THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

COMPA.Nos.933, 934, 935 of 2017
In
R.C.C. No.11 of 1998

COMMON ORDER :

The Company Application No.933 of 2017 is filed to condone the delay of 5942 days in filing the certificate in Form No.71 of the Companies (Court) Rules, 1959 before this Court with respect to the adjudication of claim of all the creditors of the company in liquidation.

The Company Application No.934 of 2017 is filed to take the certificate in Form No.71 filed as Annexure-E in respect of M/s.Andhra Oil Cake Prodaucts Ltd., in liquidation relating to the claims of all the creditors with the memorandum of admission/ rejection of the claim on record; direct the Registrar to notify the said Form No.71 on the notice board of this Court in terms of Rule 169 of the Companies (Court) Rules, 1959; and order that the costs of this application do come out of the assets of the Company in liquidation.

The Company Application No.935 of 2017 is filed for an order to:

i) permit the Official Liquidator to declare & disburse dividend @100 paisa in a rupee an amount of Rs.2,14,228/- to P.F.Organisation treated as priority payment based on the Supreme Court orders and further to declare & disburse dividend @56.1751039 paise in a rupee, an amount of Rs.5,86,446.0 to State Bank of India, Vizianagaram and Rs.2,77,443/- to workmen (134 workers) after adjustment of interim payments already paid to them in pursuance of this Court orders.

ii) authorise Official Liquidator to open a separate dividend account in Punjab National Bank and for disbursement of amounts out of the said account, in terms of Rule 290 of the Companies (Court) Rules, 1959;

iii) permit Official Liquidator to pay/ reimburse an amount of Rs.1,83,534/- to State Bank of India, Vizianagaram towards reimbursement of initial expenses, watch & ward expenses and advertisement charges.

iv) permit the Official Liquidator to dispense with the publication of notice of dividend in newspapers.

v) permit the Official Liquidator to send individual notice of dividend in From Nop.138 also with receipt to P.F. Organisation, State Bank of India and Workmen through its union representative of the Company in liquidation.

vi) authorise Official Liquidator to fix the schedule for making payment.

vii) authorise the Official Liquidator to pay dividend amount to any deceased workmen/ creditors to his/ her legal heirs upon produce of proofs by such legal heirs, death certificate, family members certificate or such other certificate issued by MRO or like authority instead of producing a succession certificate and also upon furnishing personal indemnity, in terms of Rule 280 of the Companies Act, 1956.

viii) authorise Official Liquidator to transfer the un-paid dividend, if any remaining in the dividend account, after the expiry of the 6 (six) months period to Companies Liquidation Account, in terms of Section 555 of the Companies Act, 1956.

ix) authorise Official Liquidator to take all necessary actions and steps which are incidental to declaration and payment of dividend and to effectively implement the orders of this Court in that regard.

x) the costs of this application do come out of the assets of the Company in liquidation

In support of the application, it is stated that this Court by an order dated 17.09.1998 in R.C.C. No.11/ 1998, was pleased to direct the winding up of M/s.Andhra Oil Cake Products Ltd., and appointed Official Liquidator attached to this Court as the Liquidator of the company. Consequent to the winding up order, the Official

Liquidator has sold the assets of the Company in liquidation and realised a sum of Rs.60,90,389/- and the said sale was confirmed by this Court vide order dated 10.07.2000 made in C.A. No.515 of 1999 in R.C.C. No.11 of 1998. By an order dated 12.02.2011 made in C.A. No.33 of 2001, this Court was pleased to permit the Official Liquidator to invite claims from the creditors of the company in liquidation. Accordingly, the Official Liquidator has invited claims from the creditors of the company by causing publication of notice in Deccan Chronicle and Vaartha Newspapers published on 07.04.2001 by fixing the last date for submission of claims as 10.05.2001. In this regard, the following claims have been received from creditors of the company and the same was adjudicated as detailed under:

S. No.	Name of claimants	Amount claimed
1	State Bank of India, Vizianagaram	81,73,341/-
2	Workmen claim (134 workers)	51,99,344.12
3	P.F.Commissioner, Visakhapatnam	6,76,839/-
4	A.P.Transco, Vizianagram	70,360/-
5	CTO, Viziangaram	5,71,591/-
6	BSNL	17,376/-
7	Pusha Dev Thirani	9,06,725/-

That the Official Liquidator had adjudicated the claims of State Bank of India, Workmen Union, P.F. Organisation and issued adjudication orders in Form No.69 to the respective creditors. The claim of preferential creditor A.P. Transco, CTO, BSNL was filed belatedly but they have not submitted the delay condoned order from this Court, while Pusha Devi Thirani, unsecured creditor has not submitted any proofs in support of her claim and hence the said claims have not been adjudicated and the Official Liquidator seeks to dispense with the adjudication of the said four claims.

In pursuance of the order of this Court dated 22.02.2001 in C.A. No.576 of 2000 filed by State Bank of India, Vizianagaram to pay 75% of the sale proceeds of the assets of the company, interim payments was disbursed for an amount of Rs.45,65,500/-. The Company Application No.1390 of 2004 was filed for declaration of dividend @49% to workmen and to recover a sum of Rs.5,62,562.01 ps from State Bank of India, Vizianagaram being the excess amount paid beyond 49% of their admitted amount. This Court by an order dated 16.07.2004 made in C.A. No.1390 of 2004 ordered the application. In pursuance to the order of this Court, State Bank of India, Vizianagaram remitted the excess amount of Rs.5,62,562.91 ps. Further in compliance to the said orders, 49% of the admitted secured debt of workmen i.e., Rs.18,94,711.61 ps. to 134 workmen was declared for disbursement and an amount of Rs.18,43,854.06 ps was disbursed to 131 workmen and an amount of Rs.50,857.54 ps which remained unpaid pertaining to 03 workmen was transferred to the Companies Liquidation Account maintained by the Registrar of Companies, Hyderabad.

The claim of the Employees Provident Fund Organisation has been adjudicated and admitted for an amount of Rs.2,14,228/- as

Secured debt and Rs.2,83,071/- as Unsecured debt while Rs.1,79,540/- was rejected. The Supreme Court vide its judgment dated 08.11.2011 made in Civil Appeal Nos.9630 to 9633 of 2011 in the matter of Employees Provident Fund Commissioner vs Official Liquidator of Esskay Pharmaceuticals Ltd., stated that the dues of Employees Provident Fund Organisation from a company under liquidation has to get priority, and got right over the above the secured creditors and they have to be paid in full before discharging other liabilities.

As on 23.10.2017, a sum of Rs.12,73,151/- is available to the credit of the company in liquidation and out of the said amount, the Official Liquidator prayed to permit him to retain a sum of Rs.11,500/- towards payment of Audit fee, Central Government fee and future liquidation expenses and to reimburse an amount of Rs.1,83,534/- to State Bank of India, Vizianagaram towards initial expenses, watch & ward expenses and advertisement charges and from the remaining balance amount of Rs.10,78,117/- permit the official liquidator for disbursement of dividend. Considering the total availability of funds to the credit of the company, the Official Liquidator seeks permission for disbursement of dividend to P.F Organisation (on priority), as in view of the above, the Supreme Court Judgment, Provident Fund Organisation has got right over and above the secured creditors and they have to be paid in full before discharging the order liabilities, hence the admitted secured debt for an amount of Rs.2,14,228/- of P.F Organisation has been treated as priority payment and the same is proposed for disbursement and further permit the Official Liquidator for disbursement of dividend to S.B.I and Workmen against admitted debt. The proportionate entitlement worked out is stated hereunder:

S. No.	Name of the Creditor	Amount admitted	Eligible amount on admitted debt	Interim paid	Balance amount of dividend payable	Proposed percentage of dividend amounts on admitted debts
1	P.F.Organisation, Visakhapatnam	2,14,228-00	2,14,228-00		2,14,228-00	100%
2	S.B.I Vizianagaram	81,73,341-00	45,91,382-80	40,04,937.09	5,86,446.00	56.1751039%
3	Workmen (134 workers)	38,66,756.00	21,72,154-20	18,94,711.61	2,77,443.00	56.1751039%
Total Rs.		1,22,54,325.00	69,77,765.00	58,99,648.70	10,78,117.00	

He further submits that Rule 275 of the Companies (Court) Rules, 1959 stipulates that no dividend to the creditor or return of capital to contributories shall be declared by the Official Liquidator without sanction of this Court and Rule 276 of the said Rules Stipulate that the Official Liquidator shall give notice of the declaration of dividend not less than one month prior to the date fixed for payment thereof and unless otherwise directed by this Court such notice shall be given by advertisement in Form No.137. In this regard, the Official Liquidator prayed to dispense with the publication of dividend notice in news papers as the payment of dividend is proposed to P.F Organisation, State Bank of India and Workmen (134 workers) secured creditors of the company in liquidation, who can be individually informed. He further submits that in order to disburse dividend, as per Section 555 of the Companies Act, 1956, a separate dividend Account shall be opened which shall have to be kept in force for a period of six months and any dividend which may remains unpaid after such period shall in accordance with Companies Liquidation Account Rules be remitted into the credit of the Central Government. Hence Official Liquidator be permitted to open a separate Dividend Account for disbursement of dividend to P.F Organisation, State Bank of India and Workmen (134 workers) the secured creditors of the company in liquidation.

Heard learned counsel for the Official Liquidator.

In view of the facts and circumstances of the case, the C.A. Nos.933 and 934 of 2017 are allowed and the C.A. No.935 of 2017 is allowed as prayed for.

A.RAJASHEKER REDDY, J

13.12.2017
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