

Meena

**IN THE HIGH COURT OF BOMBAY AT GOA
COMPANY APPLICATION NO. 70 OF 2023
IN
COMPANY PETITION NO.10 OF 1999**

CARSONS ORE CARRIERS PRIVATE LIMITED ... Applicant
THE OFFICIAL LIQUIDATOR, HIGH COURT OF
BOMBAY AT GOA

V/s.

NO PARTY ...Respondent

Ms. Amira Razaq, Advocate for the Applicant.

CORAM: BHARAT P. DESHPANDE, J

DATED: 18th January, 2024

P.C.:

1. The above Company Application has been filed by the Official Liquidator seeking the following reliefs :

“a) In view of the averments made in para 10 above, whether this Hon’ble Court would be pleased to dispense with the filing of the half yearly amounts from 31/03/2022 onwards under Rule 299 of the Companies (Court) Rules 1959, read with Section 462 of the Companies Act, 1956;

b) In view of the averments made in para 11 above, whether this Hon’ble Court would be pleased to dispense with the filing of the Annual Statement of Accounts from 31/03/2022 onwards under Rule 311 of the Companies (Court) Rules, 1959 read with Section 551 of the Companies Act, 1956;

c) In view of the averments made in para 12 above, whether this Hon’ble Court would be please to order dissolution of M/s.

Carsons Ore Carriers Private Limited (in liquidation) under Section 481 of the Companies Act, 1956;

- d) If the direction to prayer clause (c) above is an affirmative and, in view of the averments made in para 13 above, whether this Hon'ble Court would be pleased to permit the Official Liquidator to preserve the papers/files of the Liquidator pertaining to M/s. Carsons Ore Carriers Private Limited (in liquidation) as required under Section 550 of the Companies Act. 1956;
- e) If the above prayers(a) to (d) are in affirmative and in view of the averments made in para 14 above, whether this Hon'ble Court would be please to permit the official Liquidator or any interested person to make an application with in 2 years under Section 559 of the Companies Act, 1956 to declare the dissolution void;
- f) In view of the averments in para 15 above, since there is no claim received by O.L., whether this Hon'ble Court would be pleased to permit the Official Liq1uidator to realize the Fixed Deposit Receipt of Rs.1,24,38,738/- and transfer the said amount to "The Company Liquidation Accounts" known as Public Account of Government of India in term of Section 555 of Companies Act. 1956 read with Rule 283 of Companies (Court) Rules, 1959 maintained by the Office of Pay and Accounts, Ministry of Corporate Affairs, Mumbai.
- g) For such other and further directions as this Hon'ble Court may deem fit and proper in the premises of the case."

2. I have heard the learned Advocate appearing on behalf of the Official Liquidator and perused the Company application. The Company Application discloses that the Ex- Directors have handed over the records of the Book of Accounts to the Official Liquidator as per Section 468 of the

Companies Act, 1956. Further, there is only a sum of Rs.1,24,38,738/- lying to the credit of the Company and invested in fixed deposit.

3. That the Official Liquidator invited the claims from the workers / creditors of the company as required under Rule 148 of the Companies (Court) Rules, 1959 by giving an advertisement in the newspapers i.e. "The Navhind Times" in English language and "Gomantak" in Marathi Newspaper circulating in the State of Goa on 28/02/2007 and the last date for filling the claims with the Official Liquidator was on 15/03/2007.

4. That pursuant to advertisement the official liquidator had received 5 claims in form of Affidavit of proof of debts. The said claims were adjudicated by the Official Liquidator. A list of admitted and rejected claims whole or in part in Form No. 71 under Rule 167 of the Companies Court Rules 1959 is annexed here to and marked as Exhibit "A".

5. It is submitted that out of total 5 claim only one claim of M/s. Damodar Mangalji and Co. Ltd for an amount of Rs. 4,00,000/- is admitted by the official Liquidator being ordinary / unsecured claim. There are no claims of workers or government dues received by the Official Liquidator. Accordingly, the Official liquidator file C.A No. 03 of 2022 to declare divided of 100% to M/s. Damodar Mangalji and Co. Ltd along with 4% interest as per C.C.R 179 from the funds available to the credit of the company in liquidation and as per the order of Hon'ble High Court dated 07/02/2023 of Rs. 7,16,444/-.

6. That the Official Liquidator had issued notice under section 454 of the Companies Act, 1956 to Mr. Gautam Maini being ex-director calling him to file the Statement of Affairs of the Company (in Liquidation). Accordingly, Mr. Gautam Maini has filed the Statement of Affairs of the company with the Official Liquidator.

7. It is submitted that there is only an amount of Rs.1,24,38,738/- lying to the credit of this company in FDR. As per the order of the Hon'ble High Court of Bombay at Goa dated 07/02/2023 passed in Company Application No.10 of 1999 the Official Liquidator invited claims of contributors / shareholders of the company by publishing notice in the "The Navhind Times" (in English) and "Gomantak" (in Marathi) published and circulated in State of Goa and "Times of India" (in English) and "Vijaya Karnataka" (in Kannada) published and circulated in Bangalore published and circulated on 24/08/2023 as per the said notice cut off date of filing the claims was 29/09/2023. An individual notice was issued to shareholder for filling claims. However, no claims of contributors / shareholders received by the Official Liquidator.

8. It is further submitted that at present there are no disposable assets in the custody of the Official Liquidator for sale and that there is no likelihood of getting any funds to the credit of the Company (in liquidation). Further, no claims are returned to be paid to the creditor. Therefore, the Official Liquidator respectfully submits that no useful purpose will be

served by keeping the company under liquidation any longer. Therefore, the Official Liquidator in the above submitted facts and circumstances prays that this Hon'ble Court may be pleased to dissolve the company under Section 481 of the Companies Act,1956.

9. That the provisions of Section 550 of the Companies Act,1956 provides that when the affairs of the company have been completely wound up and it is about to be dissolved, its books of accounts and papers and those of the Liquidator may be disposed of in such manner as this Hon'ble Court may direct.

10. It is submitted that Section 559 provides power of the Court to declare dissolution of the company void :- Section 559 (1) of the Companies Act, 1956 read as under:

“Where a company has been dissolved, whether in pursuance of this Part or of section 394 or otherwise, the Court may at any time within two years of the date of dissolution, on application by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court think fit, declaring the dissolution to have been void; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.”

In view of above this Hon'ble Court would be please to Permit the official Liquidator or any interested person to make an application within two years under Section 559 of the Companies Act, 1956 to declare the dissolution void.

11. It is submitted that since there is no claim returned to be paid by the Official Liquidator a balance amount of Rs.1,24,38,738/- lying to the credit of the company in Fixed Deposit Receipt the if the company is dissolved Official Liquidator has to transfer and credit the said balance amount along with interest accrued to “The Company Liquidation Account” known as public account of Government of India in terms of Section 555 of Companies Act, 1956 read with Rule 283 of Companies (Court) Rules, 1959.

12. I have heard the learned Advocate appearing on behalf of the Official Liquidator. Section 481 of the Companies Act stipulates that where the affairs of the Company have been completely wound up or when the Court is of the opinion that the Liquidator cannot proceed with the winding up of a Company for want of funds or assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the Company should be made, the Court shall make an Order that the Company be dissolved.

13. Looking at the averments and the statements made in the Company Application, I am satisfied that the Company has no funds or assets which would serve any purpose to continue with the winding up of the Company in liquidation. Looking at the overall facts of the case, therefore, I am of the opinion that the prayers sought for in the above Company Application ought to be allowed.

14. In view of the foregoing discussion, the Company application is made absolute in terms or prayer clauses (a) to (f) reproduced herein above.

15. A copy of this Order shall be forwarded by the Official Liquidator to the Registrar within a period of thirty days from today who shall make in his books a minute of the dissolution of the company.

16. The above application is accordingly disposed of. No order as to costs.

17. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

BHARAT P. DESHPANDE, J

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