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

% **Date of decision: 14th May, 2024**

\+ CO.PET. 134/1995

RE- ARC CEMENT LTD. ..... Petitioner

Through: Mr. Siddharth Sikri and Ms. Kirti Singh, Advocates for applicant/Cement Worker Union).

versus

.... Respondent

Through: Mr. T. Singhdev, Mr. Tanishq Srivastava and Mr. Abhijit Chakravarty, Advocates for OL.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

<u>DHARMESH SHARMA, J. (ORAL)</u>

<u>CO.APPL. 483/2024</u>

1. The above-noted application has been preferred on behalf of the Official Liquidator under Section 481 of the Companies Act, 1956[1], seeking dissolution of the respondent/company (in liquidation) – M/s. ARC Cement Ltd., and praying that the Official Liquidator be discharged as its Liquidator.

2. This application for dissolution has been moved in the present company petition, which was instituted on the basis of a reference

[1] The Act

from the Board of Industrial and Financial Reconstruction, for winding up of the company (in liquidation).

3. It is brought forth that the respondent company was ordered to be wound up *vide* order dated 15.12.2000 and the Official Liquidator attached to this Court was appointed as its Liquidator with the direction to take charge of the assets, records and books of accounts of the company. Pursuant to the same, citations for winding up were made by way of publications in the newspapers namely, 'Statesman' (English) and 'Amar Ujala' (Hindi) on 17.01.2001 as also in the Delhi Gazette.

4. As per the records maintained with the Registrar of Companies, NCT of Delhi, the following persons were shown to be the Directors of the company (in liquidation):

(i) Mr. C.M. Chadha
42, Friends Colony, New Delhi

(ii) Mrs. Sadhana Chadha
42, Friends Colony, New Delhi

(iii) Mr. Kamlesh Sawhney
A-18, New Friends Colony, New Delhi

5. As regards the registered office of the company (in liquidation) situated at 8 & 9, Atma Ram Mansion, Scindia House, New Delhi – it is stated that the office of the Official Liquidator visited the said premises on 06.02.2001, however, possession of the same could not be taken over as it was found that the company (in liquidation) was not functioning out of the premises and there was no board or signage to indicate that the premises was being used by the company (in liquidation).

6. In respect of the factory premises of the company (in liquidation) situated at village Gunial Gaon, Dehradun, Uttarakhand – it is stated that possession of the said premises was taken over by the Official Liquidator on 19.08.2002. Thereafter, the Plant & Machinery as also the Land & Building of the said factory premises were sold for a sum of Rs. 4.73 crores, and possession of the same was duly handed over to the auction purchaser – Diana Euro Chem (P.) Ltd., in compliance with the order dated 23.05.2003.

7. Pursuant to the order dated 23.05.2003, claims were invited from the creditors and workers of the company (in liquidation). Thereafter, *vide* order dated 12.12.2003, the Official Liquidator was directed to examine and scrutinise the claims received. Subsequent to undertaking this process, pursuant to the order dated 14.10.2004, the Official Liquidator disbursed a sum of Rs. 19,36,511/- to 63 workers of the company (in liquidation). Further, in compliance of order dated 16.11.2006, a sum of Rs. 1 crore was disbursed amongst the secured creditors of the company (in liquidation) in the following manner:

(i) IDBI received Rs. 45,90,216/-;
(ii) IFCI received Rs. 22,78,589/-; and
(iii) ICICI received Rs. 31,31,195/-.

8. In addition to the above-stated disbursement, the Official Liquidator further disbursed Rs. 1.40 crores amongst the secured creditors of the company (in liquidation) on 02.02.2008. The said disbursement was made pursuant to the order dated 03.01.2008, and carried out in the following manner:

(i) IDBI received Rs. 64,26,303/-;

(ii) IFCI received Rs31,90,025/-; and

(iii) Kotak Mahindra Bank received Rs. 43,83,672/-.

9. At present, it is stated that as on 29.04.2024, the funds position of the company (in liquidation) is Rs. 10,04,898.48/- and the liquidation expenses are estimated to be Rs. 12,95,000/-. It is further stated that the Official Liquidator is not seized of any assets, either movable or immovable, from which any money can be realised. Therefore, it is submitted that no fruitful purpose would be served in keeping the present winding up proceedings pending.

10. In light of the prevailing facts and circumstances, this Court is of the opinion that these liquidation proceedings warrant a quietus, and the company (in liquidation) should be dissolved as the Official Liquidator cannot proceed any further with the winding up process. It would be expedient to invite reference to the decision of the Supreme Court in **Meghal Homes (P) Ltd. v. Shree Niwas Girni K.K. Samiti & Ors.**[2]**,** the relevant observations of which are reproduced hereinbelow:

> "When the affairs of the Company have been completely wound up or the court finds that the Official Liquidator cannot proceed with the winding up of the Company for want of funds or for any other reason, the court can make an order dissolving the Company from the date of that order. This puts an end to the winding up process."

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[2] (2007) 7 SCC 753

11. It would also be apposite to consider Section 481 of the Companies Act, 1956, which provides for the dissolution of a company, the relevant portion of which reads as under:

> "**Section 481. Dissolution of Company.**
> (1) When the affairs of a company have been completely wound up or when the Court is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any of the reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly."
> ....

12. Thus, relying on the decision of the Supreme Court in ***Meghal Homes (supra)*** as also the import of Section 481 (1) of the Act, besides the facts and circumstances of the present case, these liquidation proceedings warrant to be brought to an end.

13. Therefore, the present application is allowed. The company (in liquidation) – M/s. ARC Cement Ltd., stands dissolved and the Official Liquidator is hereby discharged as its Liquidator.

14. The Official Liquidator is permitted to transfer the available balance, if any, to the Common Pool Fund and thereafter, to close the books of accounts of the company (in liquidation).

15. A copy of this Judgment be communicated to the Registrar of Companies within 30 days by the Official Liquidator.

16. Accordingly, the present company petition and pending applications, if any, stand disposed of.

17. The next date of hearing i.e., 23.07.2024 hereby stands cancelled.

DHARMESH SHARMA, J.

MAY 14, 2024
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