(2020) 01 DEL CK 0600

In the Delhi High Court

Case No : Cmpany Petition No. 76 Of 2001

Ravinder Tyagi APPELLANT

Vs

Ram Mohan Chits Pvt. Ltd RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Companies (Court) Rules, 1959 — Rule 9, 130
Companies Act, 1956 — Section 454, 456, 481, 555

Citation : (2020) 01 DEL CK 0600

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Deepak Anand, Aayushmann Vatsayayana

Final Decision : Disposed Of

Judgement

Jyoti Singh, J

CO. APPL. 67/2020

1. This application has been filed by the Official Liquidator under Section 481 of the Companies Act, 1956 read with Rule 9 of the Companies (Court) Rules, 1959, praying that M/s Ram Mohan Chits Private Limited (In Liquidation) be finally dissolved and the Official Liquidator be discharged as its Liquidator.

2. It is stated in the application that the Company Petition in respect of the Company (in liquidation) was admitted on 03.09.2003. Thereafter, the Provisional Liquidator was appointed and citation was duly published by the Petitioner. The Company (in liquidation) was finally wound up on 22.02.2016 and Official Liquidator attached to this Court was appointed as its Liquidator.

3. The Regd. Office of the Company (in liquidation) was situated at premises bearing No. WZ-224, Hastasal Road, Uttam Nagar, New Delhi-110052. The registered office was taken into the possession by the Liquidator. However, it is informed that because the premises were rented, the same had to be handed

over to the owner i.e. Mr. Jatin Dhamija.

4. As per the earlier OLR's filed on record, there are seven Directors of the Company (in liquidation)-

a) Ms. Shakuntala Rani WZ-224, Uttam Nagar, Uttam Nagar, New Delhi

C) Shri Krishan Kumar Hastal Road, Uttam Nagar, New Delhi.

e) Smt. Asha Gupta, BF-10, Shalimar Bagh, Delhi

g) Shri Krishna Tyagi S/o Shri Balwant Singh Tyagi, 388/2 Hastsal Road, New Delhi

b) Mr. Raj Kumar Q-13, Vikas Vihar, New Delhi

d) Shri. B D Dhamija WZ-224, Uttam Nagar, New Delhi.

f) Shri Balwant Singh Tyagi, 388/2, Hastsal Road, New New Delhi

5. Record reveals that notices under Sections 454 and 456 of the Companies Act, 1956 and Notices under Rule 130 of the Company (Court) Rules, 1959 were issued to all of the ex- Directors of Respondent Company. Three directors out of seven i.e. Mr. B. D Dhamija, Mr. Krishan Kumar and Mr. Kishan Tyagi appeared before the Official Liquidator. It has been informed that Mr. Krishan Kumar and Mr. Kishan Tyagi (Ex-Directors) failed to file the statement of affairs. Though Mr. B.D. Dhamija filed the statement of affairs, the same was however defective. Despite being informed, he has failed to remove the defects.

6. While awaiting the response from the Directors, a criminal complaint was filed under Section 454 of the Companies Act, 1956 bearing Crl.O.(Co.) No. 2/2005. The same was disposed of on 06.12.2018 by the Court.

7. In furtherance of the winding up proceedings, an order dated 26.08.2011 was passed directing the Official Liquidator to invite the claims of workmen/creditors of Company (in liquidation). As has been observed from the records, the claims from the workmen/creditors of the Company (In Liquidation) were invited by way of advertisement in the newspapers namely "Statesman"(English) and "Veer Arjun"(Hindi) and in response to the aforesaid advertisement, it is informed that 7 claims were received from the investors of the Company (In Liquidation).

8. M/s Vinay Jain & Associates, Chartered Accountant was appointed for scrutinizing the claims of the creditors. A report was furnished by the Chartered Accountant, which report was placed before this Court on 20.03.2018. This Court, in accordance with the report submitted by the Chartered Accountant, directed the payments to be released to the claimants of the Company (in Liquidation) with an interest @ 4% per annum. The order was duly complied with by the Official Liquidator.

9. Claims from the contributories of the Company (In Liquidation) were also invited vide publication in the newspapers "Statesman" (English) and

"Jansatta" (Hindi) on 28.07.2018 in terms of the order dated 20.03.2018. The Official Liquidator was permitted to scrutinize and settle the claims of the contributories. The claims of the contributories as has been examined and found admissible by the Official Liquidator is totaling to Rs. 32,66,000/-.

10. The Official Liquidator released the admitted amounts to the contributories subject to their fulfilling the requisite formalities/documentation. An amount of Rs. 5,22,560/- has been stated to have been left towards the unclaimed dividend in the dividend account of the Company (In Liquidation). The said amount, as is requested by the Official Liquidator, is to be transferred to the R.B.I in accordance with the provisions of Section 555 of the Companies Act, 1956.

11. It is further submitted by the Official liquidator that the PAN of the Company (in liquidation) is improper/defective, resultantly, no income tax could be deposited on behalf of the Company for the preceding three financial years. Thus, an Income Tax Demand could arise in future. Figures show that after transferring Rs.5,22,560/- on account of unclaimed amount of contributories as well as after reimbursing the amount to ex-Director/s i.e. Rs. 1,41,740/-, the remaining fund of the Company would be Rs. 1,13,018/-.

12. On enquiring from the counsel for Official Liquidator, he has submitted that there are no assets, movable or immovable belonging to the Company (in Liquidation) and if approved, after making payment of Rs.1,41,740/- to the Ex-Director/s, remaining funds of the Company (In liquidation) may be transferred to Common Pool Fund to meet the liabilities which may arise in future either on account of the Income Tax Department and/or other similar liability.

13. In the case of Meghal Homes (P) Ltd. Vs. Shree Niwas Girni K.K.Samiti& Ors., (2007) 7SCC 753, 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 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".

14. In view of the above decision of the Supreme Court and the facts and circumstances of the present case, the liquidation proceedings deserve to be put to an end. Consequently, M/s Ram Mohan Chits Private Limited is dissolved under Section 481 of the Companies Act. The amount available in the account of the Company be transferred to the Common Pool Fund in lieu of the expenses incurred by the Official Liquidator.

15. A copy of this order be communicated to the Registrar of Companies within 30 days by the Official Liquidator. The application is disposed off and the Official Liquidator is discharged.

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16. The respondent company stands dissolved.

17. The petition stands disposed off.

