

(1976) 03 DEL CK 0017

In the Delhi High Court

Case No : Company Application No. 78 of 1976

Capital Chit Fund Pvt. Ltd. and Another

APPELLANT

Vs

Official Liquidator

RESPONDENT

Date of Decision : 22-03-1976

Acts Referred:

Citation : (1978) 48 CompCas 176

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Judgement

D.K. Kapur, J.—The present application seeks an order for effectively carrying out a scheme which has already been sanctioned by this court. The background of the case may be mentioned as it has some bearing on the type of order that has to be passed. The applicant-company, M/s. Capital Chit Fund (P.) Ltd., was a company which was ordered to be wound up by this court. During the winding-up proceedings, a considerable amount was recovered from the debtors of the company and, Therefore, a scheme of arrangement was propounded by Shri J. N. Kapoor and Shri Dhall for paying off the creditors of the company. This scheme was sanctioned and now the company is working under that scheme. This is in a way an unusual situation, because the official liquidator was for a considerable period taking steps to wind up the company. The amounts which are at the disposal of the company are partly amounts which were collected by the official liquidator and partly there is an amount of Rs. 62,000 which was to be contributed by the profunder of the scheme to carry out the same. There are problems concerning the payment of commission to the official liquidator and problems concerned with the payment to some of the creditors. Also, after the scheme had been sanctioned, certain amounts have been received by the official liquidator and there is a problem as to whether the official liquidator is entitled to get any commission on the receipt of those amounts, and whether he is also to get commission on the disbursal of the amounts. As I have said, this is an unusual case, because a company which had closed down for all practical purposes, has been revived after the winding up had proceeded for a

considerable time and now we have to determine what are the rights of the official liquidator in respect of the funds which he has collected on behalf of the company after the scheme was sanctioned and also whether the official liquidator is entitled to commission on the amount contributed by the profounder of the scheme.

2. I now proceed to deal with the various questions raised in the application one by one. It is stated in the application that most of the creditors have been paid according to the scheme, but certain creditors were unable to collect the money either because they had died or because the cheques were not received by them when sent to their last known addresses. The names of nine creditors are mentioned. They total a sum of Rs. 2,800.82. It is stated that the amount payable to these creditors is quite small and it need not be, necessary for them to produce succession certificates before the amounts are disbursed to them. The court has power u/s 392 of the Companies Act, 1956, to supervise the carrying out of the scheme or arrangement. I agree with the claim of the applicant that it need not be necessary for these small creditors to get a succession certificate before the payment is made. But the profounder of the scheme must ensure that the payment is made to the right persons. Therefore, if the profounder are sure that the right persons are claiming the amount, they may either pay the amount to them and obtain indemnity bonds from them to ensure situation in case it is found that these are not the right persons or the applicant may be asked to produce succession certificate if the profounder have any doubt concerning the identity of the persons to whom the money is to be paid. Some of these nine creditors are persons who have not died but whose addresses are not traceable. In the case of these persons, the applicant-company may keep the money and pay them if they are traced out. Thus, the direction on the first point raised is that in case the original creditors have died, their legal representatives may be paid against either an indemnity bond or the production of a succession certificate and in the case of untraced out creditors, the money should be retained and paid as and when they are traced out. The company should keep the court informed of the carrying out of the scheme by making a report under Rule 86 of the Companies (Court) Rules, 1959. Such a report may be submitted within a period of two months.

3. Coming now to the second question, concerning which directions are sought, it is stated that a sum of Rs. 4,385.75 is still lying undistributed and two more creditors have filed their claims with the official liquidator claiming that Rs. 1,000 and Rs. 2,000 respectively are due to them. As the company is no longer being wound up, I do not think that the official liquidator should now proceed to determine these claims. In fact, it is the company which should determine the claims and, if the company disputes the same, it should direct the persons concerned to move the court u/s 392 of the Companies Act, 1956, to seek a direction from the court as to whether their claims are payable or not. Thus, the direction in this respect is that the claims need not now be determined by the official liquidator, but should be determined by the company and, in case the

company finds difficulty in dealing with the same, or there are some creditors not covered by the scheme, then the persons concerned should be directed to move this court u/s 392 of the Act.

4. Coming now to third question, it is stated that the official liquidator has received a sum of Rs. 4,648.75 from the debtors of the company after the scheme had been sanctioned by the court. Naturally, this amount has to be paid to the company and need not be retained by the official liquidator. Indeed, the applicant rightly seeks a direction that all monies to be paid to the company should in future be handed over to the company by the official liquidator retaining the same. I will presently give directions regarding the question of commission, if any, which has to be deducted by the official liquidator from the amounts received.

5. Coming now to the main question, which is raised in this petition, I find that, according to the applicant, the official liquidator is claiming a commission of 2% on all monies received by him from whatever source it might be received on behalf of the company and he also claims a commission of 2% on the sum of Rs. 62,000 which has been contributed by the proponent of the scheme for paying the creditors under the scheme. The commission on Rs. 62,000 comes to Rs. 1,240. Similarly, the official liquidator is claiming a commission of 1% on all disbursements including the disbursement of the said sum of Rs. 62,000. The applicant claims that this commission is not payable and, further, no commission is payable on any other amount which might be received by the official liquidator hereafter. The company also claims that all disbursements are being done by the company. This question raises a point of considerable importance in connection with what are the rights of the official liquidator after the winding-up order has ceased to be effective and the company has come under a scheme or arrangement. Is the official liquidator to continue to receive his commission, even on amounts disbursed under the scheme and is the official liquidator entitled to get commission on all amounts received hereafter by the company ? These two questions require a considered analysis of the scheme of the Companies Act and the Companies (Court) Rules, 1959.

6. The relevant rules dealing with the fees to be paid on account of the work done by the official liquidator are contained in Rule 291 of the Companies (Court) Rules, 1959. That rule states that, if the official liquidator becomes the liquidator of a company, certain amounts as specified in the rule have to be paid into the public account of India in the Reserve Bank of India to the credit of the Central Government from out of the assets of the company in liquidation. In case the official liquidator acts as provisional liquidator, then either the company or the petitioner as the court may direct, have to pay such fees as the court may consider reasonable for the services of the official liquidator. In case a winding-up order is made and the official liquidator acts as a liquidator, then on all realisations made, a certain percentage has to be paid on each year's collection. The percentage is 3% on the first sum of Rs. 10,000 and 2% on the next Rs.

40,000 and 1% on the subsequent Rs. 50,000. Above Rs. 1,00,000 the percentage is 2%. Thus, the percentage to be paid to the Central Government is payable on a slab system. On distribution, the percentage is 1/2 of this amount. Similarly, there is a commission to be paid for realisations of property for debenture-holders and other secured creditors. If the official liquidator acts as a trustee under a scheme of arrangement, or performs any special duties, the court can fix the scale of fees. Similarly, if the official liquidator acts as liquidator in a creditors' voluntary winding up or, in case there are additional liquidators u/s 527 of the Act, the fees payable are adjustable by the court. Finally, if there is a reconstruction of the company in liquidation or a scheme of arrangement concerning its affairs, or if for any other reason the court is of opinion that the fees prescribed are excessive and a reduction should be made, the court has power to reduce the same. The present is a case where there is now a scheme of arrangement concerning the affairs of the company and, hence, the court has power to reduce the fees to be paid on account of the services of the official liquidator if the court finds them excessive. This is the relevant rule.

7. The first question for consideration is whether the Central Government is to be paid any fees in respect of the amount contributed by Shri J. N. Kapoor and Shri M.R. Dhall as profunder of the scheme. The amount in question is Rs. 62,000 and it has to be determined whether this amount can be considered to be part of the total assets of the company which have been realised or brought to credit by the official liquidator. I do not think that this amount can in any way be considered to be part of the total assets of the company. Sub-rule (2) of Rule 291 of the Companies (Court) Rules, 1959, indicates that the total assets include calls on contributories, interest on investments, rents from properties and must necessarily include the amounts realised from persons indebted to the company in liquidation. I do not think that any amount contributed by a third party with a view to the carrying out of a scheme or arrangement sanctioned by the court, can be considered to be an amount the company got out of liquidation in order to restart its business. In case the scheme is sanctioned, as it has been sanctioned in the present case, the company ceases to be in liquidation and comes under the scheme of arrangement which is to be supervised by the court u/s 392 of the Act. It would, Therefore, follow that any amount paid by a third party to enhance the finances of the company and thus to make the scheme workable, cannot be considered to be an amount which is realised or brought to credit by the official liquidator. This in fact is the raising of additional capital to finance the company for working out the scheme of arrangement. I would, Therefore, answer the first question under this heading by stating that no amount is to be paid to the Central Government on account of the so-called realisation of Rs. 62,000 contributed by the profunder of the scheme. Nor is any amount to be paid for disbursements under the scheme. I now take up the question of other sums which have been realised by the official liquidator.

8. In paragraph No. 5 of the application, it is mentioned that a sum of Rs. 4,648.75 realised by the official liquidator from the debtors of the company is

with the official liquidator and should be directed to be refunded to the company. As this amount has been realised by the official liquidator, the fees for making the realisations are payable to the Central Government under Rule 291. However, the official liquidator is not required to disburse this amount as the company has come under a scheme of arrangement. The amount is, Therefore, to be paid to the company itself which has now been revived and is not to be distributed by the official liquidator. I accordingly hold on this point that the Central Government is entitled to get commission for realisations according to the scale fixed under Rule 291, but not on disbursements.

9. Finally, Therefore, a question as to whether the Central Government is to get any fees on account of disbursements which are to be made under the scheme. This raises a peculiar and unusual question because there is no doubt that the amounts in question have been realised by the official liquidator during the winding up proceedings. After the sanctioning of the scheme, the amounts have merely to be paid to the persons carrying out the scheme. Can this be described as disbursement of the amount ? It is provided in the rule that the total amount distributed in dividend or paid to contributories, preferential creditors, and debenture-holders by the official liquidator require a fee to be paid calculated at half the rate at which it is payable on realisation. The amount in question is now not to be paid to the persons mentioned in the rule, but is to be given to the company who will utilise the amount in accordance with the scheme. I think that the purpose of the fees payable to the Central Government in respect of disbursements made by the official liquidator is to cover the cost of the work done by the official liquidator in carrying out his duties consisting of ascertaining the creditors and taking other steps in respect of the disbursements. These duties are no longer required to be undertaken by the official liquidator, but are to be the work of the company itself. It is the pre-ponders of the scheme, or any other person, who may be managing the affairs of the company, who have now to utilise this money in accordance with the scheme. I do not think that the rule was intended to treat the payments by the official liquidator to the company after the scheme was sanctioned as a disbursement to the creditors, contributories or other persons entitled to receive monies from the company. These are not, strictly speaking, disbursements within the meaning of the rule and, accordingly, I would conclude that payments made to the company out of the realised funds are not to be treated as disbursements and are not to attract the fees payable under Rule 291 of the Companies (Court) Rules, 1959.

10. Turning to Section 391 of the Companies Act, 1956, it is to be noticed that a scheme can be sanctioned by the court even if a company is being wound up. If such a scheme is sanctioned, the scheme of arrangement becomes binding on all the creditors of the company, and also on the liquidator and contributories of the company. If that is so, the object of making the realisations by the official liquidator out of the assets of the company and paying the same to the creditors and contributories of the company ceases to exist. In short, it is no longer necessary to wind up the affairs of the company, but to carry out the scheme and

thus enable the company to carry on its business again. The company ceases to be a company under winding up and becomes a working company against albeit a company working under a scheme. This means that monies expended by the company under the scheme cannot be treated as disbursements made by the official liquidator. For this reason, reading Rule 291 of the Companies (Court) Rules, 1959, and the provisions of Sections 391 and 392 of the Companies Act, 1956, together, I come to the conclusion that the Central Government has not to be paid any fees on disbursements made under the scheme. However, inasmuch as the official liquidator may still be making some realisations under the previous orders of the court and may continue to receive monies on behalf of the company, those will have to be treated as being realisations and the same will be subject to the prescribed fees payable for realisations under Rule 291. If the monies are received directly by the company without the intervention of the official liquidator, then no fees will be paid to the Central Government in respect of such fees. The court has, in respect of these realisations, power, as I have already stated, to reduce the rate at which the fees are to be paid in case it is found that the amounts are excessive. In fact, the amounts do not seem to be large in the present case and I have no reason to believe that they are excessive. In case it is found that large amounts are involved, the company may approach the court for a reduction in the rate, if so advised. As at present advised, I do not find any necessity to reduce the rate of fees payable on realisations. I may particularly note that the revival of the company is, to a large measure, due to the fact that the official liquidator has made realisations from the debtors of the company. This is a factor to be taken into consideration when the question of reduction of fees is to be considered. The application is disposed of in accordance with the directions contained hereinabove. No costs.