2024:DHC:1200

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on: 23 January 2024**
Judgment pronounced on: 19 February 2024

\+ CO.PET. 128/1994

M/S GROVER LEASING LTD. ..... Petitioner
Through: Mr. Devanshu Chauhan, Mr. Rishi Kapoor & Ms. Parul Sharma, Advocates.

versus

M/S RANK SUSPENSION PVT. LTD. ..... Respondent
Through: Ms. Jagniti Bharti, Adv. for RBI.
Ms. Isha Khanna, Standing Counsel for OL.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

CO.PET. 128/1994 & CO. APPL. 698/2018

1. This judgement shall decide the above noted application dated 28.05.2018, which has been preferred under Rule 9 of the Companies (Court) Rules, 1959 by the applicant - Shri Rajinder Pal Marwaha, who claims to be a shareholder of the respondent company which has since been dissolved, seeking release of funds from the Reserve Bank of India.

2. Briefly stated, company petition bearing CO.PET. 128/1994 was instituted under Sections 433, 434 and 439 of the Companies Act, 1956 seeking winding up of the respondent company – M/s Rank Suspension Pvt. Ltd. In the course of proceedings, an Official Liquidator attached to this Court was appointed as the Provisional Liquidator of the respondent company vide order dated 18.03.2002

and thereafter the company was ordered to be wound up vide order dated 17.09.2004. From a perusal of the record, it is borne out that claims were invited by the Official Liquidator in 2013, however no creditors came forth and on completion of the formalities, the respondent company was finally dissolved on 04.09.2013 and a sum of Rs. 70,32,321.50/- was accordingly transferred to the RBI.

3. On behalf of the applicant, it is stated that he was one of the shareholders of the respondent company and out of a total of 28760 shares of the company, he held 23110 shares in his name - accounting for 80.35% of the shares; as also 1439 shares in the name of his HUF that being 'Rajinder Pal Marwaha HUF' – accounting for 05% of the shares. It is the case of the applicant that he had shifted to Uttar Kashi in the year 2006 and has since been taking care of abandoned families who are flood survivors, and was unaware of the notices published in newspapers by the Official Liquidator. It is further stated that he was under a *bonafide* impression that no funds were left available with the respondent company at the time of its final dissolution on 04.09.2013, and therefore he did not file any claim before the Official Liquidator.

4. Presently, it is stated on behalf of the applicant that he is entitled to a sum of Rs. 56,50,470.33/-, equivalent to 80.35% of Rs. 70,32,321.50/- on account of the shares held by him in his name; as also an amount of Rs. 3,51,616.08/-, on account of the shares held by him in the name of his HUF, being 05% of the total shares of the respondent company.

5. *Per contra*, certain contentions have been raised on behalf of the Official Liquidator vide OL Report 101/2023 dated 25.10.2023. It has been stated in the said report that a claim was received from the applicant on 28.05.2019, seeking release of funds from the RBI. Thereafter, vide order of this court dated 16.01.2023, notice was issued to the RBI and the applicant was directed to furnish necessary documents in support of his claim, evidencing the he was a shareholder of the company. Pursuant to the same, the applicant filed an affidavit and the facts stated therein were verified from the annual returns filed by him in the year 1999, and it is stated that it appears that he is entitled to 23110 and 1439 shares as claimed by him. However, it has been stated in the report of the OL that the applicant failed to produce the share certificates. A justification was provided in the affidavit filed by the applicant that he had lost the share certificates in the year 2000, yet he failed to produce any complaint or FIR lodged in relation to the missing certificates.

6. A notice dated 16.04.2023 was issued by the Official Liquidator calling upon the applicant to submit all relevant documents and proof, including the share certificates in original, in furtherance of the claim made for release of the funds and further vide order of this court dated 02.08.2023, the applicant was directed to appear before the office of the Official Liquidator. In compliance of the same, Counsel for the applicant appeared before the office of the Official Liquidator and submitted certain documents. It has been stated that the applicant only furnished copies of the Annual Return of the company for the year

ending 31.03.1999 but failed to provide the original Share Certificates and thus, in absence of the original Share Certificates, the Official Liquidator cannot confirm the claim of the applicant.

7. At this juncture, it is apposite to note that a Reply Affidavit dated 19.12.2019 was filed on behalf of the RBI in response to the present application in compliance with the order of this court dated 22.02.2019. It has been stated therein that the present application is not maintainable as against the RBI in view of the fact that Punjab National Bank (PNB) has been designated as the accredited bank for opening of Official Liquidator Accounts and Company Liquidation Accounts, as provided for under Sections 552 and 555 of the Companies Act, 1956. In this regard, reference has been made to Corrigendum F.No.G-25017(VI)-Adv.Party (DOA) dated March 11, 1977 issued by Controller of Accounts, Ministry of Law, Justice and Company Affairs. Further, it is stated that per the Companies Liquidation Accounts Rules, 1965, the definition of Reserve Bank of India, includes its branches and agencies, and that PNB is an agency bank for handling Government transactions. Moreover, reliance has been placed on the Companies (Central Government's) General Rules and Forms, 1956, per which all payments subsequent to 01.10.1976 are to be made to PNB as it is the designated Public Sector Bank for the Department of Company Affairs. As regards the Company Liquidation Account provided for under Section 555 of the Companies Act, 1956, the same is to be maintained with and handled by PNB instead of RBI as per the Draft Manual of the Functioning of Official Liquidators, dated 27.03.2012.

8. Having heard learned counsels for the rival parties, including the learned Standing Counsel for the Official Liquidator and on perusal of the record, it would be expedient to reproduce Section 555 of the Companies Act, 1956 which provides that at the instance of winding up of a company, any funds remaining with the company on account of unpaid dividends and undistributed assets are to be paid into a separate public account of the RBI called the Companies Liquidation Account. Section 555 of the Companies Act, 1956 reads as under:

> 555. UNPAID DIVIDENDS AND UNDISTRIBUTED ASSETS TO BE PAID INTO THE COMPANIES LIQUIDATION ACCOUNT
> (1) Where any company is being wound up, if the liquidator has in his hands or under his control any money representing - (a) dividends payable to any creditor which had remained unpaid for six months after the date on which they were declared, or (b) assets refundable to any contributory which have remained undistributed for six months after the date on which they became refundable, the liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India in a separate account to be known as the Companies Liquidation Account.
> (2) The liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.
> (3) The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to such officer, as the Central Government may appoint in this behalf, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.
> (4) The liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it under subsections (1) and (2), and such receipt shall be an effectual discharge of the liquidator in respect thereof. (5) Where the company is being

wound up by the 1 [Tribunal], the liquidator shall make the payments referred to in sub-sections (1) and (2) by transfer from the account referred to in section 552.
(6) Where the company is being wound up voluntarily * [by] 2 [the Tribunal], the liquidator shall, when filing a statement in pursuance of sub-section (1) of section 551, indicate the sum of money which is payable to the Reserve Bank of India under sub-sections (1) and (2) of this section which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.
(7) (a) Any person claiming to be entitled to any money paid into the Companies Liquidation Account (whether paid in pursuance of this section or under the provisions of any previous companies law) may apply to the 1 [Tribunal] for an order for payment thereof, and the 1 [Tribunal], if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due : Provided that before making such an order, the 1 [Tribunal] shall cause a notice to be served on such officer as the Central Government may appoint in this behalf, calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made. (b) Any person claiming as aforesaid may, instead of applying to the 1 [Tribunal], apply to the Central Government for an order for payment of the money claimed ; and the Central Government may, if satisfied whether on a certificate by the liquidator or the Official Liquidator or otherwise, that such person is entitled to the whole or any part of the money claimed and that no application made in pursuance of clause (a) is pending in the 1 [Tribunal], make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.
(8) Any money paid into the Companies Liquidation Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government ; but a claim to any money so transferred may be preferred under sub-section (7) and shall be dealt with as if such transfer had not been made, the order, if any, for payment on the claim being treated as an order for refund of revenue.
(9) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall - (a) pay interest on the amount retained at the rate of twelve per cent per annum, and also pay such penalty as may be

> determined by the Registrar : **Provided** that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause ; (b) be liable to pay any expenses occasioned by reason of his default; and (c) where the winding up is by, 1 [the Tribunal], also be liable to have all or such part of his remuneration as the 2 [Tribunal] may think just to be disallowed, and to be removed from his office by this 2 [Tribunal].

9. A careful perusal of the aforesaid provision would show that as per Clause 7(a) a person may move an application for payment or refund of any money paid into the Companies Liquidation Account showing his entitlement to such money or funds. The Court or the Tribunal, as the case may be, has to be satisfied that such person is entitled to an order for payment or refund of such amount.

10. In the instant case, first things first, the present application was filed on 28.05.2018 whereas evidently, the respondent/company had been finally dissolved on 04.09.2013. The applicant/Shri Rajinder Pal Marwaha has made the following averments in the instant application:

> "03. That the Applicant recently appointed an advocate and inspected the court file whereupon the Applicant became aware that the official liquidator filed an application dated 30.08.2013 bearing CA No. 1534 of2013 under the provisions of Section 481 of the Companies Act, 1956 for dissolution of the Respondent Company and to close the books of the Respondent Company after transferring the available funds to the Reserve Bank of India. It would not be out of place to mention here that as per the said application the funds available in the Respondent Company, *on 31.07.2013,* was to the tune of Rs. 70,32,321.50 (Rupees Seventy Lakhs Thirty Two Thousand Three Hundred and Twenty One and Fifty Paisa Only). It was also cited in the said application that since no contributory have come forward, and therefore the available funds should be transferred to the Reserve Bank of India.
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> 04. That vide order dated 04.09.2013 this Hon'ble Court was pleased to allow the aforesaid application dated 30.08.2013 bearing CA No. 1534 of 2013 and was also pleased to dissolve the

Respondent Company and transferred Rs. 70,32,321.50 to the Reserve Bank of India.

05. That it would not be out of place to mention here that the Applicant was not aware about the notices issued in the news papers as claimed in the application dated 30.08.2013 bearing CA No. 1534 of2013 since the Applicant shifted to Uttar Kashi sometime in the year 2006 and the Applicant is now taking care of three abandoned families who are survivors of flood which took place in the year 2013. If the Applicant would have been aware about the notices issued in the news papers the Applicant would have definitely approached the Official Liquidator. The Applicant was under bona-fide belief that there was nothing left in the Respondent Company as against the fact that there were funds, *to the tune of Rs. 70,32,321.50 (Rupees Seventy Lakhs Thirty Two Thousand Three Hundred and Twenty One and Fifty Paisa Only),* available in the Respondent Company at the time of dissolution of the Respondent Company on 04.09.2013 and the same was transferred to the Reserve Bank of India in the absence of claim by the shareholders."

11. The averments, on the face of it, are completely misleading and false, in view of that fact that during the course of the winding up proceedings, his presence in person as well as through counsel has been recorded by this Court on 29.08.2006, 01.11.2006, 01.12.2006 and 06.03.2007. Furthermore, vide order dated 29.08.2006, it was found that the applicant had appropriated funds to the tune of Rs.7,30,000/- of the company (in liquidation) without any authority, from its account and had failed to appear, despite notices issued by the Official Liquidator and this Court. It appears that Bailable Warrants were also ordered to be issued, thereby ensuring and procuring his appearance before this Court and even an attachment order was passed in respect of his bank account to the extent of Rs.7,30,000/-, which was eventually realised by the Official Liquidator. Thus, it cannot be said that the applicant was unaware of the proceedings.

12. All said and done, the applicant was one of the Ex-directors of the respondent company, who did not appear regularly during the winding-up proceedings and failed to produce relevant documents to the satisfaction of the Official Liquidator, deliberately concealing material facts and properties from the Official Liquidator. The applicant has miserably failed to substantiate that he is entitled to 23110 shares of the company in his name as also 1439 shares in the name of his HUF, as claimed by him. He has not even cared to enjoin the other shareholders in the proceedings arising out of his application.

13. The crux of the matter is that in the face of the fact that the applicant has failed to substantiate his claim, I find no infirmity or perversity in the report of the Official Liquidator since it is evident that it is not possible to process his claim. It was for the applicant to produce sufficient material before the Official Liquidator, which he has been unable to do. The supposed certified copy of the Annual Report dated 09.09.1999 which suggests that he is holding such shares is one which is only signed by him. However, the report is snagged where the details and signatures of other directors, promoters or shareholders are required and various relevant places are left in blank columns. The same has not even been signed by the other shareholder namely, Shri Satender Lal Marwaha

14. No other record has been brought forth by the applicant which may suggest an inference that he was a shareholder in the company. He has failed to provide share certificates which are the *prima facie*

evidence of the title of a person to such shares, as provided for under Section 84 of the Companies Act, 1956 or Section 46 of the Companies Act, 2013. No evidentiary proof has been provided in the nature of the Register of Members in terms of Section 150 of the Companies Act, 1956 or Section 88 of the 2013 Act. The applicant has not placed any legitimate documents on the record which suggest that he had earned some dividends from the shares claimed by him nor any such documents have been brought to the fore that would identify the shares as his assets.

15. In view of the foregoing discussion, the relief claimed by the applicant seeking release of an amount of Rs. 56,50,470.33 towards his alleged shareholding as also an amount of Rs. 3,51,616.08/- on account of the shares held by him in the name of his HUF, cannot be entertained.

16. Therefore, the said application is dismissed. Nothing survives in the present company petition and the same is disposed of.

17. The next date of hearing already fixed in the matter i.e. 02.05.2024 stands cancelled.

DHARMESH SHARMA, J.

FEBRUARY 19, 2024

sm/ck