IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

COMPANY APPLICATION NO.9/2016 IN
COMPANY PETITION NO. 22/2013

Official Liquidator of M/s. Digitech Telemaststics Ltd. Vs. Shri Sudhanshu Suresh Godbole and anr.

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

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Dr. Anjan De, Advocate for Official Liquidator.

CORAM : ANIL L. PANSARE, J.
DATE : 22.03.2024

The present complaint has been filed under Section 454(5) of the Companies Act, 1956 (For short the, "Act") against the ex-Directors of the company. They have not furnished the statement of affairs within 21 days in terms of Section 454(3) of the Act. The complaint is pending for last 8 years. The second accused (second ex-Director) is not yet served.

2. The order of winding up was passed on 27.03.20215. When inquired, the Official Liquidator states that he has not invited claims from the creditors. Rule 139(1) of the Companies (Court) Rules, 1959 provides that, "As soon as practicable after the winding-up order is made and, in any event, not later than seven days after the filing of his preliminary report under sub-section (1) of section 455, the Official Liquidator shall take out a summons for directions with regard to the settlement of the list of contributories.."

3. In the present case, the Official Liquidator has not received the statement of affairs and, therefore, he has

initiated the action in terms of Section 454 (5) of the Act. Thus, in absence of the statement of affairs, it was difficult for the Official Liquidator to invite the claims. However, in such an eventuality, the Official Liquidator was duty-bound to seek extension of time in terms of the Section 455 of the Act, which the Official Liquidator has not done. In that sense, the limitation to invite the claims has lapsed.

4. When inquired, the Official Liquidator submits that he had visited and inspected the records of Registrar of Companies to find out whether there are assets of the company but no assets were found. He further submits that the total balance to the credit of the company is Rs.8489/-.

5. Thus, it appears that the company has no assets nor credit balance. The statement of affair is not on record. The effective steps have been not taken to get the necessary information.

6. In the circumstances, no fruitful purpose will be served by continuing the present proceedings, which is pending before the Court for last more than 8, that too, years for want of service on the second accused. Accordingly, by invoking the provisions of Section 433 of the Act of 1956 and Section 258 of the Criminal Procedure Code, 1973, the present proceeding are dropped.

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In view of what has been stated hereinabove, balance to the credit of the company is only Rs.8489/-. The company has no assets. The liability has been not fixed nor anyone has raised any claim against the company. Thus, it appears that the Official Liquidator cannot proceed with the winding up of company for want of funds and assets. It will, therefore, be just and reasonable to pass an order of dissolution of company.

2. Accordingly Digitech Telematics Pvt. Ltd. stands dissolved.

3. The Official Liquidator seeks permission to adjust the amount lying to the credit of company towards administrative expenses done by the Official Liquidator.

4. Permission is granted. Necessary compliance be done.

5. Before I part with the matter, I deem it appropriate to highlight some annoying facts.

6. On 09.02.2024, following order was passed.

> *“. The Petitioner - Suvidhaa Infoserve Pvt. Ltd. (SIPL) has, in the year 2013, filed Company Petition for winding up the Respondent – Company namely, Digitech Telematics Pvt. Ltd. under Section 433 read with Section 434 of the Companies Act, 1956 (In short, ‘the Act of 1956’). The Petition has been filed on account of non-payment of outstanding dues/debt to the tune of Rs.5.00 Crores approximately. The Official Liquidator came to be appointed vide order dated 27/3/2015 passed by this Court in Civil Application No. 586/2015 in Company Petition No. 22/2013. The statement of affairs, which ought to have been filed within 21 days or three months, as the case may be, in terms of sub-section (3) of Section 454 of the Act of 1956 has been filed on 21/3/2017.*

2. The Official Liquidator, in the year 2016, filed complaint under Section 454(5) of the Act of 1956 vide Company Application No. 9 of 2016 to try the Ex-directors as accused and punish them for the offence committed under section 454(5) of the Act of 1956. According to the Official Liquidator despite service of notice in the year 2015, the Ex-directors namely, Mr. Sudhanshu Suresh Godbole and Mr. Abhijit Madhukar Lele failed to file statement of affairs within 21 days. The Official Liquidator sought permission to prosecute these accused/Ex-directors in OLR No.15/2015, which the Court granted vide order dated 20/11/2015. Accordingly, the present complaint has been filed.

3. The Official Liquidator has filed yet another OLR No. 23/2021 stating therein that the Official Liquidator has gone through the statement of affairs and noticed various discrepancies, and accordingly, informed the defects to the Ex-director Mr. Sudhanshu Godbole from time to time by issuing several letters requesting him to file duly rectified and proper statement of affairs, but he did not. The Official Liquidator, therefore, could not realize the amount due to the Company from various persons and parties, as mentioned in the statement of affairs for want of full particulars and addresses.

4. The Official Liquidator has then stated that the Ex Managing Director of the Company had filed, before this Court, Misc. Civil Application No.1095/2017 under Section 11 of the Arbitration and Conciliation Act, 1996 (In short, 'the Act of 1996') against Bharat Sanchar Nigam Limited, New Delhi (In short, 'the BSNL'). The Application was filed for appointment of Arbitrator for adjudication of dispute existing between the parties. The BSNL raised preliminary objection regarding maintainability of Application by stating that the Applicant – Digitech Telematics Pvt. Ltd. is under liquidation and professional Liquidator has been *appointed. The Application was, accordingly, dismissed with liberty to the Official Liquidator to take appropriate steps to recover the alleged claim of the Company, if deemed fit. This order was passed on 11/12/2020.*

5. The Official Liquidator states that he had issued various letters to the BSNL, but without any result. The last letter was issued on 5/8/2021. The Official Liquidator then states that in the statement of affairs dated 27/2/2017 filed by the Ex-director an amount of Rs.72,24,516.17 was shown to be due to the Company from the BSNL. However, the Ex-director did not provide supporting information/documents in this regard in order to substantiate the claim for recovery of dues. Accordingly, the OLR No.23/2021 is filed to direct the BSNL to deposit the principal amount of Rs.72,24,516.17 and/or to direct the BSNL to appoint the Arbitrator in terms of the Agreement dated 20/9/2012 so as to decide final amount due and payable to the Company under liquidation.

6. The learned Counsel appearing for the Respondent - BSNL submits that nothing is to be paid by the BSNL to the Company. Rather certain amount is due and recoverable from the Company.

7. Thus, despite having knowledge, in the year 2017, of the fact that an amount of Rs.72,24,516.17 approximately is due from the BSNL, the Official Liquidator has not taken any step either for appointment of Arbitrator or for recovery of the amount till September-2021. The filing of Misc. Civil Application under Section 11 of the Act of 1996 by the Company is immaterial, in as much as, once the Official Liquidator has been appointed, it was his responsibility to move application under Section 11 of the Act of 1996 or under the provisions of the Act of 1956 before this Court, if for want of details the Official Liquidator could not proceed further. He ought *to have filed application seeking directions against the Company under liquidation or the BSNL, immediately upon filing statement of affairs by the Company. Having not done so, the Official Liquidator has, in a way, let go the claim which has now become barred by the Law of Limitation.*

8. In the circumstances, the Official Liquidator shall explain as to what prevented it from filing Application/Report seeking remedial action immediately upon receiving the statement of affairs. The Official Liquidator shall also make his submission as regards the period of Limitation for recovery of amount.

9. There is yet another instance which discloses the casual and negligent approach of the Official Liquidator. The same is reflected in the OLR No.18/2023. He is seeking to dispense with filing of misfeasance proceedings under Section 542 and 543 of the Act of 1956 on the ground that the same ought to have been filed within five years from the date of order of winding-up or from the first appointment of Liquidator in the winding-up or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer, but for the absence of books of accounts and records of the Company in liquidation and because the statement of affairs was defective and because the Ex-directors did not furnish the details despite reminders, the Application could not be filed.

10. The record shows that Mr. J. D. Bastian, the learned Counsel, appeared for Mr. Godbole, one of the Directors of the Company. This appearance is reflected at least till March-2018.

11. The Official Liquidator shall submit the report as to why necessary steps were not taken during the period from the year 2017 till filing OLR in the year 2023 seeking appropriate directions/orders against the

Ex-directors for providing requisite details, which according to the Official Liquidator were necessary to file proceedings under section 542 or 543 of the Act of 1956.

12. Stand over to 23rd February, 2024."

7. In response to the aforesaid order, the Official Liquidator has tendered across the bar a report. It is taken on record.

8. Dr. De submits that the earlier officers were responsible for lapses noted by this Court in the order dated 09.02.2024. The present Official Liquidator was appointed in July, 2023. He could not collect details as to what prevented the earlier officers from initiating the appropriate proceedings.

9. When inquired what prevented the present officer to collect information from his predecessors, Dr. De submits that he has no power to question his predecessors.

10. I do not find any merit in the submission. The order dated 09.02.2024 itself gives such powers. If the order is to be complied, the present officer ought to have collected the information from his predecessors. Instead, an excuse is tendered that the present officer has no power to question his predecessor. It is surprising that such a plea is taken by the present officer. When the Court has sought explanation and compliance of the order, by virtue of the order itself, the present officer would get the powers to collect the information from his predecessors. The order doesn't require questioning the predecessors of the present Official

Liquidator. There is a difference between collecting information and questioning his predecessors.

11. Thus, instead of complying order, the present officer has shirked his duties by putting forth an unacceptable excuse.

12. The order dated 09.02.2024 speaks of the serious lapses committed by the respective officers holding the post of Official Liquidator. The present Official Liquidator has failed to comply the order. Thus, the lapse continued, which resulted into following losses:

(a) Recovery of Rs.72,24,516.17/- from BSNL became time barred.

(b) Proceedings under Sections 542 and 543 of the Companies Act, 1956 against the ex-Directors has become time barred.

(c) Other losses, as referred in the order dated 09.02.2024, have occurred.

13. In the circumstance, it will be appropriate to refer the matter to the Secretary, Ministry of Corporate Affairs, to inquire into the matter and take appropriate action against the erring officers, in accordance with law.

The compliance report be filed by 10.05.2024.

14. The Company Petition No.22/2013 is disposed of accordingly.

(Anil L. Pansare, J.)

Kahale