GAHC010124672015

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Co.Pet. 10/2015

1:HDFC BANK LIMITED
A COMPANY INCORPORTED UNDER THE COMPANIES ACT, 1956 AND CARRYING ON BANKING BUSINESS UNDER LICENSE GRANTED BY RESERVE BANK OF INDIA AND HAVING ITS REGISTERED OFFICE AT HDFC BANK HOUSE, SENAPATI BAPAT MARG, LOWER PAREL WEST, MUMBAI- 400013 AND AMONGST OTHERS, HAVING ONE OF ITS OFFICES AT 11, U.N. BRAHMACHARI STREET, KOLKATA- 700017 AND CENTRAL PLAZA, 2/6, SARAT BOSE ROAD, P.S.- BALLYGUNGE, KOLKATA- 700020.

VERSUS

1:CHOTATINGRAI TEA ESTATE PRIVATE LIMITED
A COMPANY INCOPORATED UNER THE COMPANIES ACT, 1956 AND HAVING ITS REGISTERED OFFICE AT JALANAGAR, DIBRUGARH, ASSAM.

Advocate for the Petitioner : MR.M SHARMA

Advocate for the Respondent : MS.B DAS

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 27-08-2019

Heard Mr. D. Senapati, learned counsel appearing for the petitioner. Also heard Mr. S. Biswas, learned counsel appearing for the respondent.

By the judgement and order dated 29/05/2019, this Court had admitted this company petition and

directed the petitioner to take steps under Rule 99 of the Companies (Court) Rules, 1959 for advertising the petition by following the provisions of the Rule 24 of the Rules. Accordingly, advertisement notices had been published in two daily newspapers.

By filing an affidavit dated 18/07/2019, the petitioner has brought on record, the copies of the English daily newspaper "The Assam Tribune" and the vernacular newspaper, viz. "Asomiya Pratidin", wherein the notices of the company petition were published. Mr. Senapati submits that no response has been received from any other creditor in response to the aforesaid notices published in the newspapers.

The facts and circumstances of the case that had led to the issuance of advertisement notices have been recorded in details in the judgement and order dated 29/05/2019 passed by this Court and for the sake of brevity, I do not deem it necessary to repeat the same in the present order. Suffice it to mention herein that M/s. Maikaal Fibres Limited had obtained the credit facility to the tune of Rs. 4 crores from the erstwhile Times Bank Ltd., which eventually stood amalgamated with the petitioner company i.e. the HDFC Bank Ltd., wherein the respondent company was a corporate guarantor. M/s. Maikaal Fibres Limited had failed to repay the loan and was wound up by an order of the Court. The respondent company had also failed to repay the loan as a result of which, the petitioner company was compelled to approach this Court by filing the present company petition seeking an order under Section 433, 434 and 439 of the Companies Act, 1956 for winding up of the respondent company.

In the judgement and order dated 29/05/2019, this Court had recorded a categorical finding of fact that the respondent being one of the guarantors of the loan, was required to repay the same but the respondent company did not have the financial capacity to repay the debt to the petitioner. The said finding of fact recorded by this Court has not been assailed by the respondent nor has the respondent company brought on record any additional facts requiring reconsideration of the observations made in the said order. Situated thus, this Court is of the opinion that the present is a fit case wherein, an order of winding up of the company as per Section 433(e) of the Companies Act, 1956 is required to be passed by this Court. Facilitating the above, Registry is directed to issue formal notice under Rule 109 of the Rules of 1959 to the Official Liquidator, so as to enable this Court to pass final order for winding up of the company

under Rule 112 read with 282 of the Rules.

List this matter again on 24/10/2019.

JUDGE

Sukhamay

Comparing Assistant