IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

O.S.A.No.116 of 2014
and
M.P.No.1 of 2014

M/s.Conch Chits Commercial Corporation (P) Ltd
represented by its share holder S.Ajay Kumar
... Appellant/Applicant

-Vs-

Official Liquidator
High Court, Chennai. ... Respondent/Respondent

PRAYER: Appeal filed under Section 483 of the Companies Act, 1956 r/w Clause 15 of the Letters Patent against the order dated 05.03.2014 passed by the learned Single Judge of this Court in Company Application No.189 of 2011 in Company Petition No.4 of 1987.

For Appellant : Mr.P.Anbarasan

For Respondent : Mrs.Deepa Mariappan
for Mr.B.Dhanaraj

JUDGMENT
[Order of the Court was made by RAJIV SHAKDHER, J.]

1. Pursuant to the last order passed by this Court on 28.08.2017, the Official Liquidator (in short 'O.L.') has filed a further report dated 06.10.2017. In the said report, it is indicated that the O.L. has verified and issued dividend notices to 4595 creditors. The report also states that out of 4595 notices sent, 3345 notices have been returned undelivered.

1.1. It is also indicated in the report filed by the O.L that he has received 99 claims, out of which, 58 claims have been duly signed and proved. Insofar as the remaining 41 claims are concerned, the O.L., for the present, has found them to be defective.

2. We may also note that the report also highlights the fact that 1151 dividend notices have neither been returned

undelivered nor has the O.L. received any reply from the notices/creditors in respect of these notices.

3. The record shows that this appeal was filed against the order of the learned Single Judge dated 05.03.2014, passed in Company Application No.189 of 2011. The said application was moved by the appellant company, in which, the following relief was claimed:

> "This is an application filed by the applicant, seeking a direction to the Official Liquidator to close the dividend account and hand over a sum of Rs.2,64,32,267/- and any other amount lying to the credit of the account of the applicant along with the list of creditors so as to enable the applicant to disburse the same."

4. Being aggrieved with dismissal of its application, the appellant company preferred the instant appeal. The appeal was admitted on 22.04.2014. Thereafter, the first substantial hearing was held on 07.03.2017. On that date, this Court recorded the following:

> "1.This appeal has been filed against the order dated 05.03.2014, passed by the learned Single Judge, whereby, the prayer made in the appellant company's application being C.A.No.189 of 2011 was rejected.
>
> 2.To be noted, insofar as the appellant company was concerned, a winding up petition was filed by, one, Mr.Madanlal under Section 433 of the Companies Act, 1956, on account of inability to pay its debts. This company petition was registered as: C.P.No.4 of 1987. From time to time, orders were passed in the said company petition.
>
> 2.1.During the pendency of the said company petition, the appellant company placed before the Court a Scheme of Arrangement for defraying its debts.
>
> 3.The record shows that the Scheme, so framed, was accepted by this Court. This Scheme was the subject matter of the appellant company's application being: C.A.No.648 of 1987.
>
> 3.1.According to the appellant company, the said Scheme was admitted on 13.10.1987.
>
> 3.2.It is also the case of the appellant company that the Company Court vide order dated 02.08.1991, passed in C.A.No.567 of 1991, permitted the appellant company to pay 35% of the amount due to its creditors.
>
> 3.3.According to the appellant company, nearly, 70% of the creditors were paid 35% of the debt, owed to them, by the appellant company.

4.The record shows, that the Company Court vide order dated 02.02.2000, vacated the interim order dated 13.10.1987, passed in C.A.No.649 of 1987, whereby, all civil and criminal proceedings were stayed against the appellant company. The order of stay, was passed, when the Scheme of Arrangement was entertained by the Court on 13.10.1987. By virtue of the fact that the stay order was vacated, the Court on the very same day i.e., 02.02.2000 appointed an Administrator and directed the Official Liquidator, attached to the Company Court to act as the Provisional Liquidator of the appellant company.

5.Suffice it to say, at this stage, that from time to time, the assets of the appellant Company were sold.

6.The learned counsel for the appellant company informs me that at the moment, the appellant company is not in possession of any assets, as all assets have been sold to liquidate the debts owed to its creditors.

6.1.This position has been affirmed by Mr.Dhanaraj, Advocate, who appears for the Official Liquidator."

5. Thereafter, the matter was posted before this Court on three occasions i.e., 14.07.2017, 25.07.2017 and 28.08.2017.

5.1. On 28.08.2017, we recorded the aspects with regard to dividend notices as emanating from the O.L.'s report dated 24.08.2017. It was noticed, at that point in time, the O.L had issued 1923 dividend notices and the balance 2672 notices were yet to be issued. It is, in this context, that the O.L. has filed a further report dated 06.10.2017, to which, we have made a reference above.



6. Given the fact that pursuant to the order dated 07.03.2017, the O.L has completed the exercise of issuance of dividend notices to all the creditors and there is very little, the O.L can do in this matter, except process the claims that he may receive hereafter.

7. The learned counsel for the appellant company has invited our attention to the order dated 07.03.2017. While passing the said order, we had noticed an earlier order of this Court dated 27.02.2008. By this order, the Court had directed the Directors of the appellant company to take over the company and return of a sum of Rs.3,46,73,766/-, lying at that point in time, with the O.L. The O.L was, in fact,

directed to hand over all the books of accounts, registers, documents, forms and other records pertaining to the appellant company to its Directors.

7.1. It would be evident upon perusal of order dated 07.03.2017, that the appellant company had preferred a Scheme of Arrangement, which was accepted by this Court.

8. It is, in this context, the appellant company had filed an application (C.A.No.189 of 2011) for return of the balance monies lying with the O.L. However, at our behest, the appellant company, was once again, directed to issue notices to the creditors, albeit, via the O.L. The exercise, in that behalf, commenced, after the hearing was held on 07.03.2017.

9. The net result of this exercise is that the O.L. has received only 99 claims, out of which, as indicated above, 58 are tenable, while the balance 41 was defective.

10. Thus, having regard to the above, we are of the view that the appeal can be disposed of, with the following directions:

(i) The O.L. will disburse the monies to 58 claimants, who have filed tenable and viable claims.

(ii) Insofar as the remaining 41 defective notices are concerned, the O.L. will give the claimants further opportunity to cure the defects. A period of eight (8) weeks will be granted for the said purpose.

(iii) The notices via recorded delivery mode will be sent to all 41 claimants whose claims are found to be defective. The expenses incurred in that behalf will be deducted from the amount owed to the appellant company which is lying with the O.L.

(iv) The O.L. will return the balance amount to the appellant company after withholding moneys which are payable to 58 creditors, whose claims have been found tenable and moneys that may become qua 41 claims, which, at the moment, appear to be defective.

(v) In addition to the above, the O.L. would also be entitled to make adjustment in respect of expenses that he is likely to incur towards the issuance of notices to 41 creditors, whose claims, presently, are found to be defective.

(vi) The balance amount will be returned to the appellant company forthwith.

(vii) In case, out of 41 claims, which are, at the moment, found to be defective, some or all claims are found to be tenable, after due proof in that behalf is submitted, requisite adjustment will be made by the O.L.

(viii) In case some surplus amount is left, the same will also be remitted to the appellant company, immediately upon conclusion of the aforesaid exercise.

11. The appeal, is, thus, allowed and deposed of as indicated above in terms of the aforesaid directions. Consequently, connected Miscellaneous Petition shall stand closed. There shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Official Liquidator,
High Court, Madras.

2.The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+2cc's to Mr.S.Periyasamy, Advocate, S.R.No.72334

O.S.A.No.116 of 2014

GP(CO)
CA(09/11/2017)