liquidator in the latter part of Sub-section (2) of Section 454. On applying itself to the aforesaid question it is not possible for this Court to hold that the official liquidator had called upon the accused in CP. No. 95 of 1999 to furnish the statement of affairs in terms of the latter part of Sub-section (2) of Section 454. The reasons for arriving at the aforesaid conclusion are as under:

i) the official liquidator under the latter part of Sub-section (2) of Section 454 of the Companies Act can call upon persons specified in Clauses (a) to (d) to submit and verify statement of affairs only with the prior approval/directions of this Court. The narration of facts in C.P. No. 95 of 1999 does not disclose that the official liquidator had addressed the communication dated 26.11.1998 with the prior approval/direction of mis Court. It is, therefore, obvious that the accused in C.P. No. 95 of 1999 had been called upon to furnish the statement of affairs only in terms of first part of Sub-section (2) of Section 454;

ii) Under Rule 125 of the Companies (Court) Rules, 1959, the official liquidator must apply to the Company Court for an order to direct any person who in his opinion is liable to furnish a statement of affairs u/s 454. Notice of the aforesaid application is liable to be served to such person. It is only after hearing such person that Court may pass the necessary order in Form No. 56. In the instant case no application has been made by the official liquidator under Rule 125 (supra) nor any notice has been issued by this Court as required in terms of the Rule 126. The facts again lead to the conclusion drawn at (i) above. For the aforesaid two reasons, it is not possible for this Court to accept that the official liquidator had required the accused in C.P. No. 95 of 1999 to furnish, statement of affairs envisaged under he latter part of Sub-section (2) of Section 454 of the Companies Act. In the aforesaid view of the matter, it is evident that the argument advanced on behalf of the Petitioner against the applicants herein is wholly misconceived.

14. Since it has been conceded by the learned Counsel for the non-applicants that the requirement to furnish statement of affairs by those envisaged in the first part of Sub-section (2) of Section 454 are subject to the condition that such person were associated with the affairs of the Company in question on the "relevant date", it must naturally be concluded on the basis of facts narrated above that the three applicants i.e. accused Nos. 3, 4 and 5 had ceased to have any nexus with M/s. Altos India Limited well before the date of appointment of the official liquidator as provisional liquidator (on 11.6.1998). They cannot as such be considered to be governed by the provisions of Section 454 accordingly they cannot be called upon to furnish the statement of affairs as envisaged therein.

15. The instant order/judgment should not be considered to be a conclusion drawn by this Court that the expression "relevant date" does not apply to the latter part of Sub-section (2) of Section 454. No finding has been recorded on the aforesaid issue in view of the fact that it has been concluded hereinabove that so far as the present case is concerned, the provisional liquidator had only invoked the claims for supply of statement of affairs under the first part of Sub-section (2) of Section 454.

16. The second submission advanced on behalf of the applicants is that it is incumbent on the official liquidator to establish that the accused u/s 454 of the Companies Act have committed default without "reasonable excuse". In this behalf, learned Counsel for the applicants have relied upon a Division Bench judgment rendered by the Delhi High Court in *Devinder Kishore Mehra v. Official Liquidator and others* [1980] 50 Comp. Cas. 699. Reliance was also placed on *The Official Liquidator Vs. Surya Partap Singh and Others*, wherein the law laid down is that u/s 454(5) of the Companies Act, 1956, the burden of proving that the accused had no "reasonable excuse" for not filing the statement of affairs is on the prosecution, in the first instance. It is submitted that the "act of not filing statement of affairs" is punishable only if it is "without reasonable excuse" and as such absence of reasonable excuse is an essential ingredient of the offence envisaged under the aforesaid provision. It is submitted that the burden of proof placed on the prosecution can be discharged if it is shown that the books and records of the company from which the statement of affairs can be prepared are available and accessible to the accused and despite their availability and accessibility statement of affairs is not filed. It is only if the prosecution succeeds in establishing the aforesaid fact that the burden of proof will shift on the accused to establish that for some justifiable reasons it has not been possible to file the statement of affairs.

17. The averments made in C.P. No. 95 of 1999 do not reveal any assertion that the accused are in possession of books and records of the company from which statement of affairs can be prepared. So far C.A. No. 332 of 1999 is concerned, it is the case of applicant-accused No. 5 that he has severed his relationship with M/s. Altos India Limited having resigned from the position of company secretary on 5.1.1998, further on account of the fact that he was not dealing with the financial affairs of M/s. Altos India Limited, he is not in an effective position either to file the statement of affairs. Likewise in C.A. No. 636 of 1999, the applicant-accused No. 4, who was one of the directors of the company, resigned therefrom on 13.4.1998 and, therefore, severed his relationship with M/s. Altos India Limited. It is expressly stated in the application that he having severed his relationship with M/s. Altos India Limited, he is not in a position to file the statement of affairs. Similar is the position of applicant-accused No. 3, who has stated that she was only a nominee director on behalf of ICICI Limited. It has further been submitted that as a nominee director, she was not involved in the day-to-day management of the company and as such she was not in an effective position to file the statement of affairs. The aforesaid factual position has not

been refuted in the replies filed by the prosecution.

18. Learned Counsel for the non-applicant-Petitioner has, however, vehemently argued that it is not sufficient for the applicants to make a general statement to the effect that they are not in a position to file statement of affairs. The aforesaid general statement cannot be accepted in law. In view of the fact that the applicants-accused were associated with M/s. Altos India Limited, either in the capacity of director, or in the capacity of company secretary, it is natural to presume that they had the necessary materials to prepare the statement of affairs. It is submitted that if the claim of the applicants is accepted, the statement of affairs will never be available and as such it will be impossible for the provisional liquidator to proceed any further. It is vehemently contended that the non-availability of the statement of affairs would be detrimental to the interest of one and all; especially to the interest of creditors.

19. In view of the judgments referred to above, the legal position propounded in the judgments relied upon by the learned Counsel for the applicants, and even on the plain reading of the provisions of Sub-section (5) and (5A) of Section 454 of the Companies Act, it is obvious that one of the essential ingredients of the offence envisaged in the aforesaid provision is that the accused "without reasonable excuse" should have failed to furnish the statement of affairs. It is, therefore, natural that the onus to prove the aforesaid essential ingredients squarely lies on the shoulders of the prosecution. In the absence of even the faintest suggestion in the pleadings of the company petition No. 95 of 1999 that the applicant-accused had not submitted the statement of affairs without reasonable excuse and even now despite the applicants having expressly alleged that they are not in a position to file the statement of affairs; in the replies filed by the non-applicant Petitioners, it has not been asserted that applicants-accused were indeed in possession of the requisite material on the basis of which statement of affairs could be prepared and despite the availability of such resources they had without "reasonable excuse" failed to file the statement of affairs despite the express mandate of Section 454 of the Companies Act. In the background of the undisputed factual position emerging out of the pleadings, this Court has no hesitation in concluding that one of the essential ingredients which is a pre-requisite for the offence envisaged in Sub-section (5) & (5A) of Section 454 of the Companies Act, 1956 having not even been alleged against the applicants-accused, as such it would not be justified to require them to suffer a prosecution, which at the end of the day is liable to fail. Even the second submission made on behalf of the applicants justifies that the prosecution against the applicants should not be continued.

20. This Court having arrived at the conclusions that the applicants i.e. accused Nos. 3, 4 and 5 could not be required to submit statement of affairs envisaged in the first part of Sub-section (2) of Section 454 of the Companies Act, 1956 on account of the fact that they had severed their relationship with M/s. Altos India Limited before 11.6.1998 i.e. the date on which this Court while allowing C.A.

No. 442 of 1997 had appointed the official liquidator as its provisional liquidator; this Court further having arrived at the conclusion that in the absence of pleadings in respect of one of the essential ingredients of the offence envisaged u/s 454 of the Companies Act, 1956. it is wholly impermissible to proceed against the applicants-accused Nos. 3, 4 and 5. Accordingly, C.A. No. 332 of 1999, C.A. No. 636 of 1999 and C.A. No. 730 of 2000 are allowed, the names of the applicants-accused Nos. 3, 4 and 5 are directed to be struck off from the array of accused in C.P. No. 95 of 1999.