Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPLICATION NO. 4 OF 2023
IN
COMPANY PETITION NO. 11 OF 2013.

M/S AMIANTIT FIBERGLASS INDUSTRIES INDIA PVT. LTD. THR. OFFICIAL LIQUIDATOR .....Applicant.
VERSUS
CORPORATION BANK .....Respondent.

Ms. A. Razaq, Advocate for the applicant.

CORAM: PRAKASH D NAIK, J

DATED: 9th November 2023

P.C..

1. Applicant/Official Liquidator filed this application seeking following reliefs:

> *(a) In view of para 6 supra, whether this Hon'ble Court may be pleased to take on records the 1st Supplementary list of 40 employees of Goa unit admitted by the official Liquidator as per Exhibit " L".*
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> *(b) In view of para 8 supra, whether this Hon'ble Court would be please to declare divided @ 19.71% to 22 Employees of Goa unit as per Exhibit "N".*
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> *(c) If prayer (b) is in affirmative. In view of para 9 of this report, whether this Hon'ble Court may be pleased to permit the Official Liquidator to deposit*

an amount of Rs.11,64,746/- in the existing Dividend Account No.2923002101038337 (under Rule 290 of the Companies (Court) Rules 1959) opened with Punjab National Bank, Panjim Branch at Calisto Mansion, Pissurlakar Road, Panjim Goa 103001 (Now shifted to Ground Floor, Kamath Nagar, Rue Helidoro Salgado Road, Opp. Hotel Marva, Panjim Goa 403001) in the name of M/s. Official Liquidator of M/s. Amiantit Fiberglass Industries India Private Limited (in Liquidation) for making payment of dividend to the respective 22 employees. The dividend shall be payable for a period of six months from the date of orders to be passed by this Hon'ble Court for declaration of dividend and thereafter the unpaid/ unclaimed amount, if any, will be transferred to "the Companies Liquidation Account" maintained with the Registrar of Companies under Section 555 of the Companies Act, 1956.

(d) In view of para 10 of this report, whether this Hon'ble Court would be pleased to permit the Official Liquidator to publish 'Notice Of Declaration Of Dividend under Rule 276 of the Companies (Court) Rules, 1959 in leading English newspaper "The Navhind Times" and Marathi newspaper in "Gomantak" having circulation in the State of Goa, through an advertising agency and pay the expenses of publication including translation charges from the funds lying to the credit of company (in liquidation) subject to deduction of TDS at the prevailing rate. In addition to above, the Official Liquidator may be permitted to issue notice

of payment to workers (Form No.138) to all 22 Employees by speed post to their last known address.

2. Vide order dated 09.06.2016 passed by this Court in Company Petition No. 11 of 2013 presented by M/s. Satyam Polymers Private Limited (Petitioner) M/s. Amiantit Fiberglass Industries India Private Limited was ordered to be wound up and the Official Liquidator is appointed. The applicant/Official Liquidator contends that as per the order dated 05.03.2021 passed in Company Application No.4 of 2019, the Official Liquidator declared and paid the dividend of @19.71% to 121 workman. Vide order dated 12.03.2021 passed in company application liberty was granted to Official Liquidator to file a fresh report concerning the claims of 40 additional workmen and also concerning the interest amount accrued or any further amount which the Official Liquidator or Bank may recover from the disposal of assets of the Company in winding up. The Official Liquidator vide report dated 24.02.2021 filed in Company Application No. 4 of 2019 indicated that there are the 40 persons over and above 121 who are the employees of the company and not workmen. As per the order of this Court dated 13.03.2020 passed in Company Application No.4 of 2019 direction was given to Official Liquidator to adjudicate the claims of 40 employee referred to in the order dated 13.03.2020 as 41 workmen within a period of two weeks. The Official Liquidator fixed a meeting with Corporation

Bank, Ex-directors and the said 40 employees on 20.03.2020. Notice was issued to Corporation Bank, Ex-directors and 40 employees on 17.03.2020 by speed Post. The Corporation Bank remained absent at the said meeting held on only a 20.03.2020. The norms of adjudication of 40 employee were adjudicated in the said meeting. The official liquidator vide letter dated 18.05.2020 forwarded copy of minutes of the meeting dated 20.03.2020 to ex-directors and Corporation Bank and requested them to submit their say on the norms of adjudication decided in the meeting. The Secured Creditor i.e. Corporation Bank chose to remain silent on the norms of adjudication as proposed in the said minutes. Thereafter the Official Liquidator by letter dated 11.08.2020 requested the Corporation Bank that the Official Liquidator has prepared a chart of the calculation on the part of employees claims as per the minutes of meeting held on 20.03.2020 and therefore they may take the inspection of said claims at the earliest and discrepancy/objection, if any, may be brought to the knowledge of Official Liquidator so that final notice of admission of proof of claims could be issued to the said employees. The Corporation Bank vide their letter dated 19.08.2020 stated that they desire to have inspection of claims and the process of inspection may take at least 30 days. Vide letter dated 11.9.2020 official liquidator informed the Corporation Bank that they have not taken inspection of employees claims on 19.08.2020 or even thereafter which delayed the process of issue of notice of admission of claims to all 40 employees and requested to take inspection of employees claims on or before 21.09.2020. In case no inspection is completed before 21.09.2020, it will be presumed that they are not interested to take inspection and the liquidator will proceed with further steps. Liquidator received one letter dated 15.9.2020 from Union Bank which indicated that bank had appointed Advocate as their representative for the purpose of verification of 41 employee and requested to submit a report after conducting inspection. Liquidator received another letter dated 21.09.2020 from Bank stating that inspection was conducted and request was made for furnishing certain documents. Official Liquidator vide their letter dated 13.10.2020 informed the Corporation Bank that documents therein may be obtained from Court and Office of Official Liquidator Thereafter reminder dated 16.11.2020 was issued to the bank by the the Official Liquidator requesting them to depute their authorised representatives for taking photocopies of the documents. Representatives of the Corporation bank never visited the office of the Official Liquidator for copies of documents. Official Liquidator issued notice of admission of claim of 40 employees on 5.2.2021. The representative of the Bank visited to office of Official Liquidator 09.03.221 when the Company Application no. 4 of 2019 was listed for hearing and took copies of claim files of 40 employees. As per order dated 12.03.2021 passed by this Court, direction was given to Corporation Bank to give details of interest accrual to the Official Liquidator within four weeks to enable the Official Liquidator to take necessary steps in the matter. Corporation Bank did not submit details of interest accrual of sale proceeds of Goa and Baroda property.

3. In paragraph 6 of this application it is contended that out of the 40 claims of employees adjudicated by the Official Liquidator only 22 employees claims fall within the category of preferential claims under Section 529A of the Companies Act 1956 and the claims of 18 employee fall under category of ordinary claims under Section 530 of the Companies Act 1956. The employees having salary under the head Basic, Variable H.R.A. and Fixed H.R.A. below Rs.10,000/- per month which is covered under Industrial Dispute Act. Therefore, their claims are admitted as preferential claims have *pari-passu* share on the sale proceeds of company in liquidation. The claims of 18 employees are admitted as ordinary under Section 530 of the Companies Act 1956. At present they have no right on the sale proceeds of the company. Their payment will be considered after the payment of 100% to workman, Government dues in full and if any residual left will be paid to these 18 employees along with other unsecured creditors.

4. In paragraph 8 of this application it is stated that dividend @ of

19.71% has been declared and paid to 121 workmen. Total admitted claims of 22 employees are Rs. 59,09,417/- and since these claims are admitted under Section 529A, a similar dividend @ 19.71% need to be declared which required an amount of Rs. 11,64,746/-. The Official Liquidator may please to permit to declare a dividend @ 19.71% to 22 employees and also issue necessary direction to Registrar of this Court to transfer an amount of Rs. 11,64,746/- to Official Liquidator from sales proceeds deposited by Corporation Bank with this Court.

5. Applicant submits that for payment of dividend in accordance with Rule 290A of the Companies Rules 1959 a separate dividend account is to be opened. Since a separate dividend account in the name of M/s. Official Liquidator of the company in Liquidation is already opened with Punjab National Bank, Panjim, the Official Liquidator may be permitted to deposit further amount of Rs. 11,64,746/- in this existing account so as to enable Official Liquidator to distribute dividend to 22 employees. The dividend shall be payable for a period of six months from the date of orders to be passed by this Court for declaration of dividend and thereafter the unpaid/unclaimed amount, if any, will be transferred to "the Companies Liquidation Account" maintained with the Registrar of Companies under Section 555 of the Companies Act, 1956.

6. In paragraph 10 of this application it is stated that for distributing the dividend, the Official Liquidator has to release an advertisement of Notice of Declaration of Dividend under Rule 276 of the Companies Rules, 1959 in one English newspaper and one local vernacular language newspaper. Official Liquidator may be permitted to publish the notice of declaration of dividend under Section 276 of the Companies Rules in leading English News Paper n "The Navhind Times" and Marathi newspaper in "Gomantak" having circulation in the State of Goa, through an advertising agency. Liquidator may be permitted to issue notice all 22 Employee by speed post. Applicant submits that each employee has to discharge the said notice of payment and submit the same to Office of Official Liquidator. The Official Liquidator will release the payment to respective employees.

7. Learned counsel for the official liquidator submitted that Corporation Bank being a secured creditor was intimated by the official liquidator regarding adjudication of claim. However there was no response from the said bank.

8. Considering averments reflected in paragraphs 6, 8 and 10, application is allowed in term of prayer clauses (a), (b), (c) and (d).

9. Application stands disposed of.

PRAKASH D NAIK, J.

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS NAIK Date: 2023.11.14 18:35:37 +05'30'