

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Company Application No. 6/2014

O/I Of M/s Thar Cements Ltd Jhunjhunu

-----Petitioner

Versus

Ram Niwas Agarwal And Others

-----Respondent

For Petitioner(s) : Mr. Vijay Choudhary, Adv.
Mr. U.S. patole, OL.

For Respondent(s) : Mr. Vinod Pathak, Adv. for
Mr. Amol Vyas, Adv.

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Order

09/08/2018

The points of claim have been filed by the counsel for the official liquidator wherein it is stated that the chartered accountant was appointed by the OL to examine the case of misfeasance and breach of trust committed by any person and a report has been submitted on 12.11.2013 detailing the instances thereto. It is stated that as per report the respondents who were directors of the company in liquidation have acted against the interest of the company and are jointly as well as the severally liable for the committing misfeasance and breach of trust and are thus liable for action under Section 543 of the Companies Act. The ex-directors have not filed statement of affairs. Learned counsel submits that independently the report of the OL shall also be submitted with regard to the provisions under Section 455 of the Act of 1956. Be that as it may, from the report as submitted by the chartered accountant, it is apparent that the company has been put to loss

on account of misfeasance, negligence and breach of trust of the directors on the basis of the instances as noted as under:-

- "1. For the Sum of Rs. 83,320/- in respect of value of vehicle not handed over to applicant.
2. For misappropriating the cash and bank balance amounting to Rs. 5.76 Lakh.
3. For loss caused to the company by misappropriating the inventory amounting to Rs. 140.97 Lakh.
4. For the loss of current assets i.e. Loans and advances amounting to Rs. 8.34 lakhs.
5. For the loss of current assets i.e. Sundry Debtors amounting to Rs. 164.11 Lakh.
6. For demand of central excise duty and penalty of Rs. 53,92,888/-."

In view thereof, proceedings may be undertaken.

In reply to the said points of claim, respondents have submitted preliminary objections and also pointed out that the respondent No.1 Ramniwas Agrawal has expired. It is also objected that the points of claim do not tally with the company application originally filed and the official liquidator is also seeking interest @18% per annum which was not there in the company application. It is stated that no application for amendment of the original company application has been moved under Order 6 Rule 17 and the points of claim being materially different are liable to be dismissed on the threshold. The affidavits of the Ramesh Chand Goyal, Suraj Devi and Ashok Gupta have been filed.

Whereafter an application has been moved under Rule 9 for deleting the name of the Ramniwas Agrawal by the counsel for the OL.

The said application has been allowed and Ramniwas Agrawal has been deleted from the array of the respondents.

Objections raised by the respondents with regard to the points of claim are noted to be rejected. The company application which is moved is a general application moved under Section 543 pointing out that the respondents have committed misfeasance after the application has been moved and the reply has been filed thereto. Thereafter, it was asked upon by this Court to the OL to submit points of claims so that exact amount may be mentioned as to the loss which may have been caused to the company. It is for that purpose that points of claims have been filed. The company rules already provide so; accordingly objection is found to be without any basis.

In view of the points of claim as noted above, it is directed that the proceedings under Section 543 as against all the directors as existing be continued and the affidavits to be filed by both the parties with permission to cross examination before the Dy. Registrar (Judicial).

Let file be now placed before the Dy. Registrar (Judicial) on 27.08.2018 who shall fix the dates for the purpose of cross examination after filing of the affidavits.

(SANJEEV PRAKASH SHARMA),J

R.Vaishnav

17.