

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/OFFICIAL LIQUIDATOR REPORT NO. 5 of 2019****In R/COMPANY PETITION NO. 157 of 1995**

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OFFICIAL LIQUIDATOR OF AHMEDABAD MANUFACTURING AND
CALICO PRINTING MILLS AND COMPANY LTD

Versus

BANK OF INDIA & 16 other(s)

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Appearance:

MS KJ BRAHMBHATT(202) for the Applicant(s) No. 1
DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 10,11,12,14,4,5,6,9
GOVERNMENT PLEADER(1) for the Respondent(s) No. 13,18
SUREN B PATEL(8420) for the Respondent(s) No. 16
MR BH BHAGAT(153) for the Respondent(s) No. 2
MR DS VASAVADA(973) for the Respondent(s) No. 15
MR RAJESH P MANKAD(2637) for the Respondent(s) No. 17
MR SIDDHARTHA SAMAL(3089) for the Respondent(s) No. 1
MR UDAY R BHATT(192) for the Respondent(s) No. 3
MR VISHWAS K SHAH(5364) for the Respondent(s) No. 8
MRS NISHA M PARIKH(2397) for the Respondent(s) No. 1
SINGHI AND CO(2725) for the Respondent(s) No. 7

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CORAM:HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 26/11/2021

ORAL ORDER

1. Heard learned advocate Ms. K.J. Brahmhatt for the applicant, learned advocate Mr. Suren B. Patel for respondent no. 16, learned advocate Mr. B.H. Bhagat for respondent no.2, learned advocate Mr. D.S. Vasavada for respondent no. 15, learned advocate Mr. Rajesh P. Mankad for respondent no. 17, learned advocate Mr. Siddhartha Samal with Mrs. Nisha M. Parikh for respondent no.1, learned advocate Mr. Uday R. Bhatt for respondent no.3 and learned advocate

Mr. Vishwas K. Shah for respondent no.8

2. By this report, the Official Liquidator has prayed for the following reliefs :

"(A) In view of facts narrated in Para (50) & (51), this Hon'ble Court may be pleased to permit the Official Liquidator to encash 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 encash premature 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 0809 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 readwith 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 readwith 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."

3. This Court (Coram : Hon'ble Mr. Justice G.R. Udhwani, As His Lordship was then) passed the following order on 8th March, 2013 granting prayers A, E, L and R in part as under :

"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, at least 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."

4. Insofar as prayer (B) is concerned, the same would not survive in view of order dated 8th

March, 2019 passed by this Court for disbursement of the amount to secured creditors.

5. With regard to prayer (C), the Bank of India has filed Company Application No. 4 of 2017 which is disposed of by order of even date with a liberty to the Bank of India to lodge the claim being debenture trustee of 6th and 7th Series debenture before the Official Liquidator and accordingly, the Official Liquidator is directed to call for the clarification from Bank of India with regard to the claim, if any, being debenture trustee of 6th and 7th series debenture. The Bank of India shall also clarify further steps for actual disbursement after proper modalities being worked out by it for making payment to the concerned debenture holders in due compliance of the order dated 8th September and 10th September, 2009 passed by this Court in Company Application Np. 387/2005 and other allied matters.

6. Similarly, for prayer (D) Official Liquidator is directed to call for the details for disbursement of 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 and Punjab National Bank being debenture holders of 6th and 7th series under section 529 of the Companies Act, 1956 on receipt of clarification to be received from Bank of India who is trustee of 6th and 7th Series Debenture. The Official

Liquidator is also further directed to consider the report/clarification to be submitted by the Bank of India and thereafter, amount which is to be disbursed to the aforesaid Debenture Holders be verified by the Chartered Accountant empanelled with the Official Liquidator.

7. Prayers (F) and (G) which pertain to granting permission to Official Liquidator to incur necessary advertisement expenses and to appoint Chartered Accountants would not survive as the Official Liquidator may approach this Court as and when such exigency arises.

8. With regard to prayer (H), (M), (N) and (P), Workmen Union i.e. Textile Labour Association, Calico Fibre Employees Association and Maharashtra General Kamgar Unions to be called upon by the Official Liquidator to submit their objections/claims or any other outstanding dues of the individual workers which may include the objections/claims raised in Company Application No. 107/2013, Company Application No. 264/2016, Company Application No. 276/2016, Company Application No. 332/2016, Company Application No. 360/2016, Company Application No. 553/2016 and Company Application No. 14/2021 within a period of eight weeks. The Official Liquidator is also directed to issue a public advertisement inviting the claims from remaining workers if left out so that no worker of the company in liquidation is left out for disbursement of

amount as per sections 529 and 530 of the Companies Act, 1956 read with Rule 179 of the Company (Court) Rules, 1959. Such advertisement shall be published in the newspaper to be decided by the Official Liquidator as well as on the official website of Official Liquidator and on the official website of High Court within a period of four weeks from today.

9. With regard to prayers (O), (P) and (Q) are concerned, the prayer (O) would not survive in view of above directions and prayer (P) would also be taken care of in view of above directions as necessary directions shall be issued for disbursement of amount to remaining workers, if any, of the company in liquidation under sections 529 and 530 of the Companies Act, 1956 read with Rule 179 of the Company (Court) Rules, 1959 and embargo under section 555 of the Companies Act, 1956 read with Rule 335 of the Company (Court) Rules, 1959 would not apply in such cases considering the plight of the workmen of the company in liquidation who remained without any payment since last more than 27 years.

10. On receipt of the claims, if any, from the remaining workmen by the Official Liquidator as directed here-in-above and on completion of 8 weeks, the Official Liquidator shall submit such claims for verification before the Chartered Accountants empanelled on the panel of

the Official Liquidator after being satisfied that the claims are genuine and as per the provisions of various Labour Laws to which such workmen is entitled to claim such amount. For this purpose, the Official Liquidator is permitted to take help of any independent qualified person having experience on the labour side and who has sufficient experience of working under the Labour Laws to satisfy that the claims raised by the workmen are genuine.

11. The Chartered Accountant shall submit verification report within a period of two weeks from the date of receipt of details of claim of workers from the Official Liquidator and Official Liquidator shall file a report before this Court for further disbursement of the amount.

12. It is also submitted by learned advocate Ms. Brahmbhatt that as on 31st October, 2021, there is a balance of 11.05 crores in the account of the company in liquidation. It is further submitted that the Official Liquidator shall file a further report for sale of the remaining fixed asset of the company within a period of eight weeks from today.

Stand over to 27th January, 2022.

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR