

OD-125

ORDER SHEET

IA NO. CA/171/2023

In

CP/2/1987

IN THE HIGH COURT AT CALCUTTA
ORIGINAL JURISDICTION
ORIGINAL SIDE

IN THE MATTER OF:
BARANAGORE JUTE FACTORY PLC
AND
CHAITAN CHOWDHURY THE O/L

BEFORE:

The Hon'ble JUSTICE PARTHA SARATHI SEN

Date: 20th September, 2024.

Appearance:

Ms. Tanushree Dasgupta, Adv.
...for O/L

Mr. Yasho Vardhan Kochar, Adv.
Mr. Anirudha Agarwalla, Adv.
Ms. P. Garain, Adv.
...for Baranagore Jute Factory P.L.C.

Mr. Rajib Mullick, Adv.
Mr. Biswaroop Ghosh, Adv.
...for Baranagore Jute Factory PLC Employees
and Workers Union

Mr. Jaydeb Ghorai, Adv.
Mr. Diptesh Ghorai, Adv.
...for Baranagore Jute Factory PLC Mazdoor Sangh

Mr. Arik Banerjee, Adv.
Mr. Binay Kumar Jain, Adv.
Mr. Piyush Jain, Adv.
...for SB Overseas

Mr. S. Bandopadhyay, Adv.
Mr. S. Sarkar, Adv.
Mr. Subhransu Ganguly, Adv.
...for Yashdeep Trexim (P) Ltd.

*Mr. Aditya Kanodia, Adv.
...for K.M. Tapuria*

The Court: 1) This Court has heard the learned advocate for the Official Liquidator in support of the petition under consideration whereby and whereunder a direction was prayed upon the Registrar, Original Side, High Court at Calcutta to release a sum of Rs.20 lakhs from the funds of the company (in liquidation) as lying with the Registrar, Original Side in favour of the Official Liquidator, High Court, Calcutta.

2) Learned advocate for the Official Liquidator at the very outset submits before this Court that by an order dated October 28, 1987, a Co-ordinate Bench of this Court passed an order for winding up the company. It is submitted further that challenging the said order, six appeals have been preferred and by a common judgment and order dated August 5, 2022, all the aforementioned six appeals have been disposed of whereby and whereunder a former Chief Justice of the Gujarat High Court was appointed as a one-member committee. By the said order, certain directions were passed by the Hon'ble Division Bench of this Court, one of which is that the said one-member committee would get the account of the company audited through a reputed chartered accountant firm with the approval of the company.

3) It is submitted on behalf of the Official Liquidator that challenging the said order of the Division Bench in the aforementioned six appeals, Special Leave Petition was filed before the Hon'ble Apex Court whereby the appointment of a one-member committee as well as his duty to get the

accounts of the company (in liquidation) audited remains untouched. It is further submitted that pursuant to the order of the Division Bench, one 'Raj Gupta and Company' was appointed to do the job of audit of the company (in liquidation) and the said company claimed 20% in advance amounting to Rs.20 lakhs.

4) It is further submitted on behalf of the Official Liquidator that the said sum of Rs.20 lakhs has already been paid by cheque by the Official Liquidator and therefore learned Registrar, Original Side, High Court at Calcutta may be directed to pay the said sum of Rs.20 lakhs to the Official Liquidator as has been paid by the Official Liquidator to the audit company being "Raj Gupta and Company".

5) Such prayer of the Official Liquidator is opposed by various stakeholders, namely; some shareholders of the company, one JC Chowbey being the Director of a secured creditor, one SB Overseas Limited being another secured creditor. Such prayer is also opposed on behalf of the workers.

6) It is however pertinent to mention herein that the prayer of the Official Liquidator is however not opposed on behalf of the management of the company. However, learned advocate appearing on behalf of the management of the company requests this Court for passing an appropriate order so that in the meeting regarding the liquidation of the company as called for by the Official Liquidator, the presence of the management may be secured. It is also submitted on behalf of the company that the company is a going company

which is however disputed on behalf of the shareholders as well as the other secured creditors as well as by the workers.

7) After hearing the learned advocates appearing on behalf of the workers, the shareholders and the aforementioned two secured creditors, it appears to this Court that their objection to the release of the funds lying with the Registrar, Original Side, High Court at Calcutta is based on the following points:-

- (i) The embargo created under Section 529A of the Companies Act, 1956.
- (ii) The availability of fund with the Official Liquidator as evident from Rule 3, 4, 5 and 8 of the Companies (Official Liquidator's Accounts) Rules, 1965.
- (iii) Several previous orders of this Court restraining the Official Liquidator as well as the Registrar, Original Side from withdrawing the fund of the company (in liquidation).
- (iv) By filing the petition under consideration, the Official Liquidator is now praying before this Court for release of a sum of Rs.20 lakhs to be paid to the auditor for settling the accounts and on the contrary the Official Liquidator has practically prayed for reimbursement which according to law is not permissible.

8) For effective adjudication of the application which is pending for disposal before this Court today, this Court proposes to look the provision of Section 529A and the same is quoted hereinbelow in verbatim:-

[529A. Overriding preferential payments.- (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company, -

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of Section 529 *pari passu* with such dues,

shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.]

9) This Court further considers that the relevant Rules of the aforementioned Rules of 1965 are also required to be looked into and those are also quoted below in verbatim:-

“3. Maintenance of accounts.-(1) The Official Liquidator shall maintain in his office separate account in respect of each company under his charge.

(2) The Official Liquidator shall also maintain:

(a) a Central Cash Book in the form set out in, in Annexure to these rules in which shall be recorded all cash transactions, that is, cash receipts remittances to the Reserve Bank and payments to claimants; and

(b) such other books as may be necessary to work out the consolidated, balance for facilitating the periodical reconciliation of the balances in the account referred to in Rule 4.

4. Opening of personal ledger account.- Every Official Liquidator shall, with the approval of the Central Government, open a personal ledger account at the nearest branch or agency of the Reserve Bank to be called the “Official Liquidator’s Account” (hereinafter referred to as the said Account) which shall be a combined account in respect of all the companies under his charge.

5. Payments into account.-(1) All moneys received by Official Liquidator which under the Act are required to be paid into the public

account of India shall be paid into the Reserve Bank to the credit of the said account under the head "T-Deposits and Advances - Part II - Deposits not bearing interest -(c) Other Deposit Accounts -Departmental and Judicial Deposits- Civil Deposits- Personal deposit -Official Liquidator's Account":

Provided that in respect of the amounts paid under sub-section (2) of Section 17 of the Deposit Insurance Corporation Act. 1961 (XLVII of 1961) and any provision for unpaid amounts made under Section 20 of that Act by Deposit Insurance Corporation, the Official Liquidator shall make payment to that Corporation as required by clause (a) of sub-section (2) of Section 21 of that Act.

(2) All moneys realised by the Official Liquidator each day shall, without deduction, be paid into the credit of the said Account not later than the next working day, provided that the remittances to the Reserve Bank may be deferred until the amount realized exceeds Rs. 100.

*8. **Withdrawals from Bank.**- All moneys required by the Official Liquidator for meeting the expenses of, or for making cash payments in connection with, the liquidation of a company in his charge, shall be withdrawn from the Reserve Bank by cheques and every payment made by the Official Liquidator in excess of Rs.50 shall be made by cheques drawn against the said account."*

10) After careful consideration of the entire materials placed before this Court and after giving due consideration to the submissions of the learned advocates for the contending parties and also on perusal of the relevant provisions of law as cited from the Bar, it appears to this Court that it is the legislative intent as incorporated in Section 529A of the Companies Act, 1956 that the dues of the workmen and the debts due to the secured creditors to the extent such debts are as per Section 529A(1) proviso Clause (c) *pari passu* with such dues shall have to be paid in priority to all other debts.

11) This Court thus finds some justification in the argument of the learned advocates who are appearing on behalf of the workmen as well as the secured creditors.

12) At this juncture, the crucial question that comes into the mind of this Court is whether the aforesaid provision of law legally restricts the Court to allow the Official Liquidator to withdraw a sum of Rs.20 lakhs which is sought to be paid to an auditor who has been appointed to audit the accounts of the company (in liquidation) in order to come to a logical conclusion regarding the assets of the company in the process of liquidation.

13) From the different Rules of 1965 as quoted hereinabove, this Court finds that Rule 3 provides maintenance of accounts including a maintenance of Central Cash Book in the manner indicated in the said Rule. Rule 4 postulates regarding opening of a personal ledger account and Rule 5 thereof further postulates as to how payments are to be made from the said account. Rule 8 of the said Rules of 1965 clearly indicates that how withdrawals are to be made from the bank by an Official Liquidator.

14) On conjoint perusal of the different provisions of the said Rules of 1965, this Court finds sufficient justification in the submission of the learned advocates appearing on behalf of the shareholders of the secured creditors that funds are available with the Official Liquidator which are to be kept in Reserve Bank by maintaining a Central Cash Book and mode of payments have also been prescribed in the said Rules.

15) The submissions as made on behalf of the shareholders as well as the secured creditors get fortified from the materials placed before this Court along with the petition on consideration wherefrom it reveals that the Official Liquidator has already disbursed a sum of Rs.20 lakhs from the said account to the auditor who has been appointed to audit the account. No materials could be placed on behalf of the Official Liquidator that there is a provision that an amount which has been spent for the purpose of incurring some expenses on behalf of the company (in liquidation), the said expenses could have been reimbursed from the money held with the safe hands of the Registrar, Original Side.

16) In view of the discussions made hereinabove, this Court finds no merit in the instant petition. Accordingly, CA/171/2023 is dismissed.

(PARTHA SARATHI SEN, J.)