

In Re: Rajasthan State Granite and Marbles Ltd.

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Court : Rajasthan

Decided On : May-12-2006

Reported in : [2007]74SCL213(Raj)

Judge : Shiv Kumar Sharma, J.

Appellant : In Re: Rajasthan State Granite and Marbles Ltd.

Judgement :

ORDER

Shiv Kumar Sharma, J.

1. In the company petition filed for winding-up under Section 433(a),(b),(e)and (f), read with Section 439(a) of the Companies Act, 1956 this Court on August 16, passed the following order:

In view of the resolution passed by the company that it may be woundup and since no objection has been filed to the winding-up of the company under Section 433(a) of the Companies Act, the Company is ordered to be wound-up. The Official Liquidator shall take charge of all the properties and effects of the Company forthwith. He shall cause a scaled copy of this order to be served on the Company by pre-paid registered post. The petitioner shall advertise within fourteen days from this day a notice in the prescribed form of the making of this order in one issue (each) of Dainik Bhaskar (Jaipur Edition) and the Hindustan Times (Delhi Edition). The petitioner shall serve a certified copy of the order on the Registrar of

Companies not later than one month from this date.

2. The notices of winding-up were published in the Extraordinary Gazette dated 23-10-1998, in the Hindustan Times of 15-8-1998 and in the Dainik Bhaskar of Jaipur Edition on 13-8-1998.

3. As per provisions of Section 444 of the Companies Act, 1956 (for short 'the Act') read with Rule 109 of the Company (Court) Rules, 1959 (for short 'the Rules'), a copy of the winding-up order was served upon the Official Liquidator (for short 'the OL') on 27-8-1999. The OL proposed to dissolve the Company and submitted a detailed report under Section 481 of the Act read with Rule 281 of the Rules on 24-12-2003. In the report it was stated as under:

4. That the Ex-Directors have filed a statement as to the affairs of the Company (In liquidation) under Section 454 of the Companies Act, 1956, as on its winding-up date along with the copy of un-audited balance sheet as at 16-8-1999. A copy of the Statement of Affairs and a copy of unaudited balance sheet as on 16-8-1999 furnished with this office submitted herewith for kind perusal of this Hon'ble Court and is marked as Annexure 'A' to this application. It is also submitted for consideration of this Hon'ble Court that there were no realisable assets nor any Secured Creditors in the Company as on its winding-up date. The only realisable assets namely cash in hand and bank balance with the Company in liquidation has since been realised after the winding-up. The unsecured loan payable to the Rajasthan Financial Corporation is also no longer payable by the Company as it is also outstanding since a very long period and have become time-barred under the Limitation Act. The stock-in-trade consisting of stone slabs was not having any realisable value. Due to aforesaid reasons the Preliminary Report was not submitted before the Hon'ble Court.

5. That keeping in view of non-realisable assets with the Company in liquidation the Official Liquidator did not sought any power under Section 457 of the Companies Act, 1956 from the Hon'ble Rajasthan High Court.

6. That the Official Liquidator deputed one of his officials to inspect the documents, files maintained by the Registrar of Companies, Rajasthan, Jaipur and had made a

request with them to arrange a copy of the latest audited balance sheet of the Company (In liquidation). It is revealed that the last audited balance sheet as at 31-3-1997, was filed with the Registrar's office. The said balance sheet has been audited by M/s. M.L. Sharma and Company, Chartered Accountants, Jaipur in accordance with Section 619 of the Companies Act, 1956.

7. That the Official Liquidator have perused the aforesaid audited balance sheet as at 31-3-1997, and the annexed Profit and Loss Account, for the year ended on 31 - 3-1997, which revealed that there was no trading and manufacturing activity during the year 1996-97. The previous year figures appearing in the Balance Sheet and Profit and Loss Account for the year ended also confirms that there was no manufacturing and trading activity in the Company in the year 1995-96. Further it is also submitted that the Ex-Directors have filed an unaudited Balance Sheet as on the winding up date i.e., 16-8-1999. The analysis of balance sheet as at 16-8-1999 shows that the accumulated loss including miscellaneous expenditure as on 16-8-1999 was Rs. 50,82,253 as against the paid up Capital of Rs. 19,00,070 (Rupees nineteen lakh and seventy only) which shows that the net worth of the Company is completely eroded.

8. That the Accountant General (Audit)-II, Government of India, Rajasthan, Jaipur by its letter dated 30-9-1997 has intimated this office that the Comptroller and Auditor General of India has decided not to review the report of the Auditors for the year ended on 31-3-1997 on the accounts of this company (in liquidation) and as such he has not made any comments under Section 619(4) of the Companies Act, 1956. A copy of the letter issued by the Accountant General (Audit)-II, Government of India, Rajasthan, Jaipur is submitted herewith for kind perusal of the Hon'ble Court and is marked as Annexure 'B' to this application.

9. That the Official Liquidator vide letter No. RSTD/161, dated 28-8-2002, has informed to the office of the Comptroller and Auditor General of India, Government of India, New Delhi, that no account books and records in respect of the company (in liquidation) have been handed over by the Ex-Directors to this office till date to take this fact on their record.

10. That from the scrutiny of statement of affairs filed under Section 454 of the Companies Act, 1956, it is revealed that the company has disclosed following current assets as on the winding up date ie., 16-8-1999:

(i) Bank Balance Rs. 1,829.00(ii) Cash in Hand Rs. 54.00(iii) Trade Debtors Rs. 58,252.00(iv) Loans and Advances Rs. 67,344.00(v) Stock in trade Rs. 20,000.0011. That Ex-Directors in the statement of affairs have shown aforesaid amount due from Trade Debtors, Loans and Advances and Stock in Trade as non-realizable. It has been stated by them that all Debtors had become Bad/Doubtful of their recovery long back and nothing could be realised from them due to their having become time-barred under the Limitation Act, 1908. Besides on details of their present addresses are available, to pursue any recovery from them.

12. That the Statement of Affairs also reveals that there are no Secured Creditors in the Company in liquidation. The details of un-secured creditors and preferential Creditors, are given in the list 'E' and list 'C' annexed to the Statement of Affairs. The amount payable to preferential creditors is Rs. 9,186 (Rupees nine thousand one hundred eighty six only) and un-secured creditors is Rs. 33,204.78 (Rupees thirty three thousand two hundred four and paise seventy eight only). It is given out in the statement of affairs that the (89) creditors in the list of the unsecured creditors are more than two decades old including the dues payable to R.S.M.D.C. Limited a holding company, to whom Rs. 55,436 (Rupees fifty five thousand four hundred thirty six only) is payable which have been stated to have been written off by the holding company in their books of account in the past.

13. That the paid-up capital of the company as on the winding-up date is Rs. 19,00,070 (Rupees nineteen lakhs seventy only) and is comprised of equity shares of Rs. 10 (rupees ten only) each and has been entirely held by the R.S.M.D.C. Limited (Holding Company) and through its nominee.

14. That the unsecured loans from R.F.C. shown at Rs. 21,01,334 (Rupees twenty one lakhs one thousand three hundred thirty four only) in the unaudited balance sheet as at 31-3-1999 and in the Statement of Affairs as on 16-8-1999 is not payable to R.F.C. in the opinion of Ex-Directors - its liability is not alive under the Limitation Act, due to outstanding since more than two decades old and further

there are no assets with the Official Liquidator to pay off in future.

15. That Ex-Directors of the Company (in liquidation) vide letter No. RSGML/WINDING/dated 25-5-2002 (copy enclosed) and marked as Annexure 'C' received in this office on 5-6-2002, have submitted the list of four Court cases for and against the Company (in liquidation). The said list included two pending cases of which one in the Hon'ble High Court, Jodhpur filed against the Company by the R.S.G.M.L. Mazdoor Sangh and another referred by the State Government with the Labour Tribunals, for seeking orders for validity of actions about the closure of R.S.G.M.L. Unit by the R.S.M.D.C. One Civil Suit No. 281/95 in the Court of A.C.J.M. No. 5 has been shown as dismissed and in the remaining cases bearing Suit No. 163/95 {Synthetic Stone v. R.S.M.D.) a decree for Rs. 45,866.80 has been passed by the A.C.J.M. No. 1, Jodhpur on 18-8-2001. It has been clarified by the Ex-Director Shri A.K. Ahluwalia that even in if former two cases are decided against the Company (in liquidation), yet there would not be any funds/resources with the Company (in liquidation) to pay the dues and in the decreed cases also there will be no funds/resources with the Official Liquidator to pay the dues of the decree-holder. It is also submitted that there are no assets in the Company in-liquidation for realisation.

16. That as per list 'H' annexed to Statement of Affairs, the deficiency as on winding-up date 16th August, is at Rs. 52,27,851 (Rupees fifty two lakhs twenty seven thousand eight hundred fifty one only) as against the equity share capital of Rs. 19,00,070 (Rupees nineteen lakhs seventy only).

17. That on 18-8-2000, the Ex-Director Shri A.K. Ahluwalia vide his letter-No. Mise/2000-2001, dated 1-8-2000 informed to the Official Liquidator that following persons were the Directors of the Company in liquidation as on its date of winding-up order i.e., 16-8-1999:

1. Smt. Sarita Singh, Executive Director, R.S.M.D.C. Limited, Khanij Bhawan, Tilak Marg, Jaipur-302005.

2. Smt. Urmila Singh, Financial Advisor, R.S.M.D.C. Limited, Jaipur.

3. Shri A.K. Ahluwalia, Chief Mining Engineer, R.S.M.D.C. Limited, Jaipur.

Further he has also informed in his letter dated 25-5-2002, that the present Directors at Section Nos. 1 and 2 were appointed as nominee directors on 9-4-1999, and on 31 -7-1999 respectively and may not be fully acquainted with whatever has happened in the past two decades. Therefore, examination of these directors may not be in fact helpful in investigating the affairs of the company and have made a request to grant pardon on this count. The Ex-Director Shri Ahluwalia has also informed that the Company was not carrying on any activity since a long period. Besides, he has also submitted an affidavit that there are no realisable assets nor any alive liabilities as on the winding up date except cash balance of Rs. 54 (Rupees fifty four only) and bank balance of Rs. 1,829 (Rupees one thousand eight hundred twenty nine only) held in the current account with the Union Bank of India, Basni, Jodhpur Branch.

18. That in the process of winding-up the Official Liquidator has realised cash balance of Rs. 54 (Rupees fifty four only) from Ex-Directors and realised bank balance Rs. 410 from the bank against Rs. 1,829 due from bank as given in the statement of affairs.

19. That at present the Official Liquidator has a balance of Rs. 462 with him and the same is lying deposited in the P.D. Account with the Punjab National Bank, Jaipur.

20. That on the basis of the statement of affairs and further on the basis of facts available on records, informations and funds position of the company (in liquidation) it could be seen that the Official Liquidator cannot proceed with the winding-up as there are no assets in the Company except a petty sum of Rs. 462 with the Official Liquidator. Further, there is also no chance for any recovery from any of the sundry debtors and loans and advances to parties as according to the Ex-Directors of the Company, there is nothing realisable. Therefore, in these circumstances no amount will be available in future for making payment to the creditors and contributors and with Rs. 462 lying in the credit of the Company in liquidation as its accounts may be transferred in Public Account of R.B.I.

4-5. On giving the notices and addresses of the Ex-Directors of the Company in liquidation this Court issued notices to the Ex-Directors on 11 -2-2005. Today Mr. B.N. Sandhu, Advocate filed Vakalatnama on behalf of Ex-Directors.

6. I have heard the submissions advanced before me. Proposal of O.L. to dissolve the company has not been opposed by the counsel for the parties.

7. Having carefully scanned the report of OL, I am of the opinion that Liquidator cannot proceed with the winding-up of the company for want of funds and assets and it is just and reasonable in the facts and circumstances of the case that an order of dissolution of petitioner-company should be made.

8. This Court, accordingly, orders that the petitioner-company be dissolved from the date of the order. The balance in the hands of Official Liquidator be deposited in the Public Account of Reserve Bank of India. A copy of this order shall, within 30 days be forwarded by the Official Liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

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