



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Company Petition No. 1 of 2007

[In the matter of M/s. Shubham Polymers Ltd.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. C. Dharmadhikari, Advocate for Shubham Polymers Ltd.
Dr. Anjan De, Advocate for the Official Liquidator
Ms. Prutha Masodkar, Advocate instructed by Mr. S. N. Kumar, Advocate
for SBI
Mr. Parth Sagdeo, Advocate instructed by Mr. M. M. Agnihotri, Advocate
for the MIDC
Mr. S. V. Sohoni, Advocate for respondent no. 4 MSFC

CORAM : ANIL L. PANSARE J.

DATED : 16-02-2024

Heard.

2. The Board for Industrial and Financial Reconstruction (BIFR) has on 10-10-2006 confirmed the Board's opinion for winding up of the company M/s. Subham Polymers Ltd. under Section 20(1) of the Sick Industrial Companies Act, 1985 and directed to send copies of the proceedings to this Court for further action. Accordingly Company Petition No. 1/2007 came to be registered in the matter of M/s. Subham Polymers Ltd.

3. On 6-2-2008, notices were issued to Official Liquidator as also M/s. Subham Polymers Ltd.

4. It appears that the order of winding up has been not passed in this case and, therefore, Official Liquidator is not yet appointed to take charge of the company.

5. Mr. A. C. Dharmadhikari, learned counsel for the company has invited my attention to Affidavit Stamp No. 18/2021 filed on 23-2-2021, sworn by Mr. Shelendra

S/o Sagarmal Manawat, authorized Director of the company, stating therein that nothing survives in the present company petition and the same could be disposed of with permission to the company to approach the Registrar of Companies by filing an application in terms of Section 248 of the Companies Act, 2016.

6. The reasons why the company says that nothing survives, find place in paragraph nos. 3 to 5 of the affidavit which read thus :

“3. The present respondent submits that during the pendency of this petition the respondent company has already paid and cleared of all its dues against all the institutions including the State Bank of India, MSFC, SICOM, ICICI Bank, MSEB as well as the state government relating to the Sales Tax, Central Excise, Labour dues, PF and ESIC dues, Water dues of MIDC and the Factory Licence has also been surrendered. All these institutions have now given no Dues certificates to the respondent company. It is submitted that though these dues have been paid and cleared long time before, the institution like the State Bank of India had not issued a certificate of satisfaction of charge with the Registrar of Companies, which has now been recently issued. The respondent therefore points out that all the dues of the respondent company are paid off and there is no liability of any bank or any institution against the present respondent.

4. The accounts of the respondent company also reflect only promoters' funds and no other liability. Moreover, all the assets/capital and properties of the company have been sold of in the year 2013-14 to M/s Fabrimax Engineering Pvt. Limited, after following the due process of law.

5. *The respondent company in order to demonstrate that all the dues of the respondent company are paid and nothing is recoverable from it as annexed a copy of a document downloaded from the official website of the Ministry of Corporate Affairs, showing that there are no charges registered against the respondent company presently and no dues are payable to any institution. The respondent is annexing herewith the said list of the institutions and statutory bodies pointing out all the dues are satisfied, along with the No dues certificates issued by the respective institutions including the financial institutions as “document number 1” collectively along with this affidavit.”*

7. Thus, the company states that it has discharged its liabilities including the liabilities of the State Bank of India (SBI), MSFC, SICOM, ICICI Bank, MSEB as well as the State Government relating to the Sales Tax, Central Excise, Labour dues, PF and ESIC dues and water dues of MIDC. The factory licence has been also surrendered. The concerned creditors have given no due certificates.

8. The record shows that the Maharashtra State Finance Corporation (MSFC) has been discharged from the proceeding vide order dated 15-6-2010 upon the application made by MSFC stating therein that present company has discharged its liabilities and thus paid all the dues receivable by MSFC.

9. Amongst other institutions named in the affidavit, present before the Court are SBI and MIDC. Ms. Prutha Masodkar, learned counsel instructed by Mr. S. N. Kumar, learned counsel for SBI and Mr. Parth Sagdeo, learned

counsel instructed by Mr. M. M. Agnihotri, learned counsel for MIDC state that the company has paid the dues to SBI and MIDC. No due certificates have been also issued. Thus, it appears that, whatever has been stated in the affidavit is correct.

10. As regards payment of workers, Mr. A. C. Dharmadhikari, learned counsel for the company, on instructions, submits that their payment has been also made. In fact according to him, MIDC does not issue permission to sell the property unless dues of workers are paid.

11. Thus what transpires from the affidavit and the submissions made by learned counsel is that the company M/s. Subham Polymers Limited has discharged entire liability. The company is now closed. The document showing discharge of liabilities and no due certificates issued against it have been annexed with the affidavit. The Official Liquidator has been not yet appointed. In that sense, the learned counsel for the company is correct in submitting that nothing survives in the present petition.

12. The question, however, remains as to whether permission sought by the company to approach Registrar of Companies in terms of Section 248 of the Companies Act could be granted. Said Section has been omitted by Companies (Amendment) Act, 2000 (53 of 2000) with effect from 13-12-2000. Therefore, permission as sought cannot be granted. The company, is at liberty to avail appropriate remedy available in law.

13. With the above observations, the company petition stands disposed of as does not survive.
14. The Official Liquidator is discharged.
15. Copy of the order be served upon the Registrar of Companies for information and necessary action.

(Anil L. Pansare, J.)

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