IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 134 OF 2015
IN
COMPANY PETITION NO. 15 OF 2006

Pedro R. Rodrigues & 9 Others .... Applicants
Versus
Anderson Marine Pvt. Ltd. .... Respondent

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Ms. Amira Razaq, Advocate for the Applicants.

Shri P.P. Singh, Advocate for the three Ex-Directors of the Company, namely, Shri Hari Mohan Saraff, Shri Gour Mohan Saraff and Ms. Myra Delores Rego.

Shri Raunaq Rao, Advocate for the two Ex-Directors of the Company, namely, Shri Antonio Florencio do Rosario and Shri K.S. Krishnamurthy.

CORAM : C.V. BHADANG, J.

DATE : 7th February, 2019

ORAL ORDER:

Company Petition No. 15/2006 was filed by the Goa Trade and Commercial Workers' Union, on behalf of nine employees of the respondent-Company. That petition was filed under Section 433, read with Section 434 and 439 of the Companies Act, 1956 (Act, for short), for winding up of the said Company as the Company had failed to pay the wages of the said workmen amongst others. It was contended that the Company, which was engaged in manufacture and repairs of barges, ships and other vessels at its Shipyard at Zorint, Sancole, had employed more than 100 workmen for its operations. Upto the year 2002, the conditions of their service were satisfactory and they were being paid wages regularly. However, subsequently, the service conditions of the workers started deteriorating. The payment of wages of the workers became irregular and although, the deduction towards Employees' Provident Fund and Employees' State Insurance were made, the same was not deposited.

2. It appears that this Court by an order dated 22.06.2007 directed that the respondent-Company shall stand wound up and the proceedings were closed.

3. The present application is filed by the official liquidator on 20.02.2015 to direct the Ex-Directors of the company in liquidation to hand over the assets and the books of accounts of the Company under Section 468, read with Section 456 of the Companies Act and also to submit the statement of affairs of the Company under Section 454 of the Act, read with Rule 125 of the Companies (Court) Rules, 1959 (Rules, for short).

4. The affidavit dated 04.08.2016 filed by Mr. V.P. Katkar, the official liquidator, alongwith the affidavit dated 18.03.2016 filed by Antonio Rosario, Ex-Director of the Company, shows that the Company had availed medium term loan of Rs.3 crores from EDC limited. EDC limited vide notice dated 04.10.2002 had called upon the Company to repay the outstanding dues as on 30.09.2002. It has further been placed on record that thereafter, EDC Limited took over, attached and sealed the mortgaged assets of the Company on 28.11.2003, under Section 29 of the State Financial Corporation Act (SFC Act, for short). There is further affidavit of Mr. V.P. Katkar dated 25.08.2016 stating that as per the letter dated 11.08.2016 from EDC Limited, the total loan amount sanctioned/disbursed to the Company under various loan facilities was Rs.3,89,64,000/- and the amount of Rs.2,81,00,000/-, which was realised by way of sale of the assets has been adjusted towards the outstanding loan and therefore, there is no balance out of the sale proceeds. The letter 11.08.2016 of EDC Limited is enclosed with the affidavit.

5. It can thus be seen that the entire assets of the Company were attached and sold and the amount realised has been credited towards the outstanding loan amount, much prior

to the order passed by this Court in the year 2007.

6. The Hon'ble Supreme Court in the case of **Meghal Homes (P) Ltd. Vs. Shree Niwas Girni K.K. Samiti (2007) 7 SCC 753** has held thus in para 31 of the judgment:

> *"31. Now to recapitulate, the Company was ordered to be wound up on 25.07.1984 and the Official Liquidator was directed to take possession of the assets of the Company. Once an order of liquidation had been passed on an application under Section 433 of the Companies Act, the winding up has to be either stayed altogether or for a limited time, on such terms and conditions as the court thinks fit in terms of Section 466 of the Act. If no such stay is granted, the proceedings have to go on and the court has to finally pass an order under Section 481 of the Act dissolving the Company. In other words, 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."*

7. The High Court of Allahabad in the case of **Faizabad Roofing Co. Ltd. (In Liquidation), In re., (1998) 91 Comp Case 22 (Allahabad)** has also held that where all the assets of

the Company in liquidation were already sold, it was expedient to order dissolution of the Company.

8. In this case, I have heard Ms. Razaq, the learned Counsel for the official liquidator, Mr. Rao and Mr. Singh, the learned Counsel appearing for the Ex-Directors. Perused record.

9. On 08.10.2018, this Court directed a public notice to be issued in two newspapers, in order to afford reasonable opportunity to the workmen, who had initiated the winding up proceedings of the Company for being heard. The notice was accordingly published. However, there is no appearance on behalf of the workmen.

10. Considering the overall circumstances and having regard to the fact that the entire assets of the Company were attached and sold and the sale proceedings are adjusted towards the outstanding loan amount, much prior to initiation of the Petition for dissolution in the year 2006 and further having regard to the law laid down in the case of **Meghal Homes (P) Ltd.** (supra), the following order is passed:

<u>O R D E R</u>

The Company in liquidation is hereby dissolved, under Section 481 of the Companies Act, 1956. The Company Application is accordingly disposed of, with no order as to costs.

C. V. BHADANG, J.

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