

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 2<sup>nd</sup> DAY OF JUNE, 2026**

**BEFORE**

**THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE**

**COMPANY APPLICATION NO. 485 OF 2005**

**IN**

**COMPANY PETITION NO.143 OF 1997**

**BETWEEN:**

OFFICIAL LIQUIDATOR OF  
M/S SUNSU GARMENTS PVT LTD., (IN LIQN).  
HIGH COURT OF KARNATAKA,  
4<sup>TH</sup> FLOOR, D AND F WING,  
KENDRIYASADAN, KORAMANGALA,  
BANGALORE - 560 034.

...APPLICANT

(BY SRI SHRISHAIL NAVALGUND, OL)

**AND:**

1. SHRI M R PATEL,  
R/O NO 59, 6<sup>TH</sup> CROSS, MLA LAYOUT,  
RMV II STAGE, NEW BEL ROAD,  
BANGALORE - 560 094.
2. SMT. KUSUMA PATEL,  
R/O NO 59, 6<sup>TH</sup> CROSS,  
MLA LAYOUT, RMV II STAGE,  
NEW BEL ROAD,  
BANGALORE - 560 094.
3. SRI. R M SURESH CHANDRA,  
R/O NO 164, AGS LAYOUT COLONY,  
NEW BEL ROAD, BANGALORE - 560 094.
4. SMT. PARVATHI,



W/O R M SURESH CHANDRA,  
164, AGS LAYOUT COLONY,  
NEW BEL ROAD, BANGALORE - 560 094.

5. SRI R M SUNDRESH,  
S/O LATE R MARISWAMY,  
164, AGS LAYOUT COLONY,  
NEW BEL ROAD, BANGALORE - 560 094.

...RESPONDENTS

(BY SMT YUKTHA ANIL, ADVOCATE FOR R1 AND R2 (NOC),  
R3 TO R5 SERVED THROUGH SUB-SERVICE BY THE WAY OF  
AFFIXTURE)

THIS COMPANY APPLICATION IS FILED UNDER SECTION 543(1) OF THE COMPANIES ACT, 1956 READ WITH RULE 260 OF THE COMPANIES (COURT) RULES, 1959 PRAYING THAT FOR THE REASONS STATED THEREIN THIS HON'BLE COURT MAY BE PLEASED TO SUMMON THE RESPONDENTS NO.1 TO 5 HEREIN FOR THE PURPOSE OF EXAMINATION IN REGARD TO THE MATTER AS SPECIFIED IN THE APPLICATION.

THIS COMPANY APPLICATION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01<sup>ST</sup> APRIL, 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

**CAV ORDER**

The application by the Official Liquidator to pass an order against respondents No.1 to 5 jointly or severally to pay ₹3,70,19,994/- along with interest at the rate of 18% per annum from 31.03.1998 till payment. The claim is under 4 heads.

2. The first head is for recovery of ₹23,87,765.90/- in respect of cash in hand with the Company in liquidation.

3. The second claim is for recovery of ₹66,20,336.38/- in respect of the money kept in Bank account.

4. The third claim is in respect of the money due from sundry debtors and said claim is for ₹2,67,63,090/-. The fourth claim is for recovery of loans and advances amounting to ₹12,48,802.11/-.

5. It is not in dispute that the Company by name M/s. Sunsu Garments Pvt Ltd., was ordered to be wound up in terms of order dated 12.06.2000. The Official Liquidator pursuant to the order of winding up has taken custody of the assets of the Company on 24.07.2000 and mahazar was drawn on the very same day.

6. The respondents No.1 to 5 have not handed over the balance sheet and the statement of affairs of the Company within 21 days from the due date.

7. It is submitted that the balance sheet for the year ending 31.03.1998 is secured from the Registrar of Companies and further submitted that there was no balance sheet from 01.04.1998 onwards till the winding up order in 12<sup>th</sup> June, 2000.

8. The basis for the claim referred to above is the details mentioned in the balance sheet for the year ending 31.03.1998.

9. The respondents No.1 and 2 have filed objection denying the liability. The remaining respondents have remained *ex-parte*. The evidence is led by the applicant as well as respondents No.1 and 2.

10. When the Company was ordered to be wound up in terms of order dated 12.06.2000, the Company was an ongoing concern. It is evident from the mahazar dated 24.07.2000 which is drawn when the Official Liquidator took possession of the property. Pursuant to the order of winding up, the Official

Liquidator along with two other secured creditors viz., Karnataka State Financial Corporation and Indian Overseas Bank have taken the control of the Company.

11. There is no difficulty in holding that after 24.07.2000, the Directors are not responsible for any loss that occurred to the Company in liquidation.

12. The respondents No.1 and 2 claim that, all the records available as of 24.07.2000 and all the assets of the Company as of that day were handed over to the Official Liquidator.

13. It is stated that, there was a theft in the premises of the Company in liquidation on 17.10.2000 and the Official Liquidator himself has lodged a complaint in this behalf. The police have filed 'C' report indicating no progress or recovery in the investigation.

14. It is also noticed that while taking note of these aspects, this Court rejected C.A.No.2001/2000 vide order dated 28.03.2012 and said document is marked as Ex.R.17.

15. Learned counsel for the applicant would submit that, the claim made by the applicant is substantiated with the

balance sheet which is an undisputed document and the respondents were required to hand over all the documents relating to the investments said to have been made in the bank and also relating to the loans advanced to the sundry debtors. Those documents have not been furnished. That being the position, the Directors are liable to pay the amount.

16. Learned counsel for the Official Liquidator would also submit that, the cash in hand to the tune of Rs.23,87,765.90/- reflected in the balance sheet as of 31.03.1998 is not handed over and same is liable to be paid by the respondents.

17. Learned counsel for respondents No.1 and 2 would urge that, the application is not maintainable and it should have been rejected at the threshold as it does not comply with the requirements of the Company Rules, 1959. It is further submitted that, no specific details are furnished as to the specific act of misappropriation on the part of the respondents and the documents if missing and not available is because of the theft in the premises. The theft has taken place after the Official Liquidator and other two secured creditors have taken

the charge of the affairs of the Company and for which, the respondents cannot be held to be responsible.

18. Learned counsel for respondents No.1 and 2 in support of her contentions would also place reliance on the judgment of the ***Official Liquidator, High Court, Calcutta vs Padam Kumar Khaitan and Others<sup>1</sup>***.

19. Learned counsel for the respondents No.1 and 2 would also invite the attention of the Court to Annexure-R2, the order passed by this Court in the Company Application No.2001/2000 wherein, the application under Section 454 of the Companies Act, 1956 is rejected.

20. The Court has considered the contentions raised at the Bar and perused the records.

21. The Company was ordered to be wound up in terms of order dated 12.06.2000. Thereafter, the Official Liquidator took possession of the assets of the Company on 24.07.2000. In this behalf mahazar is drawn. The mahazar would indicate that as of 24.07.2000, the Company was an ongoing concern with 75 employees. It does not indicate that the Directors have

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<sup>1</sup>**2008 SCC OnLine Cal 508**

not handed over the documents relating to the investments made in the bank. At the same time, the mahazar also does not indicate that all the assets of the Company and the documents are handed over to the Official Liquidator.

22. From the mahazar one cannot ascertain as to whether the movable assets of the Company and other documents of the Company were received by the Official Liquidator.

23. It is also required to be noticed that the mahazar does not contain description of any documents relating to the Company.

24. Theft is said to have taken place on 17.10.2000. As already noticed, 'C' report is filed indicating no recovery and no progress in the investigation.

25. The claim made before this Court is solely based on the balance sheet as of 31.03.1998. Admittedly, balance sheet reflects Rs.23,87,765.90 as cash in hand. The mahazar drawn on 24.07.2000 reveals that the Company was an ongoing concern with 75 employees. This would indicate that, from 31.03.1998 till 24.07.2000 the Company must have been

functioning. Under such circumstances, the Court may infer that the cash in hand reflected in the balance sheet dated 31.03.1998 must have been spent towards the expenditure of the Company. It is indeed true that, there is no direct evidence to authoritatively take such a view. At the same time, the contents of the application filed by the Official Liquidator also lack requisite pleading relating to misappropriation of said amount said to be the cash in hand as on 31.03.1998. Had there been proper inventory and documentation of only assets and movables of the Company while taking the possession of the assets of the Company, the Court would have been in a better position to ascertain as to whether it is the case of misappropriation or gross negligence on the part of the Directors. Added to that, when the assets of the Company were in the custody of the Official Liquidator and two secured creditors, the alleged theft has taken place. That being the position, the Court is of the view that the claim for recovery of Rs.23,87,765.90/- said to be the cash in hand as of 31.03.1998 pertaining to an ongoing concern atleast till 24.07.2000 is not tenable.

26. The second claim is in respect of recovery of Rs.66,20,336.38/- said to be kept in Indian Bank, Centurion Bank, Indian Overseas Bank, Global Trust Bank. Out of the said amount, the amount in Indian Bank is Rs.8423.41/-, amount in Centurion banks is said to Rs.78.97/-. These two deposits are meagre amount.

27. The remaining deposits of Rs.54,93,675/-, Rs.5,98,149/- and Rs.5,22,010/- are all with Indian Overseas Bank. These investments add up to Rs.66,13,834/-. How much amount from these deposits has been utilised post 31.03.1998 till 24.07.2000 is not forthcoming in the pleadings. The onus of disclosing the details relating to the expenditure if any, made in respect of these deposits was on the respondents. However, no such acceptable explanation is forthcoming from the respondents. The respondents could have obtained the records from the bank from these deposits assuming that those records were handed over and later, were lost on account of theft. However, respondents have not made any such attempt. That being the position, applying the test of preponderance of probability and drawing adverse inference from the respondents, the claim has to be allowed for Rs.66,13,834/-.

28. The third claim relating to recovery of Rs.2,67,63,090/- towards the dues from sundry debtors and the fourth claim for recovery of Rs.12,48,802.11/- towards loans and advances have to be rejected. The reason is, the Official Liquidator did not prepare proper mahazar while taking the custody of the company ordered to be wound up. After the Official Liquidator and two secured creditors took over the Company's assets, there was a theft in the month of 17.10.2000.

29. In addition to that, it is not possible for the respondents to furnish the records relating to recovery if any, made after 31.03.1998 till 24.07.2000 as there is a possibility of records being lost in the theft said to have taken place on 24.07.2000 or there is a possibility that the Official Liquidator and two of the secured creditors might have misplaced those records relating to the recovery, if any, made. This being the position, the Court is of the view that the respondents are jointly and severally liable to make the payment of Rs.66,13,834/-. Considering the facts of the case, the Court is of the view that the respondents are also jointly and severally

liable to pay interest @ 8% per annum from the date of the application till the date of payment.

30. Before concluding, it must be observed that the manner in which the mahazar is drawn while taking assets of the Company which is ordered to be wound up is unacceptable. The Official Liquidator was under an obligation to ensure that the proper mahazar is drawn indicating all movable assets and extent of immovable assets of the Company. In addition, the Official Liquidator should have ensured that all the documents handed over to the Official Liquidator are properly catalogued in the mahazar. If, no records are handed over, same should have been recorded in the mahazar. Unfortunately, these vital aspects are not reflected in the mahazar. The Court would expect that in future. Such a casual approach must not be shown by the Official Liquidator who holds in trust the properties and assets of the Company ordered to be wound up.

31. Hence, the following:

**ORDER**

- (i) Company Application No.485/2025 is ***allowed-in-part.***

- (ii) Respondents are jointly and severally liable to pay **Rs.66,13,834/-** along with interest @8% per annum from the date of application till the date of payment.
- (iii) Before proceeding to recover the amount from the respondents, the Official Liquidator shall make an effort to recover the amount from the bank in which the amount is said to have been deposited. If, such deposit is recovered from the bank then, the liability of the respondents gets discharged. If, the part of the amount is recovered from the bank, then the respondents are jointly and severally liable to pay the balance of unrecovered amount along with interest as ordered.

**Sd/-  
(ANANT RAMANATH HEGDE)  
JUDGE**

CHS/BRN.