



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

Company Application (CAO) No. 1067 of 2013
in

Company Petition No. 9 of 1991

[In the matter recovery of dues from Nagpur Transformers Limited (under liquidation)]

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

Court's or Judge's orders

Mr. S. D. Patil, Official Liquidator

CORAM : ANIL L. PANSARE J.

DATED : 08-03-2024

On 1-3-2024, following order was passed.

“In continuation of order dated 2/2/2024, learned Counsel for the Applicant fairly submits that he could not find any Judgment to support his contention that the claim of Bharat Heavy Electricals Limited having been adjudicated by the competent court would fall in the category of secured creditor. He submits that the claim falls in the category of financial creditor. He further submits that the “financial creditor” has been not defined in the Companies Act. This terminology finds in the Insolvency and Bankruptcy Code, 2016. Thus, it appears that the claim of Bharat Heavy Electricals Limited cannot be categorised under the head of secured creditor.

2. By pursis No. 6/2024 the Official Liquidator states that as on 31/12/2023 the funds available to the credit of the Company (In Liquidation) is Rs.4,99,541/-. As against, there are thirteen creditors. The amount payable to the creditors is Rs.2,22,05,929/-. Out of these thirteen creditors, Bank of Maharashtra is a secured creditor. The amount payable to Bank of Maharashtra was Rs. 1,67,00,000/-. Out of which, 28,00,000/- has already been paid.

3. *In addition to Bank of Maharashtra, two persons namely, Shri Vishnu Kumar Jailal Shahu and Shri Shayam Narayanrao Shendre, the workers in the Company appears to have raised claims of Rs. 21,592/- and Rs. 28,102/-. These claims have been not adjudicated by the Official Liquidator. The reason assigned is that they have not furnished documentary proof and further that the work for adjudication of claim is assigned to the Panel Chartered Accountant and report of Chartered Accountant is awaited.*

4. *It appears that the Chartered Accountant's services have been availed on 24/1/2024. The Petition has been filed in the year 1991. Thus, for more than 30 years this claim remained adjudicated. It further appears that letter for furnishing documents was issued to the workers for the first time on 11/6/2021. The Official Liquidator after 30 years expects response to such letter.*

5. *The approach and conduct of the Official Liquidator is not in tune with the provisions of the Companies Act, 1956 and Companies (Court) Rules, 1959. The entire record of the Company ought to be in the office of Company and details of workers must be available in the office. The Official Liquidator, with a little effort, could have immediately found the names of workers and adjudicated the claim. Having not done so, the Official Liquidator has failed to discharge his duties.*

6. *At this stage, learned Counsel for the Official Liquidator seeks time to take corrective measures. It's too late to take corrective measures. The Official Liquidator shall first verify whether the workers are alive. It's been more than 30 years, the Official Liquidator has not taken necessary steps in this regard. Prima facie, the*

Official Liquidator concerned is guilty of misconduct or is atleast responsible for dereliction in discharging official duties.

7. *The copy of order be, therefore, sent to the Regional Director, Mumbai for taking appropriate action against the erring Official Liquidator/s responsible for inaction for the period from the year 1991 till today. Compliance report be filed by 30th April, 2024.*

8. *Stand over to 8th March, 2024.”*

2. In response, the Official Liquidator has submitted his reply. According to him, the officials visited the houses of workers, namely, Shri Vishnu Kumar Shahu and Shri Shayam Narayanrao Shendre. It was informed that Vishnu Kumar Shahu has expired on 8-4-2018. During enquiry, it was revealed that these two persons were working as Superintendent and Assistant Commercial Manager respectively. The Official Liquidator has accordingly adjudicated their claims through Chartered Accountant. The Official Liquidator submits that these two persons do not fall under the definition of ‘workmen’ as stipulated in sub-section (3) of Section 529 of the Companies Act, 1956 read with Section 2(s) of the Industrial Disputes Act, 1947. Accordingly, he submits that their dues are payable in terms of Section 530 and not Section 529-A of the Companies Act.

3. Thus what transpires is that to the credit of the company, an amount of Rs. 4,99,341/- is lying. There are 13 claims pending with the Official Liquidator of which the claim of Bank of Maharashtra falls under the

head of 'Secured Creditor' and will have priority amongst all other claims. The total amount of claim of Bank of Maharashtra is Rs. 1,67,00,000/-, out of which Rs. 28,00,000/- has been paid.

4. The Official Liquidator submits that even entire balance amount of Rs. 4,99,341/- cannot be paid to the Bank of Maharashtra because Official Liquidator will have to deduct the amount payable towards administrative exigencies of the office of Official Liquidator which includes payment of Advocates fees and other administrative expenses. Thus whatever will be left after such payment, will be paid to the Bank of Maharashtra.

5. The Official Liquidator states that there are no assets left of the company. It is thus evident that the Official Liquidator cannot proceed with the winding of the company for want of funds and assets. The company, therefore, stands dissolved in terms of Section 481 of the Companies Act, 1956 with following order.

ORDER

(i) The Official Liquidator, after deducting amount towards administrative exigencies from the amount of Rs. 4,99,341/-, shall pay to the Bank of Maharashtra remaining amount. Thereupon company named and styled 'Nagpur Transformers Limited' shall stands dissolved.

- (ii) The Official Liquidator shall file compliance report within two weeks from today.
- (iii) Civil application stands disposed of accordingly.

(Anil L. Pansare, J.)

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