$~17

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

\+ WP(C) 783/2021 & CM APPL.52002/2022, CM APPL.14619/2024

CREDITORS WELFARE ASSOCIATION ....Petitioner

Through: Mr. R.P. Shukla, Mr. Dhruv Shukla, Ms. Upasna Shukla, Ms. Aeshwarya Sharma and Mr. Gaurav Chauhan, Advocates.

versus

OFFICIAL LIQUIDATOR, SUPER BAZAR & ORS ...Respondents

Through: Mr. Harin P Raval, Senior Advocate alongwith Mr. Ruchir Mishra, Mr. Mukesh Kr. Tiwari, Ms. Reba Jena Mishra, Ms. Urmi P. Raval, Ms. Shrestha Narayan and Ms. Shreya Bansal, Advocates for R1.
Mr. Ripudaman Bhardwaj, CGSC with Mr. Kushagra Kumar and Mr. Abhinav Bhardwaj, Advocates for UOI.
Mr. Nitin Kumar with Mr. Ayush, Advocates for applicant.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

O R D E R

% **18.12.2024**

1. The present petition has been filed by the petitioner association, *inter alia*, praying as under:

> *(a) Issue writ, order or directions in the nature of the writ of certiorari and mandamus or any other appropriate order or direction which may be deemed fit and proper, interalia, directing*

the Respondent No. 2 & 3 to direct thr Respondent No. 1 to disburse the claim of the Petitioner of Rs. 26 Crore along with interest at the prevailing bank rate in terms of the order of the Hon'ble Supreme Court Of India dated 05.03.2020 passed in Conmt. Pet. (C) No. 1665-1666 Of 2017 In I.A. No. 102-103 Of 2017 in SLP (C) NO. 8398-8399 of 2005 namely M/S Writers and Publishers Pvt. Ltd. v. Dr. A. K. Mishra, Official Liquidator; along with the amount of security paid by the Petitioners to the Super Bazar in accordance with the terms and conditions applicable, before its liquidation.

2. The learned counsel appearing for the petitioner association states that the petitioner is an association of secured creditors comprising almost 800 suppliers who were supplying goods and items on credit basis to Super Bazar – a Multi-State Co-operative Society, in the year 2002. He submits that the dues of the members of the petitioner association are around ₹26 Crores. He submits that the goods were supplied in the year 2002 itself and in the same year, the Central Registrar of Co-operative Societies passed an order winding up the Super Bazar on 05.07.2002. The said order was challenged but the said challenge was repelled by the Appellate Authority on 05.11.2002. He submits that this court had also dismissed the writ petitions challenging the winding up order, which were instituted by the employees of Super Bazar.

3. He submits that the then Official Liquidator issued an Office Order on 31.12.2002 recognising the claim of the petitioner association to the extent of ₹26 Crores and recorded the said claim at Priority No.1. On that basis, he contends that respondent no.1/Official Liquidator be directed to release the said claim in favour of the members of the petitioner association.

4. Mr. Harin P Raval, the learned senior counsel appearing for respondent no.1/Official Liquidator, disputed the contention that the Official

Liquidator had acknowledged and settled the claim of the suppliers at ₹26 Crores or that the said claim was set at Priority No.1. The learned senior counsel had also given a brief background of the entire dispute commencing from the year 2002 till date. In support of his submissions, he drew attention of this court to paragraph nos. 6 and 7 of the Counter Affidavit filed on behalf of respondent no.1/Official Liquidator.

5. Apart from the above, Mr Raval also referred to Section 90(2)(c) of the Multi-State Co-operative Societies Act, 2002 (hereinafter *the Act*) and submitted that the Official Liquidator has been invested with appropriate jurisdiction to investigate into all the claims against a society registered under the Act and to decide the questions of priority arising between various claimants. He also stated that the present writ petition may not be the appropriate remedy available with the petitioner inasmuch as sub section (g) of Section 99 of the Act provides for an appeal against an order passed by the liquidator under Section 90 of the Act.

6. Mr Raval also referred to Rule 28 of Multi-State Co-operative Societies Rules, 2002 (hereinafter *the Rules*) and contended that the procedure as prescribed under the Rules is required to be adopted by the liquidator. He submits that the examination of all claims in terms of the said procedure is as yet incomplete.

7. It would be apposite to extract paragraph nos. 6 and 7 of the Counter Affidavit of respondent no.1/Official Liquidator. The same are set out below:

> *"6. That, furthermore, the priorities of refunds/payments out of receipt of payment as per the directions of the Hon'ble Supreme Court and the Multi State Cooperative Societies Act, 2002 was mentioned. In regard to the claim of the Petitioner, it was stated*

that vide order dated 19.07.2011 by the Department of Agriculture & Cooperation, Ministry of Agriculture, Government of India, the Joint Secretary, Rs. 25 crores (approx.) be paid within one month to the suppliers. However, it is clarified that the said amount has not been verified with the official records of Super Bazar by the Office of the Official Liquidator.

*7. **That these claims have not been decided and have not been adjudicated by any Competent Authority, as required under the Multi State Cooperative Societies Act. As of today, only claims had been invited by the erstwhile Official Liquidator and a tabulated list of such claims had been made, however, the records of the Official Liquidator do not show any document(s) or order(s) passed verifying the claims submitted pursuant to the invitation of the claims**."*

[emphasis supplied]

8. Since the submission of the learned counsel for the petitioner regarding approval of their claims and prioritization of the same at No.1 is disputed by respondent no.1/Official Liquidator himself, we do not propose to delve into the issue inasmuch as the materials on record disclose that there are multitude of disputed questions of facts. It is trite that Courts under Article 226 of the Constitution of India would normally refrain entertaining any petition involving disputed questions of facts.

9. In view of the above, we direct respondent no.1/Official Liquidator to determine all the claims of the petitioner association or its constituent members in accordance with the procedure prescribed in Section 90(2)(c) of the Act as well as the Rules. The petitioner association would be entitled to submit all relevant documents and evidence in support of their claims to respondent no.1/Official Liquidator within the time specified by respondent no.1. We request respondent no.1/Official Liquidator to consider and pass

appropriate orders in respect of the claims including that of the petitioner association as expeditiously as possible.

10. The present petition is disposed of in the aforesaid terms.

11. All pending applications also stand disposed of.

12. The rights and contentions of the parties are reserved and it is clarified that this court has not examined the merits of the petitioner's claim.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 18, 2024/*rl*

Click here to check corrigendum, if any