(2015) 10 RAJ CK 0057

In the Rajasthan High Court

Case No : Company Application (IA) No. 6210/13, Company Application No. 624/14 in Company Petition No. 03/2000

In Re: Kishangarh Fabrics Limited

Date of Decision : 15-10-2015

Acts Referred:

Citation : (2015) 10 RAJ CK 0057

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Vikas Balia and Party-in-Person, for the Respondent

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—The Official Liquidator has filed Company Application No. 6210/13 seeking permission to declare the full and final dividend to the secured creditors, workmen & preferential claim, pursuant to Rule 275/276 read with Rule 9 of the Companies (Court) Rules, 1959 (for short "the Rules"). Yet another Company Application being No. 624/14 has been filed by the State Bank of India, a secured creditor, seeking directions to the Official Liquidator to pay the dues as admitted by him against the debt of the Company under liquidation.

2. The Company M/s. Kishangarh Fabrics Limited, Bhilwara has been ordered to be wound up by this court on the Company Petition filed by the Company M/s. Reliance Camotex Industries Private Limited, under Section 433 read with Section 439 of the Companies Act, 1956 (for short "the Act"), vide order dated 18.10.02 and the Official Liquidator attached to this court was appointed as its liquidator from the date of passing of the winding up order and further to take charge of all properties, assets, the books and papers of the Company in liquidation.

3. Pursuant to the order passed by this court as aforesaid, the properties and assets of the Company were taken possession of by the Official Liquidator. After approval of this court, the land and building of the Company in liquidation were sold for a consideration of Rs. 97,35,000/- to M/s. PSM Realmart Private Limited,

Shriji Complex, Pur Road, Bhilwara. The sale of the property of the Company was confirmed by this court vide order dated 21.10.08 and pursuant thereto, the possession of the property was handed over to the purchaser on 1.2.08.

4. The application preferred by the Official Liquidator seeking permission of the court for inviting claims under Rule 147/148 of the Rules was allowed by this court vide order dated 13.1.09. Accordingly, the Official Liquidator proceeded to invite claims from all creditors of the Company in liquidation vide advertisement published in daily newspapers on 3.3.09. The last date of the receipt of the claims was fixed on 8.4.09.

5. It is submitted that in response to the above publication/notices issued, the Official Liquidator received total 18 claims from the various creditors of the Company in liquidation including the workmen, secured creditors, preferential creditors and unsecured creditors. The claims received from the creditors were adjudicated by the Official Liquidator. The list of the creditors as settled by the Official Liquidator in the prescribed Form No. 71 pursuant to Rule 167 of the Rules was filed vide Interlocutory Application No. 315/13, which stood allowed by this court vide order dated 15.10.13.

6. The Official Liquidator has furnished the details of the creditors of the Company in the liquidation, who have proved their claims and stand adjudicated by the Official Liquidator. The details furnished in this regard in the tabular form may be reproduced hereunder:

7. The details of the claim rejected as set out by the Official Liquidator in the application filed are as under:

8. In the application filed initially, it was averred that after adjusting cost and the expenses incurred in connection with the winding up in valuation of assets, securities and publication of the notice etc. by the Official Liquidator and taking into account the interest earned on the total sale proceeds of the land and building of the Company in liquidation, a sum of Rs. 1,09,91,026/- (Rupees One Crore, Nine Lakhs, Ninety One Thousand & Twenty Six) as on 6.11.13 was lying in the credit of the Company in liquidation. Out of the above said amount, a sum of Rs. 18,44,000/- is proposed to be kept in the account of the Company in liquidation for making payment of regular income tax and meeting out expenses to be incurred on account of payment to Government fee/commission including interest, cost on account of pre mature withdrawal of fixed deposits for the payment of dividends, publication charges of Form No. 137 pursuant to Rule 276 of the Rules and other miscellaneous expenses to be incurred by the Official Liquidator till its final dissolution and preserving the records and books of account of the Company in liquidation for a period of five years after its dissolution.

9. However, in an additional affidavit filed on 9.4.15, regarding the interest earned on the amount of Rs. 97,35,000/- kept in FDR, the Official Liquidator has deposed as under:

"That the Official Liquidator has realized the entire assets of the company in liquidation with the permission of this Hon''ble Court for a consideration of Rs. 97,35,000/- and sale was confirmed vide order dated 21.10.2008 in S.B.Co. (Admn.) Application No. 15/2008 (16033/2008). The said amount have been kept in FDR with the Public Sector Banks namely the Punjab National Bank and Andhra Bank. After taking into interest earned on the total investment comes to Rs. 1,18,85,457/- as on 31.03.2015 which is lying in the account of the above named company in liquidation."

10. The details of the fund position of the Company in liquidation as on 31.3.15 in Annexure-A, attached to the additional affidavit, has been summarised in tabular form, as under:

11. The details of the claims and calculation of dividend proposed to be paid to the Secured Creditors, workers, Government etc. and Unsecured Creditors are summarised thus:

12. The amount of interest shown to have been earned on the amount of Rs. 97,35,000/- kept in FDR for more than six years appear to be too meagre and therefore, annual statement of account filed by the Official Liquidator under Section 551 of the Act was requisitioned for perusal. A perusal of the annual statement furnished by the Official Liquidator upto 17th October, 14, the total realization has been disclosed to be Rs. 1,66,89,289/- and out of that an amount of Rs. 49,59,211.94 is shown to have been disbursed and the balance amount has been disclosed as Rs. 1,17,30,077.06. Thus, there was an apparent discrepancy in the total amount realized as disclosed in the application and the additional affidavit filed and the total amount realized disclosed in the statement of account furnished to this court under Section 551 of the Act. That apart, the Court noticed that the declaration of the dividend to creditors has not been sanctioned by this court till this date. The Official Liquidator, present in person, was confronted with the disclosure made in the statement of account and was categorically asked as to why the details of the total amount realized and the disbursement made has not been disclosed in the application and additional affidavit filed. Further, the Official Liquidator, was pointedly asked to explain the nature of the disbursement disclosed in the statement of account furnished to this court under Section 551 of the Act. In these circumstances, vide order dated 7.5.15, the Official Liquidator was directed to produce complete account of the amount realized and disbursed till this date, the details of the nature of the disbursement and the vouchers in support thereof, as also the complete statement of bank accounts.

13. Pursuant to the directions issued by this Court, as aforesaid, the Official Liquidator has produced the photo stat copies of the FDR Statement, Ledger Account, Cash Book and Vouchers of the Company.

14. Now, yet another additional affidavit has been filed on 17.9.15 by the Official Liquidator, stating that after taking into account the interest earned on the

investment made, the balance amount comes to Rs. 1,27,17,490/-. It is proposed that a sum of Rs. 16,96,500/- needs to be kept to meet out the winding up cost and expenses till dissolution of the Company in liquidation, provisions for contingencies, loss of interest, for premature withdrawal of FDR and miscellaneous expenses, provisions for income tax liabilities, provisions for advertisement expenses and provisions for ROC, filing fees etc. It is submitted that after keeping the aforesaid provisions, a sum of Rs. 1,10,20,990/- remain available in the funds of the Company in liquidation for distribution of dividend to SBI, workers, Government claims and Unsecured Creditors etc. against their admitted claim. The details of claims and calculation of dividends to be paid to Secured Creditors, workers, the Government etc. and Unsecured Creditors is summarised in the tabular form as under:

15. The bifurcation of Rs. 48,65,676/- to be paid to the Secured Creditors and workmen is summarised thus:

16. The bifurcation of the distributable amount to the Government etc. on the basis of the admitted claim shall be as under:

17. The bifurcation of Rs. 32,13,162/- in the ratio of the admitted claims of Unsecured Creditors, the distributable amount of the admitted claims shall be as under:

18. Having considered the submissions made on behalf of the Official Liquidator, this court is of the considered opinion that the Official Liquidator deserves to be permitted to distribute the dividend as proposed.

19. Accordingly, the application (No. 6210/13) is allowed. The Official Liquidator is permitted to distribute the dividend as proposed vide additional affidavit filed 17.9.15. The Official Liquidator shall give notice of the declaration of the dividend not less than one month prior to the date fixed for the payment therefor. The notice shall be sent by registered A/D post to every person whose name appears in the list of Creditors as on the date. The requirement of publication of the advertisement in the newspaper shall stand dispensed with.

20. In view of the directions issued as aforesaid, the application (IA No. 624/14) preferred by the SBI also stands disposed of.