(2008) 04 GUJ CK 0067

In the Gujarat High Court

Case No : Criminal Case No. 4 of 2005 in Company Petition No. 255 of 2000

O.L. of Ilaxi Modi Export Pvt. Ltd. APPELLANT

Vs

Ilaxi D. Modi and Others RESPONDENT

Date of Decision : 17-04-2008

Acts Referred:

Companies (Court) Rules, 1959 — Rule 130
Companies Act, 1956 — Section 146(1), 162, 166, 209(5), 210

Citation : (2008) 144 CompCas 277 : (2008) 3 CompLJ 534

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Official Liquidator and Hiren M. Modi, for Complainant 1, for the Appellant; Manish J. Patel, for Accused 1, Manoj N. Popat, for Accused 2 and Dharmesh V. Shah, for Accused 3, for the Respondent

Judgement

K.A. Puj, J.—Official Liquidator has filed this criminal complaint u/s 454(4) of the Companies Act, 1956 against the accused Nos. 1 to 3, who were ex-directors of M/s. Ilaxi Modi Exports Pvt. Ltd. (In Liquidation) requesting this Court to take cognizance of the default committed by them u/s 454(5) of the Companies Act, 1956 and to issue process against them. The Official Liquidator has also prayed for the directions to the accused Nos. 1 to 3 to submit the statements of affairs before him in the statutory form and to attend to his office for the purpose of recording their statement under Rule 130 of the Companies (Court) Rules, 1959.

2. This Court has issued process on 9.5.2005. This Court further issued bailable warrants on 7.2.2006 in the sum of Rs. 10,000/- for production of accused Nos. 1 and 2 before this Court as despite service of notices, they have not remained present before the Court. The accused Nos. 1 and 2 remained present along with their counsels on 27.4.2006. Mr. Manish J. Patel learned advocate appeared on behalf of the accused No. 1 and Mr. Manoj N. Popat learned advocate appeared on behalf of the accused No. 2. Time was prayed for, for the purpose of filing reply to the criminal case. Since the statement of affairs was not filed, this Court has further passed order on 8.8.2006 directing all the three accused to remain

personally present. By this time, an appearance of Mr. Dharmesh V. Shah, learned Counsel, is filed on behalf of accused No. 3. Accused No. 3 has filed his affidavit-in-reply on 22nd June, 2005 and additional affidavit was filed by him on 1st April, 2006. The facts stated and averments made by the accused No. 3 in his affidavit were denied by the accused No. 2. This Court has further ordered on 27.9.2006 observing therein that if the statement of affairs were not filed, straightway the criminal case would be taken up for hearing, on the next returnable date, which was fixed as 6th October, 2006.Since, the statement of affairs was filed, a submission was made on behalf of the accused on 6.10.2006 that further affidavits in reply were to be filed by other accused in support of the statement of affairs.

3. Since there were certain defects in the statement of affairs filed by the accused and since the same were communicated to the accused, different orders were passed by the Court from time to time. In the order dated 17.3.2008, this Court has specifically observed that in the statement of affairs, all columns were shown nil except the column of loan and advance against which, the amount of Rs. 50,00,000/- was mentioned. Even on the liability side, estimated unsecured balance of claim of creditor, is mentioned as Rs. 50,00,000/-. In schedule-3 under the head loans and advances, date of advance is shown as 10.9.1998 and advance was made to M/s. Modi Exports. The value of the realizable debt is again shown as nil. After scrutinizing the statement of affairs, the Official Liquidator wrote a letter to one of the Directors, namely, Ms. Ilaxi D. Modi accused No. 1 herein, wherein it is stated that no information has been furnished in the statement of affairs except a transaction of receiving an amount of Rs. 50,00,000/- from one Mr. Mohandas Adnani and paying the said amount of Rs. 50,00,000/- to a partnership firm of M/s. Modi Exports. All other columns and schedules of the statement of affairs do not contain any information since only nil words are written against each and every column. The Official Liquidator was, therefore, of the view that statement of affairs was not complete and the accused were directed to file complete statement of affairs and also surrender books of accounts of the company in the office of the Official Liquidator. The Official Liquidator has also inquired about the matter that loan and advance of Rs. 50,00,000/- are recoverable from M/s. Modi Exports as per the books of accounts. However, estimated realizable value is shown as nil. It was also stated in the said letter that the partnership firm of M/s. Modi Exports is a firm in which accused No. 1 is a partner and she has stated that estimated realizable value of the debt is nil. The Official Liquidator has, therefore, called for justification of supporting documents as to on what basis and under what circumstances they have estimated the realizable value of debt of Rs. 50,00,000/- as nil from M/s. Modi Exports in which the accused No. 1 is a partner. The Official Liquidator has also asked the accused No. 1 to furnish the details and evidence about the transaction of Rs. 50,00,000/- received from Mr. Mohandas Adnani. If the amount was repaid to the said Mr. Mohandas Adnani, from which source the company had paid the amount, and on what basis settlement was arrived at.

Since, no explanation was furnished with regard to the said transaction, Official Liquidator was of the view that the amount has been siphoned off or misappropriated and, therefore, the explanation was asked for as to why the proceedings for misappropriation and siphoning off the funds of Rs. 50,00,000/- of the Company should not be initiated u/s 543 of the Companies Act, 1956.

4. In response to the said notice of the Official Liquidator, reply dated 12th March, 2008 was given by the accused No. 1 stating that the matter was settled with said Mr. Mohandas Adnani. A letter dated 23rd December, 2004 received from said Mr. Mohandas Adnani by Mr. Ratnakar Munshi, accused No. 2 was placed on record of this case, wherein said Mr. Mohandas Adnani stated that all his dues with the Company towards cheque issued by him in 1998 for an amount of Rs. 50,00,000/- have been settled and that there were no dues payable by the company and/or it''s directors or any officer of the Company to him. It is, however, not stated in the said letter as to how much amount has been paid and from which source and by whom the said amount has been paid by virtue of which, the said letter was issued stating that the amount has been paid and matter is settled between the parties.

5. Since there were several questions which still remain unanswered, the personal presence of all the three accused persons were necessary and, therefore, the Court directed them to remain personally present before the Official Liquidator for recording their statement under Rule 130 of the Companies (Court)Rules 1959.

6. Accordingly, all the three accused remained personally present before the Official Liquidator on 25.3.2008 and their statements under Rule 130 of the Companies (Court) Rules, 1959 were recorded by him. However, no satisfactory answer was received with regard to the amount of Rs. 50,00,000/-, which were given by the Company to the partnership firm of M/s. Modi Exports. The Court, therefore, observed in it''s order dated 26.3.2008 that pursuant to the directions given by this Court in Company Petition No. 110 of 2001, the Inspector has submitted his report on 14.5.2002. However, what actions were taken by the Registrar of Companies pursuant to the said order, was not known. The Court, therefore, directed the Official Liquidator to inquire from the Registrar of Companies with regard to the steps taken by him and to place the details on the record of this Criminal Case. Pursuant the said directions, the Official Liquidator has filed his report on 7th April, 2008 wherein he has stated that he has made an inquiry with the Registrar of Companies and a letter dated 31.3.2008 was received from the office of the Registrar of Companies. It was stated, therein, that during the course of investigation, the Investigating Officer has observed various irregularities. On the basis of the said Investigation Report, the Ministry of Corporate Affairs, New Delhi, vide letter dated 5.9.2002 instructed the Registrar of Companies to file prosecutions under Sections 240(3), 146(1) and 209(5) and under Sections 162, 166, 210 and 220 of the Act. Accordingly, the office of the Registrar of Companies had already filed prosecutions under

Sections 240(3), 146(1), 209(5) and also for non-filing of Balance Sheets and Annual Reports for the years 1998 to 2001 in the Court of Chief Metropolitan Magistrate, Ahmedabad. All these cases are pending before the said Court.

7. In above view of the matter, the Court has finally heard the matter on 9.4.2008. All the three accused were personally present before the Court. Learned advocate Mr. Manish J. Patel, Manoj N. Popat and Dharmesh V. Shah appearing for the accused Nos. 1 to 3 respectively have made their submissions. The accused have also made it very clear that they have not to say anything further beyond what they have stated before the Official Liquidator in their statements recorded under Rule 130 of the Companies (Court) Rules, 1959. The Court has also considered the various reports filed by the Official Liquidator from time to time.

8. The main substance of the arguments of Mr. Manish Patel, learned advocate appearing for the accused No. 1, which is based on the affidavit-in-reply by her on 26th April, 2006, is that the accused No. 1 had resigned as Director on 8.9.1998. Form No,.32 was duly filed with the Registrar of Companies and the same is placed on record. He has further submitted that the accused No. 1 had filed application form for striking off the name of the Company u/s 560 of the Companies Act, 1956 under Simplified Exit Scheme on 16.8.2005 with affidavit and indemnity bond and stated that till the date of filing of the application, no dues towards Income Tax, Sales Tax, Central Excise, banks and financial institutions or any other central or state departments/authorities or any local authorities, are outstanding. He has further submitted that after incorporation of the Company, the Company has not entered into any transactions nor made any business. He has further submitted that the accused No. 1 being lady, was not looking after the day to day business/transactions of the Company. Mr. Ninad Raje, accused No. 3 was looking after all the activities of the Company. He has further submitted that another Director Mr. Ratnakar Munshi, accused No. 2, herein is the close relative of the accused No. 3 and the brother of accused No. 2, i.e. Mr. Anil Munshi was also associated with the affairs of the Company and said Mr. Munshi and Mr. Raje both were looking after the business of the Company. He has, therefore, submitted that accused No. 1 has not committed any offence u/s 454 of the Companies Act, 1956 and hence she should not be made liable for any action.

9. Mr. Manoj Popat, learned advocate appearing for the accused No. 2 has emphatically submitted before the Court on the basis of the affidavit filed by the accused No. 2 on 25th April, 2006 and the documents attached therewith that the accused No. 2 is 68 year old person suffering from various critical diseases. He was serving with Ahmedabad Electricity Company as a Senior Commercial Officer and retired on 30th April, 1998. He has, further submitted that in the year 1998 Mr. Ninad Raje came with a proposal to float an Export Company and his brother Mr. Anil Munshi and Ms. Ilaxi Modi agreed for the same. The accused No. 2 was not interested in any commercial activity. The accused No. 2 agreed to

become Director in the Company at the request of Mr. Ninad Raje and his brother with specific understanding that he would be Director for namesake only. He has further submitted that the accused No. 2 was not aware about the alleged loan transaction of Rs. 50,00,000/-. He has further submitted that even in the Investigation Report, the Investigating Officer after verifying all available records and statements of all the three Promoters of the Company and others have observed that the accused No. 2 did not appear to have any financial stake or personal involvement or any personal gain or benefit.

10. Mr. Dharmesh Shah learned advocate appearing for the accused No. 3 i.e. Mr. Ninad Raje has submitted on the basis of the affidavits filed by him on 22nd June, 2005 as well as 1st April, 2006 that he had already resigned from the Company. He did not have any details and/or information regarding affairs of the Company and therefore, he was not in a position to deal with the facts stated in the complaint. He has further stated that on the date of winding up of the Company the accused No. 3 was not a Director of the Company. He has tendered his resignation on 9th September, 1998 to the Company and the same was duly accepted by the Company. He has further submitted that the accused No. 1 was the main key person and Director of the Company and both accused No. 1 as well as 2 were looking after day to day business affairs and the management of the Company. He has further submitted that the accused No. 3 being a professional person, namely, Charted Accountant, was rendering his service to the Company. He has further submitted that the accused No. 3 came to know that his name still continued as a Director only when one Mr. Mohandas Adnani had filed a Company Petition No. 255 of 2000 for winding up of the Company, wherein notice has been served on him. He, therefore, wrote a letter to the Registrar of Companies intimating that he had already resigned from the Company. The accused No. 3 was, therefore, under a bona fide impression that necessary action must have been taken by the Registrar of Companies, more particularly, when there is a Departmental Circular stating that where a Registrar receives any communication from any Director about his resignation, the Registrar should inquire whether the resignation of such Director is or is not bona fide and if he finds that such Director has bona fide resigned from his Directorship of the Company, he should not start any prosecution against such Director, irrespective of the fact whether such resignation was or was not accepted by the Company. However, when the accused No. 3 has received a notice dated 5.3.2002 from Registrar of Companies for investigation u/s 237 of the Companies Act, 1956, he came to know that though the resignation has been tendered by him, his name was not deleted from the Company. He, therefore, again wrote a letter dated 5.4.2002 to the Registrar of Companies intimating about his resignation as Director of the Company. During the investigation by Registrar of Companies u/s 237 of the Companies Act, 1956, his statement was recorded by the Registrar of Companies on 15.4.2002 and the Registrar of Companies was informed about his resignation. However, neither the Registrar of Companies has taken any action against the Company nor record of the Registrar

of Companies has been corrected. He had, therefore, filed Form No. 32 with the Registrar of Companies on 27.5.2002 with charges as well as additional charges specifically mentioning that as the Company has not filled in Form No. 32 with the office of the Registrar of Companies, he was filling the said Form as Ex-Director of the Company. After scrutiny of the said Form by Registrar of Companies, the same was accepted and came to be registered by the Registrar of Companies, namely, Document No. 8 on 10.6.2002.

11. Based on the aforesaid submissions of the learned advocate appearing for their respective parties and considering the affidavits filed before the Court along with relevant documents, the Court is of the view that statutory requirements were complied with by the accused persons as the statement of affairs is filed before the Official Liquidator, though late and their statements were also recorded by the Official Liquidator under Rule 130 of the Companies (Court) Rules, 1959. All the three accused are shifting their burdens on each other and they are trying to escape from their responsibilities as an Ex-Directors of the Company to file the Statement of affairs. There is not much dispute about any other items except a transaction of Rs. 50,00,000/-, which were borrowed from one Mr. Mohahdas Adnani and the said amount had been transferred to M/s. Modi Exports, wherein the accused Nos. 1 and 2 are partners. This very transaction is a subject matter of a detailed inquiry and investigation carried out u/s 237 of the Companies Act, 1956, pursuant to the order passed by this Court on 19.12.2001 in Company Petition No. 110 of 2001.The relevant facts stated in the said report, findings arrived at and conclusions drawn by the Inspector are as under:

6.2 The company opened a current account on 9.9.98 with the State Bank of Hydrabad, Maninagar Branch, Ahmedabad by depositing Rs. 5000/- cash. The account No. of the company is 774. An amount of Rs. 50,00,000/- was credited in the company''s Account by Transfer on 10.9.98 and an amount of Rs. 50,00,000/- was debited to the company''s account on the same day i.e. on 10.9.98 through clearing leaving a balance of Rs. 5000/- only. These are the only three entries in the company''s Bank Account and there is no further transaction at all.

6.3 Shri Mohandas M. Adnani opened an O.D. Account with State Bank of Hydrabad, Maninagar Branch, Ahmedabad on 10.9.98, being O.D. Account No. 775. The very first cheque bearing No. 243001 was issued by Shri Mohandas M. Adnani on 10.9.98, in favour of Ilaxi Modi Exports Pvt. Ltd. for an amount of Rs. 50,00,000/-. A copy of the said cheque as collected, is annexed with this report as Annexure-F. As seen from back side of the cheque, it was deposited by Ilaxi Modi in the Bank Account of Ilaxi Modi Exports Pvt. Ltd. on 10.9.98 and the account of the company was credited by Rs. 50,00,000/- by transfer on 10.9.98 itself. These facts indicate beyond doubt that an amount of Rs. 50,00,000/- has been received by the company from Shri Mohandas M. Adnani. The receipt of this amount has also been confirmed by the directors of the company in their statements, but it could not be verified as to what was the purpose and term of this transaction and what was the rate of interest, if any. Shri Adnani also could not produce any document describing the nature of transaction or rate or interest, if any, though he was asked to submit documentary evidences, if any, he is having in support of his averments made in the petition.

Incidentally, during the course of investigation while visiting State Bank of Hydrabad, Maninagar Branch, Ahmedabad, it was noticed that C.B.I has seized various cheques and documents in connection with investigation of case No. RC2(A)/2002-CBI, Gandhinagar, including the cheque No. 243001 dated 10.9.98 for Rs. 50,00,000/- of O.D. Account No. 775 issued in the name of Ilaxi Modi Exports Pvt. Ltd. The Account No. 775 is of Shri Mohandas M. Adnani. A copy of C.B.I''s production memo dated 14.2.2002 is annexed with this report and marked as Annexure G''.

6.4 From the documents collected from State Bank of Hydrabad, Maninagar Branch, Ahmedabad, it is observed that company''s application for opening the Bank Account is not available with the Bank. There is no Board Resolution also for opening the Account with the Bank. However, the specimen signature card indicates that Ilaxi Modi and Ninad Raje were authorized to operate the Bank Account singly or jointly. The signature of I.D. Modi is verified by Manager, Bank of Maharashtra and the signature of Ninad Raje is verified by Manager, Syndicate Bank. A copy of the specimen signature card for account No. 774 is annexed with the report and marked as Annexure-H.

6.5 On very first day of opening the company''s Bank account with State Bank of Hydrabad, i.e. 9.9.98 itself, a cheque of Rs. 50,00,000/- is issued in favour of Modi Exports. The cheque No. 242901 so issued on 9.9.98 is written by Ilaxi Modi herself in her own handwriting and is signed also by her as a Director of Ilaxi Modi Exports Pvt. Ltd. It is pertinent to note that there was credit balance of Rs. 5000/- only in the company''s account on 9.9.98, as the account was opened on 9.9.98 with Rs. 5,000/-, still a cheque of Rs. 50,00,000/- is issued on 9.9.98 without having sufficient balance in the account. However this cheque was not deposited in the Syndicate Bank on 9.9.98 where the Modi Exports is having the Bank Account, but was deposited in Syndicate Bank on 10.9.98 after depositing the cheque issued by Shri Mohandas Adnani, on 10.9.98 in the company''s account with State Bank of Hydrabad. From these facts it is crystal clear that the amount of Rs. 50,00,000/- received by the company from Shri Mohandas Adnani, on 10.9.98, was transferred to a partnership firm Modi Exports, on very same day.

6.6 The investigation revealed that Modi Exports is a Partnership Firm constituted by two partners, namely, Smt. Ilaxi D. Modi and Shri Ratnakar M. Munshi as per the deed of partnership executed on 21.5.98. A copy of the said partnership deed dated 21.5.98 is annexed to this report and marked as Annexure-I. The Modi Exports is having a Bank Account in Syndicate Bank, Navrangpura Branch, Ahmedabad, being the current account No. 1219. As per the Statement of account of Modi Exports with Syndicate Bank, there was a credit balance of Rs.

440 only as on 5.9.98 and an amount of Rs. 50,00,000/- is credited in Modi Exports'' account on 10.9.98 by clearing. This amount of Rs. 50,00,000/- is undoubtedly the amount transferred from Ilaxi Modi Exports Pvt. Ltd.''s Account vide cheque No. 242901 dated 9.9.98. These facts reveal that the amount of Rs. 50,00,000/- received by the company on 10.9.98 from Shri Mohandas M. Adnani, have been siphoned off and misappropriated on 10.9.98 itself by the director of the company namely Ilaxi Modi, by transferring it to a partnership firm constituted by herself and another director Shri Ratnakar Munshi.

6.7 On verification of the records of Syndicate Bank, Navrangpura, Ahmedabad it revealed that an application was made to Syndicate Bank to open a current Account in the name of Modi Exports on 23.5.98. As per Bank records Modi Exports is a partnership firm constituted by Shri Ratnakar Munshi and Ms. Ilaxi Modi. The current Account No. 1219 was opened in Syndicate Bank on 23.5.98 in the name of Modi Exports. The Partners of Modi Exports were introduced to the Bank by Shri Ninad Raje as Proprietor of Raje Financial Consultancy Services who is also having current Account No. 872 in the same Bank and same branch. As per the Account operating instructions to the Bank for the current account No. 1219, the account of Modi Exports could be operated by any of the partners namely Ratnakar Munshi or Ilaxi Modi.

6.8 As per the Bank Statement(Syndicate Bank, current Account No. 1219- Modi Exports), a cheque of Rs. 50,00,000/- is deposited in this account on 10.9.98. As per the Pay-in-slip, it was the cheque No. 242901 of State Bank of Hydrabad, Maninagar Branch, Ahmedabad. The pay-in-slip is filled up and signed by Shri Ninad Raje on 9.9.98 i.e. before the amount of Rs. 50,00,000/- was received by the company(i.e. Ilaxi Modi Exports Pvt. Ltd.), who has issued the cheque No. 242901 from its current account No. 774 with State Bank of Hydrabad. These facts sufficiently prove that siphoning of company''s funds was pre-planned and all the directors of the company acted in concert and connivance of each other in the nature of a conspiracy to swallow the money anticipated from Shri. Mohandad M. Adnani which anticipation was in fact materialized.

7. The end use of funds of Rs. 50,00,000/- received in Modi Exports from Ilaxi Modi Exports Pvt. Ltd.

7.1 An amount of Rs. 15,00,000/- is immediately withdrawn from Modi Exports'' account, in cash on 11.9.98 by issuing a self cheque being cheque No. 298527. This cheque is written by Shri Ninad Raje and is signed by Ms. Ilaxi Modi as partner of Modi Exports. On back side of the cheque also Ms. Ilaxi Modi has signed as partner of Modi Exports and Shri Ninad Raje has also signed twice, in token of having received Rs. 15,00,000/- in cash from the Bank. These facts show that the amount of Rs. 15,00,000/- is misappropriated by Ilaxi Modi and Ninad Raje who have acted in unison with each other. However, in their statements recorded before the Inspector, Ilaxi Modi alleged that money is taken away by Ninad Raje as she handed over signed cheque book to him and Shri Ninad Raje has alleged that he wrote the cheque at the instructions of Ilaxi Modi, collected the money from the Bank at the instructions of Ilaxi Modi, and handed over the cash of Rs. 15,00,000/- to Ilaxi Modi. Their statements are per se false.

7.2 Again on the same day, another cheque No. 298532 is written by Shri Ninad Raje on 11.9.98 for Rs. 6,00,000/- in the name of Labh Construction and Industries Ltd. This cheque is also signed by Ilaxi Modi. On specific questions neither Ilaxi Modi nor Shri Ninad Raje disclosed as to why this amount of Rs. 6,00,000/- was paid from Modi Exports'' account to Labh Construction & Industries Ltd. In their statements both of them have expressed ignorance making allegations against each other. The amount of Rs. 6,00,000/- has gone to Labh Construction & Industries Ltd. for undisclosed purposes. The company has not maintained records of transactions like bill, contract note, invoice or vouchers etc.

7.3 On the next day i.e. 12.9.98, another cheque being cheque No. 298533 is issued for an amount of Rs. 5,00,000/- in favour of Labh Construction & Industries Ltd. This cheque is also written by Ninad Raje and is signed by Ilaxi Modi. In respect of this cheque also, both of them have shown ignorance and have made allegations against each other. From their attitude it seems that either there is some undisclosed dispute between them or they are still behaving in concert to hide the facts and mislead the investigation.

7.4 On 12.9.98, another cheque, being cheque No. 298535 is written by Shri Ninad Raje for an amount of Rs. 5,00,000/- in favour of S.R. Investment. This cheque is also signed by Ilaxi Modi. On specific questions, neither Shri Ninad Raje nor Ilaxi Modi disclosed the purpose of paying Rs. 5,00,000/- to S.R. Investment, on the contrary both of them expressed ignorance about the identity of S.R. Investment or its relations with Modi Exports or its partners.

7.5 On 12.9.98 itself one more cheque is issued being cheque No. 298537 for an amount of Rs. 23,16,500/- in favour of Shri Anil Munshi. This cheque is also signed by Ilaxi Modi but it is not a handwritten cheque. This cheque is typed one. On 12.9.98 three cheques are issued. Two are handwritten and written by Shri Ninad Raje whereas the third one is typewritten issued in favour of Shri Anil Munshi. Shri Anil Munshi is brother of Shri Ratnakar Munshi and he appeared before the Inspector voluntarily on behalf of Shri Ratnakar Munshi and stated that he is not aware why this money was transferred from Modi Exports account to his account. Shri Anil Munshi also made allegations against Shri Ninad Raje saying that it is done by Ninad Raje who was working for him and had with him the signed cheque book of Shri Anil Munshi also. The statement of Shri Anil Munshi makes it clear that he was fully aware of entire affairs of the company and Modi Exports also and he was silently but actively and deeply involved in the affairs of the company and Modi Exports. This point is elaborately dealt with separately in this report hereafter.

7.6 On 18.9.98, a cheque bearing No. 298538 is issued for an amount of Rs. 80,500/- in favour of Raje Financial Consultancy Services, the Proprietary concern of Shri Ninad Raje. This cheque is written by Shri Ninad Raje and signed by Ilaxi Modi as partner of Modi Exports. In respect of this cheque, on asking specific question, Ilaxi Modi stated that she does not know anything as she had given signed blank cheque book to Shri Ninad Raje, whereas Shri Ninad Raje stated that he received this payment from Modi Exports towards fee for rendering professional services.

8. Involvement of Shri Anil Munshi in siphoning off the funds.

8.1 As discussed in para 7.5 above, an amount of Rs. 23,16,500/- was transferred from Modi Exports'' account vide cheque No. 298537 dt.12.9.988 to Shri Anil Munshi''s account. On further verification of Bank records, it is found that Shri Anil Munshi is also having a savings Account in Syndicate Bank, Navrangpura, Ahmedabad being SB A/c. No. 5987. The Ledger extract of SB. A/c. No. 5987 with Syndicate Bank reveals that an amount of Rs. 2,00,000/- is deposited in this account by cash on 18.8.98 and the said amount of Rs. 2,00,000/- was paid on the same day vide cheque No. 15466 to Raje Financial Consultancy Services. This transaction is of 18.8.98 i.e. before the incorporation of Ilaxi Modi Exports Pvt. Ltd. as the company was incorporated on 31.8.98. This transaction clearly shows that there were dealings between Shri Anil Munshi and Shri Ninad Raje, even before formation of Ilaxi Modi Exports Pvt. Ltd.

8.2 On 14.9.98 an amount of Rs. 23,16,500/- is credited to Shri Anil Munshi''s S.B. A/c. No. 5987 by clearing from Account No. 1219. The account No. 1219 is Modi Exports'' account. An amount of Rs. 21,36,000/- is paid by Shri Anil Munshi vide cheque No. 15467 dt.12.9.98 to Raje Financial Consultancy Services (i.e. Shri Ninad Raje) and the same is debited from his account on 14.9.98 to account No. 872. This transaction shows that out of the amount of Rs. 23,16,5000/- (which came from Modi Exports), an amount of Rs. 21,00,000/- has ultimately gone to Shri Ninad Raje. On asking the specific questions in this regard. Shri Ninad Raje in his statement has not denied the receipt of money but he stated that the amount of Rs. 21,36,000/- was paid by Shri Anil Munshi to Raje Financial Consultancy Services (RFCS) towards money due from Anil Munshi to RFCS since RFCS was giving money to Shri Anil Munshi in his various property schemes from time to time. On the other hand Shri Anil Munshi has stated that this money is taken away by Shri Ninad Raje fraudulently by using his signed blank cheque book which was lying with Shri Ninad Raje. These facts of actual flow of money and contrary statement of Shri Anil Munshi and Shri Ninad Raje clearly show that they were having financial dealings for undisclosed purposes and the money has been siphoned off in squaring up their internal transactions/ dealings.

8.3 On 21.9.98, Shri Anil Munshi issued a cheque of Rs. 1,00,000/- in favour of Inland Realities & Finstock Pvt. Ltd. being cheque No. 15468. This cheque is debited from his account on 21.9.98 to account No. 1107. This cheque is written by Shri Ninad Raje and is signed by Shri Anil Munshi. Even on specific questions none disclosed anything about Inland Realities & Finstock Pvt. Ltd. or the purpose of making payment of Rs. 1,00,000/-

8.4 On 25.9.98, Shri Anil Munshi issued a cheque of Rs. 86,500/- in favour of Shruti Raje(the wife of Shri Ninad Raje), being cheque No. 15469. This cheque is also debited from his account on 25.9.98, leaving a balance of Rs. 894/- only and the account is dead since then. Shri Ninad Raje stated that his wife received this money because she had given loan to Shri Anil Munshi.

8.5 Shri Ninad Raje in his statement has stated that the registered office of Ilaxi Modi Exports Pvt. Ltd. and the place of business and the office of Shri Anil Munshi was same. Ilaxi Modi, the principle promoter director of the company and Shri Anil Munshi used to sit together at the same office and had jointly undertaken development of properties. Shri Anil Munshi also in his statement has admitted that Shri Ninad Raje was managing funds for him and he in fact borrowed some funds from Shri Ninad Raje. Shri Anil Munshi has further confirmed in his statement that he received finance from Inland Realities & Finstock Pvt. Ltd. through Shri Ninad Raje. From the reply of question No. 32 in the statement of Shri Anil Munshi, it reveals that Shri Anil Munshi is a Builder. He confirms that the amount of Rs. 50,00,000/-borrowed from Shri Mohandas M. Adnani has not been repaid to him in terms of money but Shir Anil Munshi has tried to convey that as the three units of the building constructed by him are in the possession of Shri Mohandas Adnani by forging the allotment papers in collusion with Shri Ninad Raje, his claim towards Rs. 50,00,000/- gets satisfied sine the value of those three units is about 60,00,000/-. From the above facts it transpires that Shri Anil Munshi who is an Architect by profession, and a builder by occupation, is the real man behind the entire conspiracy. He kept himself behind the screen in the name of his brother Shri Ratnakar Munshi who does not appear to have any financial stake or personal involvement or any personal gain or benefit.

9.0 Conclusion

From the foregoing discussion/observations, it may be concluded that the incorporation of the company i.e. Ilaxi Modi Exports Pvt. Ltd. was a part of conspiracy to borrow money on the faith of a genuine company but the route for siphoning of money was simultaneously masterminded by creating a bogus unregistered firm in the name of Modi Exports and to create legal hurdles and technical complications to avoid suit for recovery and other legal proceedings directly against Shri Anil Munshi, Shri Ninad Raje and Ms. Ilaxi Modi. M/s. Ilaxi Modi Exports Pvt. Ltd. is a paper company having no assets at all except Modi Exports as debtor for Rs. 50,00,000/- but Modi Exports is also a paper firm having no assets or business or actual existence. It is a case where corporate veil requires to be lifted and Shri Ratnakar Munshi, Shri Anil Munshi, Shri Ninad Raje and Ms. Ilaxi Modi require to be made jointly and severally personally liable and fully accountable for the liabilities of the company including the amount of Rs. 50,00,000/- borrowed by them from Mohandas M. Adnani, in the name of the Company.

12. From the above findings of the Inspector, it appears that the transaction of Rs. 50,00,000/- was elaborately dealt with in the Investigation Report and pursuant to the said report, several complaints are filed, which are pending before the trial Court. This Court leaves this entire issue for the decision of the trial Court. This Court has taken cognizance of this matter only for the limited purpose of deciding the issue as to whether the statement of affairs filed by the accused is correct or not. The Company has borrowed the amount from one Mr. Mohandas M. Adnani, who has stated in writing that the settlement was arrived at and he had not to recover any amount either from the Company or any of its Directors or officers. It is not in dispute that the amount has been transferred by the Company(In Liquidation) to the partnership firm and there is no corresponding entry to that effect that the partnership firm has repaid the said amount to the Company. Thus, the Company still remains as a Creditor of the partnership firm in the eye of law and since the company is in liquidation, the Official Liquidator is entitled to recover the said amount from the partnership firm by resorting to the provisions of Section 477 of the Companies Act, 1956. The Court is not convinced with the submissions of learned Counsels appearing for Respondent Nos. 1 and 2 that they have resigned as Directors much before the date of winding up order and hence they are not liable for default, if any, committed by the Company in liquidation. As a matter of fact, so far as transaction of Rs. 50,00,000/- is concerned, they are directly involved along with accused No. 3 and his brother and an ill-motivated and systematic attempt was made to transfer the amount of Rs. 50,00,000/- which is not reflected in the books of the accounts or in the Statement of affairs. Since all the three accused are facing criminal prosecution against them, the Court will not express any opinion on this issue in the present matter as it may otherwise cause prejudice to their defence in those criminal cases, which are still pending before the trial Court. However, looking to the documents produced before this Court and considering the submissions made and facts found, the Court holds that the statement of affairs is not filed in time nor it is found to be true and correct and hence the Court holds all the three accused guilty for an offence u/s 454(5) of the Act for their failure to file true and correct statement of affairs. But for the pendency of other criminal cases pending before the trial Court in relation to the transaction of Rs. 50,00,000/-, the Court would have considered the question of imprisonment for commission of default in complying with the requirement of Section 454 of the Companies Act, 1956. The Court, therefore, confines its order to the extent of imposition of fine of Rs. 10,000/- on each of the accused which shall be paid by them to the Official Liquidator within 30 days from today. Failure to deposit this amount would render them liable to undergo the sentence of one month imprisonment with immediate effect.

13. Subject to the aforesaid observations and directions, this Criminal Case is accordingly disposed off.

