
(2025) 07 BOM CK 0254

In the Bombay High Court, Nagpur Bench

Case No : Company Application (CAL) No. 48 Of 2024 In Company Petition No. 3 Of 2010

M/s Mahadeo Land Developers Pvt. Ltd. Thr. M.D.

APPELLANT

Vs

Sanjay Bhayyaji Nimbulkar And Ors

RESPONDENT

Date of Decision : 11-07-2025

Acts Referred:

Companies Act, 1956 — Section 443, 481, 555, 555(2)
Companies (Court) Rules, 1959 — Rule 308, 309

Citation : (2025) 07 BOM CK 0254

Hon'ble Judges : Anil L. Pansare, J

Bench : Single Bench

Advocate : N. R. Dawda, Deepak Parsoya

Final Decision : Disposed Of

Judgement

Anil L. Pansare, J

1. By present application, the Official Liquidator is seeking permission to appoint Mr. Jintendra Mangre as Peon (MTS) in liquidation of M/s Mahadeo Land Developers Private Limited on same terms and condition as mentioned in order dated 20-4-2018 and permit the Official Liquidator to pay salary and allowances from the common pool funds account maintained by the Official Liquidator.

2. The application was first heard on 14-12-2024. A detail order came to be passed noting serious lapses in appointment of company paid staff. Reference was made to the judgment of the Supreme Court in the case of Official Liquidator Vs. Dayanand and ors. [(2008) 10 SCC 1] wherein while dealing with the scope of Rules 308 and 309 of the Companies (Court) Rules, 1959 (for short 'the Rules of 1959'), the Supreme Court held that employees engaged by the Official Liquidator under court-sanctioned rules, specifically through employment sanctioned under Rule 308 of the Rules of 1959, do so on a purely temporary basis with full knowledge of the non-permanent nature of their employment. The Court further held that such employees cannot claim a right to regularization,

absorption, or benefits equivalent to permanent government employees solely based on their long service or the similarity of duties performed. The Supreme Court further held that the company paid staff constitute a separate and distinct class and from the inception of their employment, they are paid from the fund created for disposal of the assets of the companies in liquidation. As against, not only the appointment is made in breach of spirit of Rule 308 but these employees are treated at par with government employees.

3. It will be appropriate here to first refer to Rule 308 and 309 of the Rules of 1959, which read as under :

"308. Employment of additional or special staff. - Where the Official Liquidator is of opinion that the employment of any special or additional staff is necessary in any liquidation, he shall apply to the Court for sanction, and the Court may sanction such staff as it thinks fit on such salaries and allowances as to the Court may seem appropriate.

309. Apportionment of expenses of common staff. - Where any staff is employed to attend to the work of more than one liquidation, or any establishment or other charges are incurred for more than one liquidation, the expenses incurred on such staff and the common establishment and other charges, shall be apportioned by the Official Liquidator between the several liquidations concerned in such proportions as he may think fit, subject to the directions of the Judge, if any."

Thus, the Official Liquidator is required to form an opinion that there is a necessity of special or additional staff in a liquidation. Thereupon, he has to apply to Court for sanction which the Court may accord on such salary and allowances as deemed appropriate. Rule 309 provides that where the staff is employed to attend to the work of more than one liquidation, the expenses incurred of such staff shall be apportioned between the several liquidations proportionately.

4. Thus, what is most crucial is the necessity of special or additional staff in a liquidation proceeding. The Official Liquidator must, therefore, form opinion based on the necessity of a special staff in a particular liquidation. The word 'necessary' in Rule 308 indicates that in absence of the appointment of special or additional staff, the liquidation may not proceed expeditiously. This would also mean that once the services of special or additional staff is taken, the liquidation will reach logical end in short time. In other words, the employment of special/ additional staff will be justified in a case where in their absence, the liquidation may not be completed within reasonable period. This temporary arrangement is made for a fixed period, outer limit of which will be the order of dissolution of the company or the order by which the liquidation proceeding would culminate.

5. In complete derogation to above, the appointment of the special/ additional staff is made to handle the files at the Office of Official Liquidator. As such, there are posts of Senior Technical Assistant and Junior Technical Assistant to handle

and process the files, the services of special/additional staff is, however, taken to perform same duties. Thus, their services are taken to fill in backlog or to augment the Office of Official Liquidator. Once such appointment is made in one liquidation, the Official Liquidator, by filing application, made a request to allow their services in all pending liquidations and accordingly, the services are continued for years together.

6. In fact these appointments are made in a very strategic manner where approval of the Court is obtained, the same, however, is done without really disclosing the necessity of appointment/continuity of service in a particular liquidation. The following reasons, in my view, will justify use of words 'strategic manner' in such appointments'.

7. The company petitions are treated disposed of upon passing order of winding up under Section 443 of the Companies Act, 1956 (for short 'the Act of 1956'). As such, by the order of winding up, the process of dissolution commences. It is first step in liquidation. The Official Liquidator is then appointed. The statement of affairs of the company is looked into. The claims of creditors are then solicited and adjudicated. The assets of the company are sold. The payment of creditors is then made and other necessary measures are taken and finally, the order of dissolution is passed under Section 481 of the Act of 1956.

8. Thus, the company petition, which otherwise takes effective progress upon passing of winding up order, is treated as disposed of. The subsequent process is taken up through official liquidator report (for short 'OLR') or through applications in the disposed of petitions. Such OLRs and applications are filed as and when the Official Liquidator feels it necessary. The Judge, who is appointed to hear and decide the matters under the Act of 1956, who otherwise, is dealing with various subjects in terms of the roster, is required to suddenly take up for hearing such OLRs/applications. He is not even made aware as to when was order of winding up passed and what exactly is the status of the matter and his order is solicited for appointment/continuation of special/ additional staff saying that such orders are routinely passed. Thereupon and believing the statements, the approval/ sanction is given and the appointments continued for years together. In a given case, the Company Judge is not even made aware as to in which case, the OLR is filed and why is there requirement of special/additional staff. In fact, in one such liquidation, the Official Liquidator has obtained order of continuation of special/additional staff in all pending cases and thereafter their services are continued in routine manner.

9. Thus, what emerges is that for no valid reasons, the special/additional staff is appointed in liquidation and continued for years together. Their services are taken to augment the Office of Official Liquidator. They are treated at par with government employees with all benefits such as facility of reimbursement of medical bills, LTC etc. I am informed that the special/additional staff at Principal Seat are claiming seniority also.

10. This arrangement runs contrary to the pronouncement of the Supreme Court in the case of Dayanand (*supra*). What is more annoying is that not a single liquidation is completed in a time bound manner to justify such appointments, rather the liquidations are pending for decades. One such liquidation that commenced in the year 1960 has been completed in this week.

11. Not only that the liquidation proceedings are not completed within time, there are instances noted in various orders passed by this Court indicating that the special/additional staff have either no role to play in liquidation or have intentionally not discharged duties in order to get continuation in employment. In one such liquidation, which is in the case of Akola Oil Industries Limited (Company Petition No. 5/2001), the winding up order was passed on 23-4-2004 and Official Liquidator was appointed, who for the first time in the year 2019 filed a report stating therein that company's quarters are occupied by erstwhile employees. Neither the Official Liquidator nor the so called special/additional staff has ever pointed out to the Court such status and/or steps taken by them to protect the company's assets and/or to get the premises vacant. This Court was required to pass multiple orders to get the premises vacated.

12. In the same proceedings, other immovable properties of the company were neither protected nor put to auction immediately. The end result of such delay was an encroachment made by one Bhalchandra Kulkarni, who constructed temple sometimes in the year 2009 and started residing by the side of the temple. He encroached upon an area admeasuring about 10000 sq.ft. The Official Liquidator published advertisement to auction the property without demarcating the boundaries and without informing the Court as regards encroachment. The bidders submitted their quotes. The highest bid was accepted. Thereupon, bidder informed the Court of encroachment made by Mr. Kulkarni. In the enquiry, the fact that encroachment was made in the year 2009 surfaced. The Court was then required to take assistance of the Collector, Akola, Commissioner, Municipal Corporation, Akola and other revenue authorities to remove encroachment. Thus, neither Official Liquidator nor special/additional staff have discharged their duties in terms of the provisions of the Act of 1956.

13. In the present case i.e. Mahadeo Land Developers Limited, the order of winding up has been passed in April, 2014. The Official Liquidator or the appointed staff have taken no efforts to take possession of immovable properties of the company. As such, the Income Tax Department attached various properties. It was, however, duty of Official Liquidator with the assistance of the special/additional staff to point out to the Court about the status and to seek appropriate directions to recover possession of the property. Ultimately, at the Court's instance, the immovable properties are now being taken in possession and put to sell.

14. In the case of Maharashtra Explosives Limited (Company Petition No. 7/2001), the property situated at Madhya Pradesh was sold by the Commercial Tax Department in the year 2004. The Official Liquidator was not even aware of

such sale, may be because the property was not supervised periodically and/or protected. Surprisingly, he sought permission to sell the property and accordingly invited bids in the year 2007. The highest bidder paid the amount and thereafter the fact of disposal of property in the year 2004 came to the knowledge. The Official Liquidator, for all these years, did not take efforts to get resolved the issue by drawing attention of the Court and inviting immediate orders. The issue has been recently settled by this Court by passing appropriate order.

15. There are many such other instances and orders passed in respective petitions which would lead to an inference that the special/additional staff was not appointed in liquidation but was appointed to discharge duties at the Office of Official Liquidator. It will be thus not incorrect to say that various liquidations are/were kept pending only to ensure continuation of services of the so called special/additional staff.

16. I need not further comment upon the manner in which the special/additional staff is appointed and utilized in the Office of Official Liquidator, because various orders have been passed in this regard. In fact the Under Secretary, Ministry of Corporate Affairs, Government of India was called upon to file report as to how does he propose to address the issue. The report was so called because the services of some of company paid staffs at Nagpur continued since the year 1999. The issue, however, remained unaddressed.

17. In so far as Mr. Jitendra Mangre is concerned, he was appointed in the year 2007. Mr. Mangre was not appointed in any liquidation but his salary and allowances as also the salary and allowances of the company paid staff is being paid from common pool funds, which is yet another illegality committed and continued for decades. I will comment on it little later.

18. Considering various lapses, vide order dated 20-12-2024, the Court expected the concerned Ministry to issue appropriate circular/notification for appointing additional/special staff, strictly in terms of Rules 308 and 309 of the Rules of 1959. It was highlighted that for such appointment, the Official Liquidator has to form an opinion as to how in a particular liquidation proceedings, there is requirement of special/additional staff. I am not apprised of issuance of such circular/notification. Thus, directions issued by the Court are conveniently ignored.

19. Another lapse noted in previous orders was that two company paid staff at Nagpur, namely, Mr. Wasnik and Mr. Khade were appointed in a liquidation of Sanjeevani Savings and Investment (I) Ltd., however, the salaries were paid from company pool funds. The DSGI was called upon to take instructions as to how the salary of these employees can be paid through company pool funds, when their appointment was for liquidation of Sanjeevani Savings and Investment (I) Ltd.

20. The Official Liquidator, however, submits that later on, these appointments were converted for all pending proceedings. Thus, a blanket order has been

obtained, without describing the role of special/additional staff in liquidation of particular proceedings. Such appointment itself indicates that the services of company paid staff are utilized only for the purpose of fulfilling the backlog/vacant posts lying with Official Liquidator's Office or to augment the office.

21. The stand of the Ministry of Corporate Affairs is that it is not connected with these appointments nor does it recognize creation of common pool fund. The Court, therefore, highlighted the larger issue, which was the manner in which the Official Liquidator/s had put forth request for appointment of special/additional staff as also the opening of account called 'common pool funds', which appears to have been opened taking aid of Rule 309, which if looked into in the light of provisions under Section 555 of the Act of 1956, is not permissible.

22. This aspect, having been brought to the notice of concerned Ministry, one would expect corrective measures, particularly, if the Ministry does not recognize the creation of common pool funds. In fact, the creation of such fund is in violation of what is provided under Section 555 of the Act of 1956. Before I deal with Section 555, it will be necessary to deal with the aspect why was common pool fund created. The prime purpose of creation of this fund is to utilize it in cases where liquidation proceedings are to be continued against the company which has no funds. Various instances were noted where Official Liquidator submitted OLRs/ applications stating therein that claims of creditors were not called for want of funds. This act, as such, is contrary to the provisions of the Act of 1956, which in such cases provide for directions to the petitioner concerned to deposit the amount, however, Official Liquidator has suggested to open common pool funds account, in which the funds available on the dissolution of other company is deposited. Further, the common pool fund is utilized for payment of special/ additional staff.

23. One may argue here that this all has been done with approval of Court. The question now is once the illegality/lapses were discovered and highlighted by this Court and attention of Official Liquidator and Ministry was drawn, the legitimate expectation will be that, corrective measures will be taken. The stand of concerned Ministry was however, hostile. Considering the situation, following observations were made in order dated 7-2-2025 in the present petition.

"5. In the circumstance, least that was expected from the Ministry of Corporate Affairs was to sensitize the Official Liquidators and to ensure that corrective steps will be taken to seek appropriate directions from the Company Courts concerned to do away with the Common Pool Funds and to restrict the appointments of company paid staff, strictly in accordance with rule 308 of the Rules of 1959, for which the first condition is that the Official Liquidator will have to form an opinion that in a particular liquidation proceeding additional/special staff will be required and then put forth proposal before the Company Court for its approval which shall be granted, if found justified, subject to condition that the salary/wages to be paid shall be decided by the Court and the same shall be paid from the funds of the company under liquidation with a further rider that the appointment shall

be ceased on the day when the purpose is served or company is dissolved.

6. The Regional Director of the Western Region, Ministry of Corporate Affairs, therefore, shall take appropriate steps in this regard and file report before the next date."

24. Thus, appropriate action in this regard was expected but nothing fruitful has been done till today. Coming to Section 555 of the Act of 1956, it provides that where company is being wound up and if the liquidator has in his hands or under his control, any money payable to creditors or contributories, if remain unpaid for six months, the money shall be paid into the public account of India in the Reserve Bank of India in a separate account, known as, Companies Liquidation Account. Sub-section (2) of Section 555 provides that the liquidator, on dissolution of the company shall deposit the unpaid amount in the said account.

25. Thus, there is a statutory obligation upon Official Liquidator to deposit the unpaid amount pending liquidation and balance amount after liquidation in the companies liquidation account. Instead, the Official Liquidator had suggested to open common pool fund, which was approved by the Court and the unpaid amount is being deposited in common pool fund and the said amount is utilized for payment of company paid staff and other miscellaneous expenses of the office. Thus, the illegality is continued and no effective steps are being taken. I am informed that as on date, in the common pool fund at Nagpur, an amount of about Rs. 10 Crores is lying.

26. Accordingly, on 7-3-2025, taking stock of the situation, following observations were made.

"6. With the above observations and further with a hope that present Official Liquidator will apply his mind while pursuing the request for appointment of company paid staff, time is granted. The Official Liquidator shall also justify continuation of company paid staff in other proceedings, considering the scope of Rule 308 of Rules of 1959. It is worth mentioning here that only few company petitions are left to be disposed of. Further, there is hardly any requirement that would justify continuation of the company paid staff in the pending liquidation. In fact, for all these years, there had been hardly any progress in the liquidation proceedings to, first appointing company paid staff and secondly to continue such staff that too with payment at par with the Central Government employees."

Thus, it was expected from the present Official Liquidator that he will apply his mind for pursuing the request for appointment of company paid staff and further shall justify continuation of company paid staff in other proceedings. It was also highlighted that only few company petitions are now pending and there is hardly any requirement that would justify continuation of company paid staff.

27. In response, the report has been filed stating therein as to how the company paid staff was appointed, which according to me runs contrary to spirit of Rule 308 of the Rules of 1959. So far as continuation of services is concerned, it is

mentioned that 6 companies are being handled by Mr. Wasnik, 8 companies are being handled by Shri Pravin Tembeker and 3 companies have been dealt with by Mr. Khade. Nothing has been said in respect of Mr. Jitendra Mangre.

28. Thus, a vague statement is made that one employee is dealing with 6 companies, another with 8 companies and third with 3 companies. The exact role to be discharged in these liquidations is not disclosed, in the sense, the liquidator has not mentioned as to what specific role is being played by each employee, who is handling 6/8/3 companies in each liquidation. Most importantly, why is their service necessary. In other words, the report is completely silent as to how in absence of these employees, the liquidation cannot proceed further. Thus, the report would only certify the earlier observations made by this Court that the services are utilized for administrative purpose in the Office of Official Liquidator and has nothing to do with the liquidation. So far as Mr. Mangre is concerned, the Official Liquidator could not even make a statement that he is dealing with any company. Thus the Official Liquidator failed to justify the continuation of services of company paid staff. Their services are utilized for the purpose of Official Liquidator's Office and not for particular liquidation proceedings.

29. I am informed that in absence of their services, the Office of Official Liquidator cannot function effectively. Thus, it appears that the Official Liquidator has no other option but to continue their services, not in liquidation but for Official Liquidator's Office. I may mention here that with an exception, in none of the pending liquidations, the petitioners and/or the Directors of the company are appearing. Few creditors are appearing with a hope of getting relief. Thus, the services of special/additional staff did not yield desired result, may be, because their appointment was not necessary in any liquidation. The Official Liquidator's Office, and not the liquidation proceedings, is dependent on these staff. The Ministry of Corporate Affairs should, therefore, look into the matter. Further, continuation of their services shall, however, be at the risk and cost of concerned Ministry. The opening of account called 'Common Pool Fund' would also require reconsideration in terms of Section 555 of the Act of 1956. In the circumstances, following order is passed.

ORDER

(i) The services of company paid staff for the month from August, 2025, if continued, the salary and other expenses of the staff shall be born by the Office of Official Liquidator, Nagpur.

(ii) The amount lying in 'Common Pool Fund' shall be deposited in Company Liquidation Account in terms of Section 555 of the Act of 1956 within 14 working days from today.

(iii) The Under Secretary, Ministry of Corporate Affairs, Government of India may consider absorption/regularization of services of special/additional staff, considering the length of services rendered by them.

(iv) Copy of order be served on the Under Secretary, Ministry of Corporate Affairs, Government of India for information and appropriate action.

(v) The Under Secretary, Ministry of Corporate Affairs shall take corrective steps and may consider discontinuation of 'Common Pool Fund' account (refer Section 555 of the Act of 1956) wherever it exists and also of appointment/ continuation of special/additional staff.