IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 10.04.2017
Judgment Pronounced On: 31.05.2017

CO.PET. 165/2002

RE-EMKAY INTERNATIONAL LIMITED

..... Appellant

Through: Mr. Kanwal Chaudhary, Advocate on behalf of the Official Liquidator.

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

CA No. 710/2017

1. The present is an application under the provisions of section 481 of the Companies Act, 1956 (hereinafter referred to as 'the Act'), filed by the Official Liquidator, praying as follows:

> "(i) The M/S Emkay International Limitaiton may be kindly considered to be dissolved under Section 481 of the Companies Act 1956 and Official Liquidator may kindly be discharged as Liquidator of the said Company.

(ii) The Audit of Half yearly/Annual Accounts of the Company (In Liqn.) to be filed with this Hon'ble High Court may also be dispensed with and the Official Liquidator may be permitted to close the books of accounts after set off/adjusting losses;

(iii) The Official Liquidator kindly be permitted to transfer the balance amount to the Reserve Bank of India in the account of public fund. After deduction necessary expenses incurred by the Official Liquidator.

(iv) Pass such other order/s as deem fit and proper in the facts and circumstances of the case may also kindly be passed please."

2. M/s Emkay International Ltd. [hereinafter referred to as 'Petitioner Company (In Liqn.)'] was directed to be wound up by way of the order of this Court dated 22.11.2004; and the Official Liquidator attached to this Court was appointed as the Liquidator of the Petitioner Company (In Liqn.).

3. It has been stated by way of the present application that in compliance to the order of this Court dated 22.11.2004, a team from the office of the Official Liquidator was deputed to take over the possession of the registered office of the Petitioner Company (In Liqn.) situated at I-1764, C.R. Park, New Delhi. However, the possession could not be taken, since at the said address one Col. Lahiri was residing and the office of the Petitioner Company (In Liqn.) was not operating.

4. Further, on 28.02.2005, a team of the office of the Official Liquidator, visited the other addresses of the Petitioner Company (In Liqn.) at E-970, C.R. Park, New Delhi and I-1690, C.R. Park, New Delhi, to take over the possession thereof. However, the possession of the said premises could also not be taken as the same were in residential occupation of Smt. Indira Chaterjee, ex-director of the Petitioner Company (In Liqn.) and one Shri S.K. Hasija, respectively.

5. In compliance to the order of this Court dated 22.11.2004, the Official Liquidator issued notices under the provisions of sections 454 and 456 of the Act and under Rule 130 of the Companies (Court) Rules, 1959, to the ex-directors of the Petitioner Company (In Liqn.) for recording of the statements of the ex-directors and filing of Statement of Affairs before the Official Liquidator.

6. Furthermore, to check the status of the regional offices of the Petitioner Company (In Liqn.) at Kolkata, West Bengal, the matter was taken up with the office of the Official Liquidator, Kolkata. Upon enquiry, it was stated by the Official Liquidator, Kolkata, that the Petitioner Company (In Liqn.) does not have a regional office at Lansdown Court, Plot No.17, 2nd Floor, 5B, Sahat Bose Road, Kolkata. Further, with respect to the regional office at 58/45, Parinee Anwar Shah Road, Kolkata, it was stated that the Petitioner Company (In Liqn.) is not operating therefrom since the passing of the winding up order.

7. It has been further noted that the records of the Petitioner Company (In Liqn.) lying at its regional office at 58/45 Parinee Anwar Shah Road, Kolkata, West Bengal, were shifted to the record room of the Official Liquidator at South Block, Delhi, on 09.09.2010.

8. It has further been stated that Mr. P.K. Ghosh, one of the Ex- Directors of the Petitioner Company (In Liqn.), filed statement of affairs on 28.11.2006. However, the same was found to be defective by the Official Liquidator, inasmuch as, the details *qua* the exact location/addresses of the Plant & Machinery/Stock of the Petitioner Company (In Liqn.) were not provided.

9. This Court vide order dated 07.12.2011, appointed M/s Saxena & Saxena, Chartered Accounts to prepare the balance sheets of the Petitioner Company (In Liqn.).

10. It has been stated by the learned counsel appearing on behalf of the Official Liquidator that the car of the Petitioner Company (In Liqn.) was sold to the highest bidder, in pursuance to the order of this Court dated 15.03.2012; and the payment was realized and transferred to the books of accounts of the Petitioner Company (In Liqn.).

11. Further, it has been stated that Ms. Indira Chatterjee and Mr. J.P. Bhushan, ex-directors of the Petitioner Company (In Liqn.), did not appear in the office of the Official Liquidator for recording their statement under rule 130 of Company (Court) Rules, 1959. Bailable warrants were issued by this Court vide order dated 17.09.2012, against both the aforesaid ex-directors.

12. Further, this Court vide order dated 03.09.2012, directed the Official Liquidator to invite claims by publication *qua* the Petitioner Company (In Liqn.). The Official Liquidator in terms of the said order dated 03.09.2012, invited claims by way of publication in two newspapers, namely, 'Indian Express' (English) on 23.10.2012 and in 'Jansatta' (Hindi) on 24.10.2012. The last date of receipt of claims was fixed as 16.11.2012.

13. Consequent to publication inviting claims, no claims are stated to have been received by the office of the Official Liquidator against the Petitioner Company (In Liqn.). This Court vide order dated 06.11.2012, cancelled bailable warrant ordered against Ms. Indira Chatterjee on her undertaking that she shall appear on each and every date as and when summoned. Insofar as, bailable warrant issued against Mr. J.P. Bhushan is concerned, the same could not be served as the address thereof could not be found.

14. Smt. Indira Chatterjee, Mr. P.K. Ghose and Mr. M.K. Chatterjee, ex-directors of the Petitioner Company (In Liqn.), appeared in the office of the Official Liquidator on 22.11.2012, 06.11.2012 and 22.11.2012, respectively.

15. Smt. Indira Chatterjee during her visit to the office of the Official Liquidator, submitted the Form No.32, which was duly filed with the Registrar of Companies, N.C.T. Delhi & Haryana at New Delhi on 18.01.2005 (after the date of winding) vide letter dated 22.11.2012, indicating her resignation from the post of the Director of the Petitioner Company (In Liqn.).

16. Further, the statements of Mr. P.K. Ghose and Mr. M.K. Chatterjee under Rule 130 of the Companies (Court) Rules, 1959, were recorded on their visit to the office of the Official Liquidator. Mr. P.K. Ghose also removed the defects in the said statement of affairs, earlier filed by him.

17. In compliance to the said order dated 07.12.2011, M/s Saxena and Saxena, Chartered Accounts, submitted their report/Balance sheets *qua* the Petitioner Company (In Liqn.). It has been stated by learned counsel appearing on behalf of the Official Liquidator that, the recovery due from the debtors of the Petitioner Company (In Liqn.) has become time barred, as per the said report submitted by the Chartered Accounts.

18. It has been also pointed out that, one of the Ex- Directors of the Petitioner Company (In Liqn.) namely, Mr. M.K.Chatterjee, had filed his claim against the Petitioner Company (In Liqn.), which was duly scrutinized and thereafter rejected by the OL by way of its order dated 12.11.2014. Against the said order rejecting the claim, Mr. M.K. Chatterjee had preferred an appeal before this Court, bearing Co. A(SB) No. 24/2015 titled as '*M.K. Chatterjee* v. *EMKAY International Ltd.'*. In the said appeal, this Court vide order dated 29.02.2016, set aside the impugned order, and the Official Liquidator was directed to re-consider the claim of Mr. M.K. Chatterjee, in accordance with law.

19. It has been further stated by learned counsel appearing on behalf of Official Liquidator that, in compliance to the said order 29.02.2016, the claim of Mr. M.K. Chatterjee was re-examined; and an amount of Rs. 7.5 lakhs, towards full and final claim thereof *vis-à-vis* the Petitioner Company (In Liqn.), was paid. Further, it has been stated that, in pursuance to the order of this Court dated 18.01.2017, the balance payment in the sum of Rs.30,690/- due and payable to M/s Saxena & Saxena, Chartered Accountant, was also made.

20. The present fund position of the Petitioner Company (In Liqn.) is stated to be Rs.1,42,321.36/-.

21. In support of the relief sought by way of the present application, the Official Liquidator places reliance on a decision of the Hon'ble Supreme Court in ***Meghal Homes (P) Ltd.*** v. ***Shree Niwas Girni K.K. Samiti,*** reported as **(2007) 7 SCC 753**, wherein it has been observed as follows:

> "…when the affairs of the Company had been completely wound up or the court finds that the Official Liquidator cannot proceed with the winding up of the Company for want of funds or for any other reason, the court can make an order dissolving the Company from the date of that order. This puts an end to the winding-up process."

22. It has been asseverated by learned counsel appearing on behalf of the Official Liquidator that, looking to the overall circumstances, nothing survives in the accompanying winding up petition, inasmuch as, no assets of the Petitioner Company (In Liqn.) remain with the Official Liquidator.

23. In view of the foregoing, the present application is allowed. The Petitioner Company (In Liqn.) shall stand dissolved under the provisions of section 481 of the Act.

24. The Official Liquidator is exempted from carrying out/filing of the statutory audit of Half yearly/ Annual Accounts of the Petitioner Company (In

Liqn.). Let books of accounts of the Petitioner Company (In Liqn.), maintained by the Official Liquidator, be closed.

25. The Official Liquidator is permitted to transfer the aforesaid amount, in the sum of **Rs.1,42,321.36/-**, to the Reserve Bank of India in the account of public fund.

26. The Official Liquidator stands discharged *qua* the Petitioner Company (In Liqn.).

27. A copy of this order be sent to the Registrar of Companies within thirty days.

28. The present application is disposed of accordingly.

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In view of the orders passed today, in Company Application No.710 of 2017, the present petition stands disposed of.

SIDDHARTH MRIDUL, J.

MAY 31, 2017
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