IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/COMPANY APPLICATION NO. 107 of 2013
In R/COMPANY PETITION NO. 157 of 1996
With
R/OFFICIAL LIQUDATOR REPORT NO. 5 of 2019
In
COMPANY PETITION NO. 157 of 1995
With
R/COMPANY APPLICATION NO. 22 of 2014
In
COMPANY PETITION NO. 157 of 1995
With
R/COMPANY APPLICATION NO. 264 of 2016
In
COMPANY PETITION NO. 157 of 1995
With
R/COMPANY APPLICATION NO. 276 of 2016
In
COMPANY PETITION NO. 157 of 1995
With
R/COMPANY APPLICATION NO. 332 of 2016
In
COMPANY PETITION NO. 157 of 1995
With
R/COMPANY APPLICATION NO. 360 of 2016
In
COMPANY PETITION NO. 157 of 1995
With
R/COMPANY APPLICATION NO. 553 of 2016
In
COMPANY PETITION NO. 157 of 1995
With
R/COMPANY APPLICATION NO. 4 of 2017
In
COMPANY PETITION NO. 157 of 1995

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TEXTILE LABOUR ASSOCIATION
Versus
OFFICIAL LIQUIDATOR OF AHMEDABAD MANUFACTURING CALICO & 11 other(s)

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Appearance:
MR DS VASAVADA(973) for the Applicant(s) No. 1
M/S TRIVEDI AND GUPTA(949) for the Respondent(s) No. 11

MR BJ TRIVEDI(921) for the Respondent(s) No. 12
MR JT TRIVEDI(931) for the Respondent(s) No. 12
MS JIGNASA B TRIVEDI(3090) for the Respondent(s) No. 12
MS KJ BRAHMBHATT(202) for the Respondent(s) No. 1
NOTICE SERVED BY DS(5) for the Respondent(s) No. 4,5,6,9
MR.SANDEEP SINGHI, ADVOCATE with PAZIMI SHAH, ADVOCATE for SINGHI & CO. ADVOCATES for the Respondent(s) No. 7
NOTICE SERVED(4) for the Respondent(s) No. 10,2,3,4,5,6,8,9
MS.MANISHA LUVKUMAR, GOVERNMENT PLEADER for the Respondent(s) No. 13
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CORAM: **HONOURABLE MR.JUSTICE G.R.UDHWANI**

Date : 08/03/2019

COMMON ORAL ORDER

1. The following prayers have been made by the Official Liquidator in this report.

> *(A) In view of facts narrated in Para (50) & (51), this Hon'ble Court may be pleased to permit the Official Liquidator to en-cash separately earmarked FDRs which are in the name of ONGC , Bank of India, IDBI & ICICI and transfer said fund in the account of the company in liquidation and also direct the Official Liquidator to en-cash pre-mature FDRs to disburse amount amongst secured creditors and workmen of the company in liquidation.*

> *(B) In view of facts narrated in Para (48) & (49), this Hon'ble Court may be pleased to permit the Official Liquidator to disburse the amount under Section 529 of the Companies Act, 1956 to concerned secured creditors of the company in liquidation subject to filing usual undertaking to the Official Liquidator to the effect that if ultimately it is found that any excess amount paid to them, they will refund the same immediately with appropriate interest on the said amount to the Official Liquidator without demur.*

(C) In view of facts narrated in Para (40) & (42), this Hon'ble Court may be pleased to direct Bank of India to clarify as to whether they have lodged the claim being debenture trustee of 6th and 7th Series debenture before the Official Liquidator and also direct them to clarify as to whether they will take further step for actual disbursement after proper modalities are worked out by it for making the payment to the concerned debenture holders in due compliance of the order dated 08-09-10/09/2009 passed by this Hon'ble Court in COMA No.387 of 2005 & other allied matters.

(D) If prayer (D) is negative, then, in view of facts stated in para (44) to (46), whether this Hon'ble Court would be pleased to permit the Official Liquidator to directly disburse the amount to SUUTI , General Insurance Co. Ltd., Oriental Insurance Co. Ltd., National Insurance Co. Ltd., New India Assurance Co. Ltd., State Bank of India & Punjab National Bank being debenture holders of 6th and 7th series under Section 529 of the Companies Act, 1956.

(E) This Hon'ble Court may be pleased to permit the Official Liquidator to invite claim from preferential creditors, unsecured creditors and contributories of the company in liquidation under Section 530 of the Companies Act, 1956 by publishing advertisement in Newspapers namely "Gujarat Samachar" in Gujarati script in Ahmedabad and Vadodara editions, "Maharashtra Times" in Marathi Script in Mumbai edition and "Times of India" in English script in Ahmedabad and Mumbai editions and also place on the website of Ministry of Corporate Affairs as well as High Court of Gujarat or in any such Newspapers as may be directed by this Hon'ble Court.

(F) This Hon'ble Court may be pleased to

permit the Official Liquidator to incur necessary advertisement expenses out of the fund available in the Company's A/c and make payment to Advertising Agency on receipt of the bills.

(G) This Hon'ble Court may be pleased to permit the Official Liquidator to appoint empaneled Chartered Accountants for verification and adjudication of claims of preferential creditors , unsecured creditors and contributories of the company in liquidation.

(H) In view of facts stated in para (55) to (57) and looking to plight of poor workmen of the company in liquidation, this Hon'ble Court may be pleased to permit the Official Liquidator to disburse amount to workmen of all three units of the company in liquidation as stated in para (56) as per the provision of Section 530 (2) of the Companies Act, 1956 read with Rule 179 of the Companies (Court) Rules, 1959.

(I) This Hon'ble Court may be pleased to direct Textile Labour Association, Calico Fibre Employees Association and Maharashtra General Kamgar Unions authorized representatives of workmen of Ahmedabad, Vadodara and Mumbai unit to prepare Master Payment Register as per usual practice and supply duly attested copy of the same to the Office of the Official Liquidator so as to enable the Official Liquidator to process the dully filled up claim forms with the help of Chartered Accountants and after verification same may be forwarded to the Bank to make the payment in the account of concerned workmen through RTGS/NEFT mode only.

(J) This Hon'ble Court may be pleased to permit the Official Liquidator to avail the

service of empaneled Chartered Accountants for verification of claim forms submitted by workmen of the company in liquidation as the Official Liquidator make payment to the concerned workmen on the basis of verification report submitted by the Chartered Accountants, and as per list provided by the concerned worker's union as well claim forms submitted by concerned workers / workers' union.

(K) This Hon'ble Court may be pleased to grant protection to the Official Liquidator and his officers and officials under Section 635A of the Companies Act, 1956.

(L) This Hon'ble Court may be pleased to direct the Textile Labour Association , Calico Fibre Employees Association and Maharashtra General Kamgar to declare the name of the office bearers who may have attested the claim disbursement forms on behalf of the union and also permit the Official Liquidator not to entertain any other persons except office bearers whose name have been declared by the said unions, for resolving the issues which may arise during the disbursement.

(M) This Hon'ble Court may be pleased to permit the Official Liquidator to accept the claim forms of individual workmen who are not associated with any union subject to condition that they will follow the due procedure as laid in present report.

(N) This Hon'ble Court may be pleased to direct the legal heirs of concerned claimant workmen to furnish relevant documents and indemnity bond as well as undertaking in original to the effect that in future any kind of dispute arises or claim is raised they will be responsible for the same and they will refund amount to the Official

Liquidator without any demur.

(O) In view of facts narrated in para (28) of this report, the Official Liquidator crave leave of this Hon'ble Court to file separate report in due course or reply in COMA No.81 of 2018 filed by Maharashtra General Kamgar Union wherein identical relief is sought which is discussed in para (28).

(P) If prayers (O) is negative, then, in view of facts narrated in Para (28), whether this Hon'ble Court would be pleased to permit the Official Liquidator to disburse amount to remaining workmen of the company in liquidation under Section 529 of the Companies Act, 1956 who have lodged their claim forms at belated stage from the dividend account which has remained open for a period of more than six month which is contrary to Provisions of Section 555 of the Companies Act, 1956 read-with Rule 335 of the Companies (Court) Rules, 1959 due to plight of workmen of the company in liquidation who are financially and economic weak and may not be aware about liquidation process due to migration to their native.

(Q) If prayer (P) is in affirmative, this Hon'ble Court may be pleased to direct all three workmen union i.e. Textile Labour Association, Maharashtra General Kamgar Union and Calico Fibre Employees Association to submit all outstanding claim forms within grace period as decided by this Hon'ble Court and also be pleased to direct the all three unions to file undertaking to the effect that they will not submit claim forms of the workmen of the company in liquidation whose claim are pending under Section 529 of the Companies Act, 1956 after expiry of grace period granted by this Hon'ble Court and they will follow the procedures as

contemplated in Section 555 of the Companies Act, 1956 read-with Rule 335 of the Companies (Court) Rules, 1959 for claiming remaining amount.

(R) *In view of facts stated in para (58), this Hon'ble Court may be pleased to permit the Official Liquidator to make payment of Rs.2,03,904/- & 88,500/- to M/s. Amal Datt & Associates, Chartered Accountants and Rs.1,77,000/- to M/s. Kiran Shah & Associates, Chartered Accountants towards their bills of professional fees which are annexed at Annexure – "O" of this report from the account of the company in liquidation maintained by the Office of the Official Liquidator.*

2. It appears from the report that a sum of about 200 crores has been so far realized from the sale proceeds of the properties of the company-Ahmedabad Manufacturing & Calico Printing Mills & Company Ltd. and the liquidator with the assistance of the Chartared Accountant, has worked out the details of the outstanding amounts of the secured creditors as defined under section 529A of the Indian Companies Act, 1956.

3. The report indicates that it is possible to satisfy the dues of the secured creditors against the sale proceeds above referred. However, it has been contended by the liquidator that for further administration of the proceedings, a sum of Rs.10 crores be reserved with him and the rest of the amount can be appropriated towards the dues of the secured creditors.

4. On consideration of the rival submissions, it transpires that two set of claims i.e. the claim by the secured debenture holders and the claim by the workmen would require a further probe inasmuch as it is reported that against 5,39,445 secured debenture holders, the claim is made only by 2,04,595 such debenture holders and in absence of cooperation from the Bank of India or the directors of the company in liquidation, the claims from the other debenture holders could not be verified. Since the secured debenture holders would fall under section 529A of the Act, and since the claim other secured debenture holders, if any, could not be received under the above circumstances, the issue of the disbursement to those who have registered the claim is separately dealt with hereunder.

5. So far as the workman falling under section 529A of the Companies Act are concerned, the question whether the claimants herein satisfy the definition of workman under the relevant provisions of the Act applicable to them is required to be determined and if already determined, the Official Liquidator is required to place the report pointing out such factual determination. However, it is pointed out that there may be around 75% of the workforce of the company under liquidation answering the definition of workman. Therefore, at this stage, it would be reasonable to pay 75% of the individual claim of the workman as verified by the Chartered Accountant.

6. The claim of Rs.52.02 crores is also made by

State Government contending that they are secured creditors. Without entering into the status of the Government at this stage, this Court would pass an order disbursing the amount claimed by the Government requiring it to hold the same in trust; and subject to the final decision of this Court as to whether the Government is a secured creditor, if such need arises. Accordingly, the disbursement be made to the State Government.

7. As indicated above, atleast the amount of Rs.10 crores is required to be reserved for future administration and therefore the disbursement can be made against the rest of the available amount. As pointed out herein above, for the time being, the full amount to the secured debenture holders and workman would not be made. A sum of Rs.15,42,16,644/- is the total claim of the workman, against that, for the foregoing reasons, 75% of the amount shall be paid to the workmen.

8. The claim of the secured debentures holders is Rs.12,97,83,070/-. The said amount will be proportionately distributed amongst 5,39,445 debenture holders and the proportionate amount therefrom shall be paid to secured debenture holders who have registered their claims. In other words, the sum of Rs.12,97,83,070/- would first be divided by 5,39,445 and then, average so derived would be multiplied by 204595 and then the amount in proportion to their claim would be determined and paid.

9. For the rest of the category of the secured creditors, the amount shall be paid in the following manner:

Sr. No.	Name of Claimants	Outstanding claims as per OLR 5/19
	Banks/FIS	
1	IARC	29,02,60,280
2	IFCI	15,11,84,819
3	IDBI	11,60,70,818
4	ARCIL	3,93,60,340
5	Bank of India	33,97,84,369
6	SBI	14,34,92,124
7	PNB	12,87,28,749
	(A)	**1,20,88,81,499**
8	Government	52,02,00,000/-
	(C)	**52,02,00,000/-**

10. It is clarified that the aforesaid disbursement would not finally determine the claims and is only adhoc payment. Each of the claimant would file the usual undertaking with the Official Liquidator. If the undertakings are filed within a week henceforth, the amount indicated above shall be disbursed by 30.03.2019, otherwise the date for disbursement shall stand extended by the time consumed for filing undertaking. The prayers are accordingly granted.

11. For the above purpose, the Official Liquidator will be free to encash the fixed deposit receipts as indicated in the report.

12. A grievance is made that bank of India who is a

trustee of the secured debenture holders has not been cooperating since last nine years even as it has failed to furnish the relevant details called for by this Court. It is also pointed out that the claim of the secured debenture holders have been verified by the Official Liquidator with the help of the Chartered Accountant and therefore, instead of paying them through the Bank of India, it will be reasonable to pay them directly. Such prayer subject to para (8) above is accepted. The prayer clauses A, E, L and R are also granted.

13. Unless otherwise necessary, Company Application No.14 of 2019 shall be heard after the claims under section 530 are received.

14. It is clarified that for consideration of the rest of the claims, the matter would be heard on the report of the Official Liquidator after the claims are fully verified.

(G.R.UDHWANI, J)

ANKIT SHAH