

(2012) 02 GAU CK 0018

In the Gauhati High Court

Case No : Misc. Case No. 284 of 2012 and CP No. 17 of 2001

In Re: Official Liquidator

Date of Decision : 14-02-2012

Acts Referred:

Companies Act, 1956 — Section 454, 481

Citation : (2012) 108 CLA 70 : (2012) 172 CompCas 559

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : S Dutta, M Chowdhury and D Chakraborty, for the Appellant;

Judgement

Hrishikesh Roy, J.—This application has been moved by the official liquidator/ attached to this court u/s 481 of the Companies Act, 1956 ("the Act") for dispensing with the requirement of filing the accounts and audit of the company (in liquidation), since it has no funds to its credit; and for dissolution of Baruah & Baruah Drugs (P.) Ltd. (in liquidation) as per section 481 of the Act in view of the fact that the official liquidator is not in a position to proceed further with the winding up of the company for want of funds, assets and reasons stated in the application and for discharging the official liquidator from proceeding further. The official liquidator attached to this court was appointed as the liquidator as per section 481 of the Act in respect of Baruah & Baruah Drugs (P.) Ltd. (in liquidation), which was wound up by this court vide judgment and order dated 17th February, 2003 passed in CP No. 17 of 2001 (disposed of). It is worth mentioning that CP No. 17 of 2001 (disposed of) was filed by the promoters of the company (in liquidation) for winding up of the said company on the ground that though the company was incorporated in the year 1992, no shares was subscribed and no statutory meeting of the company has held. The statutory returns were also not submitted by the company to the jurisdictional Registrar of Companies ("RoC"). In sum and substance, the company never commenced its business after its incorporation. In view of such position, the company Judge was pleased to hold that hardly any useful purpose will be served to allow the company to remain alive on record. Therefore, it was ordered to wind up the company and the RoC/official liquidator was directed, to initiate necessary action

in accordance with law.

2. The official liquidator, in compliance to the direction of this court given vide order dated 17th February, 2003; in CP No. 17 of 2001 (disposed of) requested all the directors of the company to furnish the statement of affairs of the company (in liquidation) under the provisions of section 454 of the Act read with rule 127 of the Companies (Court) Rules, 1959 so that the official liquidator could take possession of the assets and liabilities of the company (in liquidation).

3. The directors of the company (in liquidation) filed the statement of affairs as per the provisions of section 454 of the Act. On scrutiny of the statement of affairs and the records maintained by the RoC, Shillong, the official liquidator has placed the following information before this court:

(i) The company (in liquidation) has no assets and liabilities.

(ii) The company (in liquidation) has no bank accounts and investments.

(iii) The company (in liquidation) is having no Government liabilities and income tax liabilities.

(iv) The fund position of the company (in liquidation) is NIL.

(v) Since incorporation, no statutory returns has been filed with the RoC, Shillong by the company (in liquidation).

(vi) There is no information or record regarding any pending litigation either by or against the company (in liquidation) and also there is no trace of any claimants.

(vii) No useful purpose would be served to the public or to any prospective claimant with such NIL fund and no useful purpose would also be served to continue the name of the company (in liquidation).

4. Under the above facts and circumstances, the official liquidator has filed the instant application submitting that it is not possible to proceed with the winding up of the company for want of funds, assets and reasons stated hereinabove and that it is just and reasonable in the circumstances of the case that an order of dissolution of the company (in liquidation) be passed, u/s 481 of the Act.

5. In the case of Meghal Homes (P.) Ltd. v. Shree Niwas Gimi K.K. Samiti (2007) 80 CLA 304 (SC) : (2007) 78 SCL 482 the Supreme Court, inter alia, in paragraph 31 thereof has held as under :

.... When the affairs of the company had 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 reasons, the court can make an order dissolving the company from the date of that order. This puts an end to the winding up process.

Keeping in view, the averments in the application and the above ruling of the

Apex Court over the issue, I am of the view that there is force in the contention of the official liquidator. Therefore, the present application needs to be allowed on merit and the reliefs sought therein, deserved to be granted and it is a fit case for passing an order for dissolution of the company (in liquidation) u/s 481 of the Act.

6. Consequently the company (in liquidation) shall stand dissolved and the official liquidator attached to this court is discharged.

The official liquidator is also dispensed with the requirement of filing the accounts and audit of the company (in liquidation), since the company has no funds to its credit. The official liquidator shall make necessary arrangement for payment of fee to the counsel for the official liquidator from the common pool fund maintained in the office of the official liquidator.

7. A copy of this order shall be communicated to the RoC within thirty days by the official liquidator. Accordingly this application u/s 481 of the Act is disposed of.