IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.243 OF 2012

Rasiklal S. Mardia
Ex-Chairman of Amar Dye Chem Ltd. ..Petitioner

WITH

COMPANY APPLICATION NO.560 OF 2012
IN
COMPANY PETITION NO.895 OF 1998

Amritlal Chemaux Private Limited ..Applicant
vs.
The Official Liquidator of
Amar Dye Chem Ltd. & Anr. ..Respondent

WITH

COMPANY APPLICATION (L) NO.262 OF 2019
IN
COMPANY SCHEME PETITION NO.243 OF 2012

Suresh Murlidhar Chopade & Ors. ..Applicants
vs.
The Official Liquidator ..Respondent

WITH

COMPANY APPLICATION (L) NO.280 OF 2019

IN

COMPANY SCHEME PETITION NO.243 OF 2012

B.N.Bhangale & Ors. ..Applicants

vs.

The Official Liquidator ..Respondent

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Mr.Zal Andhyarujina a/w Mr.Nirav Merchant i/b D.P. Desai for the Petitioner in CSP No.243/2012.
Mr.Vishal Kanade a/w Ms.Gargi Bhagwat i/b Divekar & Bhagwat for the Applicant in CA No.560/2012.
Ms.Gayatri Singh, Senior Advocate a/w Ms.Ronita Bhattacharya for the Applicants in CAL No.280/2019 and CAL No.262/2019..
Ms.Heena Shaikh i/b M.V.Kini & CO. for Creditor (MSKPCL).
Mr.Mustafa Doctor, Senior Advocate a/w Ms.Penta Havewala i/b Devanshu Desai for Sponsors.
Ms.Priyanka Fadia i/b Shashank Fadia for Invent Assets Securitisation & Reconstruction Pvt. Ltd.
Mr.G.N. Savagave for Intervenor- Mazdoor Congress in CSP no.243/2012.
Mr.Shanay Shah, Mr.Imran Siddique a/w Mr.Mahendhar Aithe Company Prosecutor for Official Liquidator.

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CORAM: R. I. CHAGLA, J.
DATE: 17TH OCTOBER, 2019

PC:-

1. An Affidavit-cum-Undertaking, which has been affirmed by Mr. Prakash H. Shah, Director of Shree Sulphurics Pvt. Ltd. dated 17th October, 2019 is taken on record. These undertakings are treated as undertaking to this Court.

2. By an order dated 16th October, 2019, the Company Petition was directed to be placed on the supplementary board today for passing orders for allowing the scheme.

Brief background of the facts are as follows:

3. The Company Petition had been admitted on 1st February 2013 and was placed for hearing on 1st March, 2013.

4. Pursuant to the order dated 27th June 2008 passed in Company Summons for Directions (filed as Company Application No.830 of 2008), the meetings of the shareholders of the Company in Liquidation and the secured creditors of the Company in Liquidation were ordered to be convened. However, the said meeting could not be held at such time, and was thereafter held pursuant to the order dated 21st July 2011 passed in the said Company Summons for Directions permitting convening of meetings of the shareholders of the Company in Liquidation and the secured creditors as well as the unsecured creditors of the Company in Liquidation pursuant to fresh notices to be issued in respect thereof. The said meetings were held on 9th September, 2011 and the report of the Scrutinizer dated 13th September, 2011 was filed recording that the proposed Scheme of Revival was duly passed with 62.50% i.e., majority of the shareholders in terms of number present in the meeting and holding shares of 96.19% in terms of value of shares out of the total share

value of the equity shareholders, who remained present in the meeting and voted in favour of the scheme. The affidavit of the Chairperson of the meeting dated 30th September, 2011 was also duly filed before this Court. It is essential to note that the Secured Creditors of the company in liquidation voted against the Scheme. However, a compromise was thereafter arrived at with the secured creditors. The Company Scheme Petition has been filed in accordance with Sections 391 and 394 of the Companies Act, 1956.

5. The Learned Counsel for the Petitioner Company states that the Petitioner Company has complied with all the directions passed by this Court in the Company Summons for Directions and that the Company Scheme Petition is in consonance with the order passed in the Company Summons for Directions.

6. The Official Liquidator has also filed his report, which had raised certain objections to the proposed Scheme of Revival. The Petitioner has by its Affidavit in Reply dealt with the said objections. Considering that there was settlement between the secured creditors and the workmen, none of the objections raised by the Official Liquidator now survive.

7. It is to be noted that the Regional Director has also filed his report raising certain objections to the proposed Scheme of Revival. The Petitioner has by its Affidavit in Reply dealt with the said objections. However, considering that the settlement had been

arrived at with the secured creditors, none of the objections raised by the Regional Director now survive.

8. It appears from the material on record that the Scheme of Revival is fair and reasonable and is not violative of any provisions of law as well as not being contrary to public policy.

9. Accordingly, the Company Scheme Petition No. 243 of 2012 is allowed in terms of prayer clause (2), subject to making the entire payment of liability of the Company in Liquidation as mentioned hereinbelow:

(a) One Shree Sulphurics Pvt. Ltd. (for short , “SSPL”) has agreed to sponsor the scheme propounded by the Petitioner;

(c) SSPL shall make payment to the Official Liquidator, High Court, Bombay towards the workmen dues/ provident fund claims and Government dues as adjudicated by the Official Liquidator and deposit the said amounts in respect of the claims which the Official Liquidator will adjudicate hereafter within a period of one week as per order of this Court dated 16th October, 2019. The amounts shall be paid within a period of 60 days by the Official Liquidator;

(d) It is made clear that provident fund claims and government dues shall not come out of the amount, which is paid towards the workmen dues;

(e) SSPL shall further make payment of Rs.1,32,00,000/- towards the interest claims of the workmen, which have been lodged with the Official Liquidator. The said amount shall also be paid by the Official Liquidator as per allocation determined by the Official Liquidator within a period of 60 days;

(f) The amount shall be paid by SSPL to the Official Liquidator within a period of 60 days and the Official Liquidator shall make payment towards workmen dues, provident fund claims and government dues within a period of 60 days thereafter;

(g) SSPL shall make payment to the secured creditors directly and obtain no dues Certificate from them and handover the same to Official Liquidator within a period of 60 days from the date of this order;

(h) SSPL shall make payment to the Official Liquidator in respect of unsecured and ordinary creditors to enable the Official Liquidator to make payment to unsecured creditors. The said amount shall be paid within a period of 60 days;

(i) SSPL shall make payment to the Official Liquidator towards the administrative and miscellaneous expenses within a period of 60 days from the date of this order. However the claim of Bhagwati Allied Services Ltd. will not be made as the claim of theft is pending against the said security agency;

(j) SSPL undertakes to make payment to Bhagwati Allied Services Ltd. only upon the order of the Court in the theft case (OLR 81 of 2015);

(k) Upon making the entire payment as mentioned above and the Petitioner reporting compliance thereof to this Court, the scheme sanctioned by this Court shall become operative and binding upon all stakeholders;

(l) Upon making the entire payment as mentioned above Official Liquidator shall handover quiet, vacant and peaceful possession of all movable and immovable properties of the Company in Liquidation to Amar Dye Chem Ltd.;

(m) Liberty is granted to any person in the Company Scheme Petition to apply to this Court for any directions or modifications that may be necessary.

10. The Company Scheme Petition is accordingly disposed of, subject to compliance with the above mentioned order.

11. The Company Applications taken out in the Company Scheme Petition do not survive in view of Company Scheme Petition being allowed.

12. The Company Scheme Petition shall be placed for compliance on 6th January, 2020 with liberty to the Petitioner to move this Court prior thereof in the event there is compliance with the said order.

(R I. CHAGLA, J.)