(2022) 09 GUJ CK 0189

In the Gujarat High Court

Case No : R/Official Liqudator Report No. 22 Of 2022 In R/Company Petition No. 34 Of 2002

OL OF M/S Arm Polymers Ltd (In Liqn) APPELLANT

Vs

Idbi Bank Ltd RESPONDENT

Date of Decision : 30-09-2022

Acts Referred:
Companies (Court) Rules, 1959 — Rule 281, 298
Companies Act, 1956 — Section 481, 559

Citation : (2022) 09 GUJ CK 0189

Hon'ble Judges : Aniruddha P. Mayee, J

Bench : Single Bench

Advocate : Bhoomi M Thakore

Final Decision : Allowed

Judgement

Aniruddha P. Mayee, J

1. Heard learned advocate Ms. Bhoomi Thakore for the applicant.

2. By this report under section 481 of the Companies Act, 1956, the Official Liquidator has prayed for dissolution of the company, named, M/s. ARM Polymers Limited (In Liquidation), which was ordered to be wound up vide order dated 01.05.2002 passed in Company Petition No. 34 of 2002.

3. The report further indicates that, pursuant to the winding up order, the Official Liquidator deputed his officials to inspect the records of the subject company lying with the Registrar of Companies, Gujarat, Ahmedabad to find out the assets and properties, liabilities, address of Registered Office, factory premises, secured creditors, debtors and names and addresses of ex-directors of the company.

4. That, while taking inspection of the records of the Registrar of Companies, Gujarat, the representative of the Official Liquidator compiled the details of the company (In Liqn.) which are as under :-

Name of Company

ARM Polymers Ltd.

CIN No.

L17119GJ1980PLC003651

Date of Incorporation

02-02-1980

Registered Office : 31 K.M. Stone, Sanand-Viramgam Highway, Village : Iyava, Taluka : Sanand, Dist. Ahmedabad , Gujarat

Sr.

No.

Name of Ex-directors

Addresses of Ex-directors

1

Mr. Podar C. Rajat

94, Rangwala Towers, Dhuliakot Road, Ellisebridge, Ahmedabad-380006.

2

Mr. Sanjay S. Sheth,

26, Jay Shefali Park, Nr. Shivranjni Circle, Satelite

Road, Ahmedabad 380015.

Sr.

No.

Name of Secured Creditors

1

IDBI Bank Ltd.

2

Bank of Baroda (erstwhile Vijaya Bank)

3

State Bank of India

5. The report also indicates that in compliance of winding up order, the Official Liquidator had taken possession of Regd. Office and Factory premises of the company situated at Plot No. A/1/477, Phase-II, GIDC Vatva, Ahmedabad and 31

K.M. Stone, Sanand-Viramgam Highway, Village : Iyava, Taluka : Sanand, Dist. Ahmedabad. It is further submited that after taking possession, the Official Liquidator had filed compliance report being Official Liquidator Report No. 365 of 2004 wherein praying various direction including constitution of sale committee for sale of assets and properties of the company in liquidation. This Hon’ble Court had vide order dated 21-06-2005 passed in Official Liquidator Report No. 365 of 2004 was pleased to constitute sale committee for sale of assets and properties of the company in liquidation.

6. It is further submitted that after following due procedures of sale, the this Court has confirmed the sale of Sanand Unit of the said Company for Rs. 2.95 Crores in favour of M/s. Jalaram Polymers and also the sale of Vatva Unit has been confirmed for Rs. 55 Lacs in favour of M/s. Rajesvari Textile Ltd. vide order dated 13.12.2007 passed in Official Liquidator's Report No. 245 of 2007. It is also submitted that the Official Liquidator as per the Chartered Accountants report verified claim of secured creditors namely IDBI Bank (First Charge Holder) and Vijaya Bank (Second Charge Holder) of Rs. 12,18,59,077/- and Rs. 12,97,26,093/- respectively.

7. It is also submitted that the IDBI Bank Ltd. had moved Company Application No. 462 of 2008 before the this Court. After hearing said matter, this Court vide order dated 17-08-2009 directed the Official Liquidator to disburse the amount of Rs. 1,52,38,456/-. Accordingly, in terms of said order, the Official Liquidator has disbursed an amount of Rs. 1,52,38,456/- to the IDBI Bank Ltd. (the Applicant) and balance amount being Vijaya Bank’s Share and Worker’s Share shall be set apart. It is further submitted that one ex-worker Mr. Nihar Satyavrat Choudhry was moved Company Application No. 93 of 2010 before this Court to get his outstanding dues of Rs. 1,44,085/- against the Company in liquidation. In this connection, this Court vide order dated 30-04-2010 directed the Official Liquidator to verify the claim of applicant Mr. Nihar Satyavrat Choudhry through the Chartered Accountants and make payment as per claim verification of report. Accordingly, the Official Liquidator verified the claim of Mr. Nihar Satyavrat Choudhry through Mr. Vibhakar J. Trivedi & Co., Chartered Accountants and they have verified the claim of Rs. 1,32,000/-Mr. Nihar Satyavrat Choudhry and accordingly, the amount of Rs. 1,32,000/- was paid to Mr. Nihar Satyavrat Choudhry in terms of order dated 30-04-2010. The Official Liquidator also submits that except above worker no other worker claim is received in the matter.

8. It is also submitted that the Applicant, the IDBI Bank Ltd. had moved O. J. Appeal No. 112 of 2009 before this Court. After hearing said matter, Hon’ble Division Bench of High Court of Gujarat vide order dated 08-11-2012 passed in O. J. Appeal No. 112 of 2009 directed that the Official Liquidator shall pay outstanding claim to the IDBI Bank being 1st Charge Holder. Accordingly, the Official Liquidator further disbursed an amount of Rs. 1,80,00,000/- to the Applicant i.e. IDBI Bank Ltd. It is further submitted that the IDBI Bank Ltd. had moved Company Application No. 30 of 2013 before the this Court. After hearing

said matter, this Court vide order dated 25-2-2013 disposed off the said Company Application.

9. It is further submitted that the IDBI Bank Ltd. had further moved Company Application No. 2 of 2020 before the High Court of Gujarat. After hearing said matter, this Court vide order dated 14-02-2020 directed the Official Liquidator to disburse the amount of Rs. 57,00,000/-. Accordingly, in terms of said order dated 14-02-2020, the Official Liquidator has disbursed an amount of Rs. 57,00,000/- to the IDBI Bank Ltd. (the Applicant).

10. It is also submitted that the fund position in the account of the company in liquidation as on date is as under :-

Sr. No.	Particulars	Amount
1	Cash	1000.00
2	Bank	3,65,461.92
3	FDR	NIL

11. It is further submitted that as per the provisions of Section 481 of the Companies Act, 1956 "when the affairs of a company have been completely wound up or when the Court is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the Court shall make an order that the company be dissolved from the date of the order and the company shall be dissolved accordingly.

12. It is also submitted that in this regard the Official Liquidator would like to rely upon following judgment passed by the Hon'ble Supreme Court of India in case of Meghal Homes Pvt. Ltd. vs. Shree Niwas Girni K.K.Samiti [(2007) 7 SCC 753]. In the said order, the Hon'ble Supreme Court of India, inter alia, in paragraph 31 thereof, has held as under :-

"When the affairs of the Company had been completely wound up or the courts find that the official Liquidator cannot proceed with the winding up of the Company for want of funds or for any other reason, the court can make an order dissolving the Company from the date of that order. This puts an end to the winding-up process”

13. It is further submitted that during the process, prior intimation letters for dissolution of the subject company, the Official Liquidator vide letters dated 22-09-2020 were sent to the Registrar of Companies, Gujarat, Income-Tax Department, Securities and Exchange Board of India (SEBI), National Stock Exchange of India Ltd. and Bombay Stock Exchange Ltd. (BSE). However, in response of letter dated 22-09-2020, the Registrar of Companies, Gujarat vide its letter dated 13-10-2020 informed that they are having no objection, if the company is dissolved by the this Court. Hon’ble High Court of Gujarat. The Official Liquidator also received letter dated 09-10-2020 from Securities and Exchange Board of India (SEBI) that they have no adverse comments against the subject Company in liquidation.

14. It is also submitted that the Official Liquidator also issued letters dated vide Official Liquidator’s letters dated 01-03-2022 to the Ex-directors of the subject company and Income Tax Department regarding proposed dissolution. However, Directors letters are returned back with remarks of postal department “LEFT” and no reply is received from Income Tax Department in the matter. It is also submitted that the Official Liquidator also issued letters dated vide Official Liquidator’s letters dated 01-03-2022 to the Secured Creditors of the subject company regarding proposed dissolution. In response to the letter dated 01-03-2022, the IDBI Bank Ltd. has submitted letter dated 16-3-2022 in which they informed that they have received amount of Rs. 3,89,38,456/- against their total outstanding claim of Rs. 12,18,59,077/-. it is also submitted that Half Yearly Statement of Accounts of the aforesaid Company have already been filed with this Hon’ble High Court as required under Rule 298 of Companies (Court) Rules, 1959.

15. It is further submitted that where a Company has been dissolved, the Court may at any time within two years of the date of dissolution, on application filed by the liquidator of the Company or by any other person who appears before this Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void in terms of the provisions of section 559 of the Companies Act, 1956 and thereupon such proceedings may be taken as might have been taken if the Company had not been dissolved. In this regard, the Official Liquidator crave leave of this Hon’ble Court to file such application as may be needed in future, if any, in the best of interest of justice.

16. It is submitted that in compliance of Rule 281 of the Companies (Court) Rules, 1959, the Official Liquidator has appointed M/s. P. C. Rathod & Co., Chartered Accountants for Auditors’ Certificate. It is further submited that as per Balance Certificate dated 04-03-2022 issued by M/s. P. C. Rathod & Co., Chartered Accountants., the following Balance in the account of the company in

liquidation : -

Cash (Rs.)

Bank (Rs.)

FDR (Rs.)

1000.00

3,65,461.92

Nil

17. It is further submitted that there is fund of Rs. 3,65,000/-(approximately) lying in the account of the company in liquidation. Hence, the Official Liquidator proposes to pay to IDBI Bank being First Charge Holder of the Company in liquidation and other balance fund, if any, will be transferred in the Common Pool Fund to meet out future expenses, if any in the said company in liquidation.

18. In light of the aforesaid submissions, it was prayed that present report be accepted and appropriate orders for dissolution of company in liquidation may be passed.

19. Having heard the learned advocate for the Official Liquidator and on perusal of the record of this report and in the facts of this case and considering the ratio laid down by the Hon'ble Apex Court in the case of Meghal Homes Pvt. Ltd. (supra), the report deserves to be accepted. The Company, named, M/s. ARM Polymers Limited (In Liquidation) is hereby dissolved under Section 481 of the Act and the Official Liquidator attached to this Court stands discharged and is relieved as liquidator of M/s. ARM Polymers Limited (In Liquidation). The official liquidator is also permitted to make the payment of Rs. 1500/- to M/s. P.C. Rathod & Co., Chartered Accountants towards preparation of Auditor’s Certificate from account of the company in liquidation.

20. It is made clear that in case of any difficulty, any affected party, if aggrieved with the present order, may apply for reviewing the same as per the provisions of Section 559 of the Companies Act, 1956.

21. Accordingly, the report is allowed in the aforesaid terms.

