Company Application Nos.214, 245 and 246 of 2020
in
CP No.339 of 1997

M.SUNDAR.J.,

First of the captioned company applications, namely, Company Application No.214 of 2020 has been taken out by 'Official Liquidator attached to this Company Court' ('OL' for the sake of brevity). Second and third captioned company applications, namely, Company Application Nos.245 and 246 of 2020 have been taken out by 'Asset Reconstruction Company (India) Limited' ('ARCIL'). To be noted, ARCIL is the respondent in Company Application No.214 of 2020 taken out by the OL.

2. Company Application taken out by OL is supported by a 'report dated 26.08.2020' (hereinafter 'said report' for the sake of brevity). To be noted, there is another subsequent report of OL dated 05.11.2020 which shall be referred to as 'additional report of OL'.

3. Captioned Company Application has been taken out by a contributory qua 'Arun Pipes Limited' (hereinafter referred to as 'said Company' for the sake of convenience and clarity) which is the Company which has gone into liquidation in the aforementioned 'Company Petition No.339 of 1997' (hereinafter main 'CP' for the sake of convenience and clarity), which is at the instance of a petitioning creditor.

4. OL was appointed as Liquidator qua said company vide order dated 28.09.2001 made by this Company Court in main CP. This Court is informed that in and by this order, OL was also given further directions to take charge of all assets and effects of said company.

5. Thereafter, the manner in which the liquidation/winding up proceedings unfurled and current fund position qua said company have been captured and set out in paragraphs 3 to 14 of said report which

read as follows:

'3. That pursuant to the said direction, the Official Liquidator took possession of the factory premises of the company (In Liquidation) situated at F-78, F-82 and F-83, Sipcot Industrial Complex, Gummidipoondi, Tamil Nadu and this Hon'ble Court, through public auction realized the assets for a total sum of Rs.2,51,00,000/-.

4. That in compliance of the order dated 12.07.2007 made in C.A.No.1674 of 2007 in C.P.No.339 of 1997 by this Hon'ble Court, the Official Liquidator invited claims from the creditors of the company in liquidation by causing publication in “Daily Thanthi” and “The Hindu” on 20.07.2007, fixing the last date for submission of claim as 08.08.2007.

5. That in response to the publication issued on 20.07.2007, five claims were submitted by the creditors, and out of which, two claims received from the secured creditors were adjudicated under Section 529A of the Companies Act, 1956. Subsequently, as directed by the order dated 23.01.2013 in C.A.No.913 of 2012 in C.P.No.339 of 1997 passed by this Hon'ble Court, disbursement to the secured creditors was also made by the Official Liquidator, the details of which are furnished in ensuing para 8 of this report.

6. That the remaining three ordinary claims were also adjudicated and the details of adjudication are as follows:-

S.No.	***Claim No.***	***Name of the Claimant***	***Amount Claimed (Rs.)***	***Amount Admitted (Rs.)***	***Amount Rejected (Rs.)***
1.	1	The Commercial Tax Officer, Ponneri Assessment Circle, Ponneri.	1,13,83,945.00	1,13,83,945.00	Nil
2.	2	The Deputy Commissioner of Central Excise, Chennai X Division, Chennai-17	10,03,935.77	10,03,935.77	Nil
3.	6	The Commercial Tax Officer, Vijayawada	3,28,842.00	3,28,842.00	Nil
		Total	1,27,16,722.77	1,27,16,722.77	

7. That as there are no creditors/claimants other than the five claimants mentioned above, since sufficient funds were available, the Official Liquidator has filed C.A.No.543 of 2017 praying for disbursement of dividend @ 100 paise in a rupee to the three ordinary creditors as well as payment of interest @ 3% per annum for a period of 3 years to all the 5 claimants/creditors of the company in liquidation and to dispense with issue of publication of notice of declaration of dividend under Rule 276 of Companies (Court) Rules, 1959, which was permitted by this

Hon'ble High Court, by an order dated 06.10.2017.

8. That it is submitted that out of two secured creditors viz., TIIC and Indian Bank, TIIC was paid dividend @ 100 paise in rupee. However, in the matter of Indian Bank, only a part payment of Rs.16,16,335.79 was made out of the admitted amount of Rs.2,25,97,809.44. The details are as follows:

S. No.	***Claim No.***	***Name of the Creditors***	***Amount Claimed (Rs.)***	***Amount Admitted (Rs.)***	***Amount Already Disbursed (Rs.)***
1.	5	The Tamilnadu Industrial Investment Corporation Limited, Chennai	1,48,65,720.10	1,45,27,738.00	1,45,27,738.00
2.	4	Indian Bank, ARM Branch, Chennai	3,60,44,038.74	2,25,97,809.44	16,16,335.79
		Total	5,09,09,758.84	3,71,25,547.44	1,61,44,073.79

9. That, though the claim of Indian Bank was adjudicated / allowed for a sum of Rs.2,25,97,809.44, an amount of Rs.16,16,335.79 only was disbursed on 25.02.2013 and the remaining amount of Rs.2,09,81,473.65 is yet to be disbursed. In the meantime, it is submitted that this office has received a letter dated 26.12.2019 from ARCIL enclosed with a copy of the notarized Assignment Agreement Deed dated 30.12.2013 entered

into between Deputy General Manager, Zonal Office, Chennai (South), Indian Bank and ARCIL wherein the loan of the company in liquidation was assigned to the latter. Further Indian Bank has also confirmed the said Assignment vide mail dated 02.01.2020. A copy of notarized Assignment Agreement Deed dated 30.12.2013 submitted by ARCIL along with the confirmation mail dated 02.01.2020 received from Indian Bank are enclosed collectively as Annexure 'A' for the kind perusal of this Hon'ble Court.

10. That as per Section 536(2) of the Companies Act, 1956, any disposition of the property (including actionable claims) of the company, made after the commencement of winding up shall, unless the Court otherwise orders, be void. That there was a transfer of debt from Indian Bank to ARCIL after the date of winding up and hence the said Assignment Agreement without the ratification of the Court is deemed to be void. Hence the respondent, ARCIL may be directed to get the Assignment Agreement ratified. Section 536(2) of the Companies Act, 1956 is reproduced under for ready reference:

> 'In the case of a winding up by the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status in its members,

made after the commencement of winding up shall, unless the Court otherwise orders, be void.'

11. That the Official Liquidator submits that since only after the disbursement of 100 paise in a rupee to the claimants coming under Section 529-A of the Companies Act, 1956, payment to the remaining creditors can be considered, the Hon'ble High Court order dated 06.10.2017, permitting the Official Liquidator to declare and pay the dividend as mentioned in C.A.No.543 of 2017 to 5 creditors (2 secured creditors/3 ordinary creditors) with interest could not be complied with, as the available fund is to be disbursed to ARCIL (Assignee of Indian Bank), subject to ratification, towards balance dividend.

12. That the funds position of the company as on 05.08.2020 is as follows:-

Cash	:	Nil
Bank	:	Rs. 3,13,461.48
Investment	:	Rs.1,80,90,000.00

		Rs.1,84,03,461.48

Also as informed by Punjab National Bank, NSC Bose Road, Chennai, upon pre-closure of the investments, the total funds available will be Rs.2,01,75,457/-. If added along with balance available with Bank account, the total amount available will be Rs.2,08,14,834/-

13. Since funds are available to the credit of the company in liquidation, subject to the approval of this Hon'ble Court, it is proposed to disburse Rs.2,03,00,000/- to ARCIL (Assignee of Indian Bank), subject to ratification, towards full and final settlement of dividend, in terms of the provisions under Section 529-A of the Companies Act, 1956.

14. The details of claim/adjudication/disbursement made/proposed disbursement are as follows:-

Claim No.	***Name of the Creditor***	***Amount Claimed (Rs.)***	***Amount Admitted (Rs.)***	***Amount already disbursed (Rs.)***	***Proposed balance dividend payable (in Rs.)***
4	ARCIL Chennai (Assignee of Indian Bank	3,60,44,038.74	2,25,97,809.44	16,16,335.79	2,03,00,000/-

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6. This Court is informed without any disputation or disagreement that post part disbursement of Rs.16,16,335.79 to Indian Bank, which is one of the secured creditors, Indian Bank assigned the

balance of Rs.2,25,97,809.44 in favour of ARCIL vide a assignment dated 30.12.2013.

7. OL has now taken out first of the captioned company applications, namely, Company Application No.214 of 2020 inter alia with a prayer to disburse Rs.2.03 crores to ARCIL in full and final settlement. To be noted, the third captioned company application, namely, Company Application No.246 of 2020 is to direct the OL to disburse Rs.2.03 crores. To be noted, the second company captioned application has also been taken out by ARCIL.

8. It is the common say of both sides that in the light of sub section (2) of Section 536 of the Companies Act, 1956, one of the captioned company applications, namely, Company Application No.245 of 2020 has been taken out with a prayer to ratify the aforementioned

Deed of Assignment dated 30.12.2013. Regarding this Company Application No.245 of 2020, there is no disputation that there can be ex post facto ratification.

9. This Court has carefully considered said report, additional report of OL, submissions of learned counsel, Deputy Official Liquidator Mr.Bavishetty Sridhar and Ms.Jayanthi Venkatesh, learned counsel on record for ARCIL.

10. Between the two parties before me, namely, OL and ARCIL, for all practical purposes, both parties are making the same prayer vide Company Application Nos.214 and 246 of 2020.

11. This Court having perused said report, additional report of OL and having heard submissions of both sides, is convinced that there

is effectively no disputation or disagreement in the captioned applications and this has been captured in the narrative supra.

12. As a result of the narrative thus far, all three captioned applications are ordered as prayed for, however, there shall be no order as to costs.

06-11-2020

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M.SUNDAR, J.

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