

(2020) 11 GUJ CK 0011

In the Gujarat High Court

Case No : R/Official Liquidator Report No. 75 Of 2020 In R/Company Petition No. 91 Of 2010

OL Of M/S Neptune Equipment Private Limited (In Liqn) Vs

Date of Decision : 02-11-2020

Acts Referred:

Companies (Court) Rules, 1959 — Rule 130
Companies Act, 1956 — Section 481, 559

Citation : (2020) 11 GUJ CK 0011

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : Pathik M Acharya

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. By this report under Section 481 of the Companies Act, the Official Liquidator has prayed for dissolution of the company, viz. M/s.Neptune Equipment Pvt. Ltd. (in liquidation), which was ordered to be wound up vide order dated 15.12.2010 passed in Company Petition No.91 of 2010. Hence, winding up of the company commenced in the year 2010. Hence, the matter is 10 years old.

2. The Official Liquidator has also stated that as per ROC record available with the office of the Official Liquidator the company under liquidation have authorized share capital of Rs.10,00,000/ and paid up share capital of Rs.40,00,00/- and names of the Ex-directors are, (1) Shri Sevantilal Popatlal Shah and(2) Shri Milan Sevantilal Shah, both residing at 7, Dani Sadan Walkeshwar Road, Mumbai. It was also submitted by the Official Liquidator that from the search report, it appears that Vijaya Bank, Asset Recovery Management Branch and the Ahmedabad Peoples' Co. Op. Bank Ltd. are the secured creditors of the company.

3. The Official Liquidator has also submitted that the possession of the office premises situated at A-201, Narnarayan Complex, Nr.Swastik Cross Roads, could not be taken by the Official Liquidator as the ownership of the said property is in

the name of one Dhawalbhai Patel and possession of the said office was already vacated by the company long back. The Vijaya Bank vide letter dated 23.03.2011 informed that the bank has disposed of company's factory and building situated at plot No.409,410, GIDC, Odhav, Ahmedabad under SARFAESI Act, 2002 and account of M/s.Neptune Equipment Pvt. Ltd. Has been closed on 29.03.2008 under OTS scheme. Shri Jitendra Jani, representative of the Ahmedabad Peoples' Co. Op. Bank Ltd. has informed that the company's other properties situated at Vatva and Aslali were sold by the said bank. The Official Liquidator has also submitted that sale of equipment of the company in liquidation and Maruti Zen Car have been confirmed by this Court vide order dated 03.12.2019 in OLR No.164 of 2019 for Rs.2,50,000/- and Rs.25,000/- respectively.

4. It is submitted that the Official Liquidator has intimated the ex-directors of the company to remain present for recording of statements under Rule 130 of the Companies (Court) Rules, 1959 and he has remained present for recording of statement. It is submitted that as per the statement of affairs filed in the office of the Official Liquidator by the ex-directors, the fund position of the company in liquidation as on 30.09.2020 is that the company has only balance of Rs.2,15,919 in the bank account.

5. It is submitted that as per the provisions of Section 481 of the Companies Act, 1956, when the affairs of the company have been completely wound up of when the Court is of the opinion that the liquidator cannot proceed with the winding up of the company for want of assets or for any other reason whatsoever and it is just and reasonable to dissolve the company, the Court shall make an order dissolving the company.

6. It is submitted that vide letter dated 26.08.2020, the Official Liquidator informed the ex- directors and secured creditors of the company that the Official Liquidator proposes to dissolve the company and if they have any objection, the same be informed to the Official Liquidator within 10 days. In response thereto, Shri S.P.Shah, ex-director of the company vide letter dated 19.08.2020 has informed that he has no objection if the company is dissolved and there is no response from the secured creditors of the company. It is submitted that the Official Liquidator has also informed this fact to Income Tax Department and also to ROC. They also do not have any objection if the company is dissolved.

7. It is submitted that as per the balance certificate dated 27.08.2020 of the company issued by M/s.Shah Dinesh Dahyalal & Associates, Chartered Accountants, the balance in the account of the company is Rs.2,17,419.

8. Relying upon the judgment of the Hon'ble Apex Court in the case of Meghal Homes Pvt. Ltd. Vs. Shree Niwas Girni K.K.Samiti, reported in (2007) 7 SCC 753, it is contended by the Official Liquidator that this Court may pass appropriate order of dissolution of the Company in liquidation.

9. Having heard the learned Advocate appearing for the Official Liquidator and on perusal of the record of this report and in facts of this case and considering the

ratio laid down by the Hon'ble Apex Court in case of Meghal Homes Pvt. Ltd. (Supra), the report deserves to be accepted. The company, the company, viz. M/s. Neptune Equipment Pvt. Ltd. (in liquidation) is ordered to be dissolved, with that also allowed Official Liquidator to transfer fund of Rs.2,17,419/- or such amount as may be available in the same company's A/c. To common pool A/c. maintained by the office of the Official Liquidator.

10. In case of any difficulty, affected party, if aggrieved with the present order, may apply for reviewing for the same in accordance with provisions of Section 559 of the Act.

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