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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.PET. 36/2013**

RE- M/S CATMOSS RETAIL PVT. LTD. Petitioner

Through: Mr. Ashish Upadhyay, Advocate with
Mr. Samrat, Advocate
Mr. Sangram Patnaik, Advocate with Ms.
Tania Sharma and Ms. Sonal Bhalla,
Advocates for the Ex-Director Mr.
Ashwani Chawla
Mr. Mayank Goel, Advocate for the
Official Liquidator

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER
% **21.02.2017**

CO.APPL.395/2017

The present application under Rule 9 of the Companies (Court) Rules, 1959 read with Section 457 of the Companies Act, 1956 (hereinafter referred to as the 'said Act'), filed on behalf of the applicant/Official Liquidator prays as follows:-

- "1. Take the application of the Official Liquidator on record.
2. Permit the Official Liquidator to institute and proceed with the accompanying complaint under sections 538, 539, 541, 542 and 543 of the Companies Act, 1956 against the following persons:-
 - a) Shri Ashwani Chawla
 - b) Smt. Asha Chawla
 - c) Smt. Reena Chawla."

Mr. Goel, learned counsel appearing on behalf of the applicant/Official Liquidator invites my attention to the provision of Section 457 of the said Act,



in particular Clause (1)(a) thereof, to urge that the prior sanction of the Company Court is essential before proceeding to institute any legal proceeding, civil or criminal, in the name and on behalf of the company in provisional liquidation.

A perusal of the application reveals that the same is predicated on a report furnished by the Serious Fraud Investigation Office (SFIO) on 15.01.2016 and in pursuance to the directions issued by this Court to the SFIO, by way of order dated 15.12.2014 to investigate into the affairs of the company in liquidation.

Needless to state that a perusal of the relief prayed for makes it axiomatic, that based on the sanction that may be granted by this Court, the Official Liquidator will be required to institute and proceed with the accompanying complaint under Sections 538, 539, 541, 542 and 543 of the said Act, against the Ex-Directors of the company in liquidation, named in the said SFIO report.

In that view of the matter, the stage at which the permission is being sought, is akin to the issuance of summons to an accused in a criminal proceeding.

Mr. Sangram Patnaik, learned counsel appearing on behalf of Mr. Ashwani Chawla, Ex-Director, does not seriously refute this legal position. Although, he prays for time to file a reply.

In my view, no notice or opportunity of hearing is warranted in law at this stage, since ample opportunity to raise a defence or objection to the SFIO report would be afforded to the Ex-Director, if and when a complaint instituted on behalf of the Official Liquidator is proceeded with, against the said Ex-Director.

Consequently, in my view, the present application deserves to be allowed. The Official Liquidator is permitted to institute and proceed with the accompanying complaint under Sections 538, 539, 541, 542 and 543 of the said Act, in accordance with law.



With the above directions, the application is allowed and disposed of accordingly.

SIDDHARTH MRIDUL, J

FEBRUARY 21, 2017

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