



REPORT OF THE OFFICIAL LIQUIDATOR, CHENNAI

A case study of companies wherein winding up proceedings have
prolonged to over a decade



AUGUST 6, 2013

INDEX

Contents

G.N.S Nidhi Limited	2
Kothari Orient Finance Ltd	4
Seshasayee Industries Ltd.....	6
Standard Motor Products of India Ltd	8

G.N.S Nidhi Limited

A Case Study

G.N.S Nidhi Limited, a public limited company which was incorporated on 03.01.1979 under Companies Act, 1956 and was functioning with its registered premises situated at No.128, Usman Road, T.Nagar and was functioning as a Non-Banking Finance Company accepting deposits from the public and advancing loans to various parties. By an order dated 18.10.1997 made in C.P.No.60 of 1997 the Hon'ble High Court, Madras appointed the Official Liquidator attached to the said court as the Provisional Liquidator of the company. Subsequently, the Hon'ble Court vide order dated 17.12.1999 made the Provisional Liquidator the Official Liquidator of the company..

Owing to the fact that the company in liquidation had over 55 branches spread across the states of Tamil Nadu, Karnataka, Kerala, Maharashtra and the Union Territory of Pondicherry, and that several of the branches were functioning at rented premises, it took the Official Liquidator more than two years commencing 28.06.1999, to ascertain whether or not the said braches belonged to the company in liquidation and to take possession of the same.

Pursuant to the orders of the Hon'ble High Court dated 31.08.2001 in C.A.Nos.749 and 750 of 2001 the movable assets lying at various branches were sold and a sum of Rs.15, 76,035 was realized. Further, by an order of the Hon'ble High Court dated 31.08.2001 and 17.10.2003 in C.A.No.300 of 2001 the Official Liquidator sold the

Conditions causing delay

- Taking possession of 55 braches spread across various states
- Movable assets of the company sold under five separate auctions
- Confirmation of sale of the immovable assets delayed due to cases field before Hon'ble High Court challenging the said sale.
- Over 9300 claims filed, the original proof of debt in half of such claims was not produced.
- Repeated intimation letters had to be sent to claimants where claims were not in order.

immovable assets and a sum of Rs.5,40,00,000/- was realized. It is pertinent to point that five separate auction sales were carried out in respect of immovable assets and that the confirmation of sale of immovable asset took place only in the year 2005 due to third party applications challenging the validity of the auction, and hence the delay.

Pursuant to the High Court order dated 1.11.2006 in C.A.No.1896/2006 claims against the company in liquidation was called for on 12.11.2006 and in response claims totaling Rs.27,85,04,711/- was received by the Official Liquidator. The delay in adjudicating the claims against the company is due to the fact that there were over 9300 claimants and that over 6000 claims were defective as original proof of debt was not produced. In this connection two reminders were sent to the claimants who had preferred defective claims and as of date over 5000 claims have been adjudicated to proof and the Official Liquidator is taking all possible efforts to declare dividend within in 12 months.

Kothari Orient Finance Ltd

A Case Study

Kothari Orient Finance Ltd is a public limited company incorporated under the Companies Act, 1956 on 30.08.1983 having its registered office in the State of Tamilnadu which was a Non-Banking Finance Company accepting deposits from the public and advancing loans to various parties. By an order dated 05.12.2001 made in C.P.No.179 of 2001 the Hon'ble High Court, Madras appointed the Official Liquidator attached to the said court as the Provisional Liquidator of the company. Further considering the workload of the Official Liquidator, the Hon'ble Court appointed an Administrator to assist the Official Liquidator.

The learned Administrator had made recoveries from various borrowers totaling to a sum of Rs. 1,11,08,922/-. Further he has also received a sum of Rs. 7,41,60,738 from Shri Pradeep D Kothari, Ex- Managing Director, to settle the dues of the company in provisional liquidation in accordance with the various orders of the Hon'ble High Court, Madras. In this regard, it is pertinent to point out that the said Ex- Managing Director is taking all possible measures to revive the company in provisional liquidation. He has also filed an affidavit C.A.No.2482 to 2485 of 2007 in C.P.No.179/2001 wherein he has undertaken to repay the deposit amount to any unpaid depositors of the said company in case if they approach the company in provisional liquidation in future for their respective deposit. Moreover, he has also stated that he has already settled over 6000 depositors in private.

Conditions causing delay

- The process of liquidation was handled by the administrator as per the Hon'ble High Court's order, and the liquidator took charge only in the year 2009
- The Ex-Managing director is making all efforts to revive the company in provisional liquidation.
- A Special leave petition filed by IDBI disputing ownership of an asset is pending before the Hon'ble Supreme court
- Application seeking recovery of occupation charges from IDBI is pending before the Hon'ble High Court, Madras.

The administrator after settling the claims received against the company with the association of the Ex-Managing Director has deposited a sum of Rs.1,11,08,922/- with the Official Liquidator, an amount which the said Ex-Managing director is claiming on the ground that the company is being revived. Subsequently the Hon'ble High Court, Madras vide order dated 23.06.2009 in C.A.No. 2485/2007 discharged the Administrator upon his report of fulfilling his duties. In the same order the Official Liquidator was to take charge of the liquidation proceedings. After taking charge, the Official Liquidator has bought movable assets of the company to sale, and an amount of Rs.1,00,000/- was realized from the sale. It is pointed out that the Hon'ble High Court, Madras is yet to take a decision on whether or not to grace the ex-directors efforts to revive the company in provisional liquidation.

Meanwhile, a dispute had arose over the ownership of a fixed asset located in Chennai which is deemed to belong to the company in provisional liquidation. That the Hon'ble High Court, Madras in C.A 1208/2008 had confirmed the property in favour of the company in provisional liquidation, against which the appellant, therein IDBI moved an appeal before the Hon'ble Division Bench, Madras and the same was dismissed. Against the said dismissal, the appellant has preferred a Special Leave Petition No. SLP (C) No.33825/2009 before the Hon'ble Supreme Court and the same is pending.

Furthermore the Official Liquidator has filed an application before the Hon'ble High Court, Madras demanding payment of occupation charges from the date of continuous occupation since 06.11.2000 till the date of handing over of the fixed asset that being occupied by the IDBI and the same is pending before the Hon'ble Court.

Seshasayee Industries Ltd

A Case Study

Seshasayee Industries Limited is a public limited company incorporated under the Companies Act, 1956 having its registered office in the State of Tamilnadu. By an order dated 20.12.1996 made in C.P.No. 39 of 1994 the Hon'ble Court, Madras ordered winding up of the company and appointed the Official Liquidator attached to the said court as the Liquidator of the company.

That prior to the said winding up order, ICICI Bank Limited, Mumbai had filed suit No.381 of 1994 before the Hon'ble High Court, Bombay against the said company and the Hon'ble Court was pleased to appoint a court Receiver, therein M/s.ITCOT Limited, Chennai to value and to sell the assets of the company on 26.09.1994. In pursuance to the aforesaid order the said receiver had taken possession of the suit properties situated at Cuddalore District, Tamilnadu and had sold the same for Rs.12.60 Crores on 06.06.2002.

In the meantime, the Official Liquidator had taken an application before the Hon'ble High Court, Madras in C.A.No.179 of 2004 and had invited claims from the creditors by fixing the last date of submission of claim as 31.5.2004. The claims so received were adjudicated and the same was filed before the Hon'ble Court as required under Company (Court) Rules, 1959. The details of the same is reproduced below

Conditions causing delay

- Appointment of court receiver before the order of winding up, who then conducted the sale of the assets belonging to company in liquidation.
- A delay of eleven years in transferring sale proceeds to the Official Liquidator due to pendency of litigation against the said transfer in various tribunals and courts.

S.No	Date of submission	No of applicants	Amount claimed Rs	Amount admitted Rs
1	26.04.2007	1078	14,95,13,916	9,65,86,017
2	26.09.2007	96	1,38,34,606	88,31,315
3	22.06.2009	250	2,02,56,297	2,02,56,297

The court receiver, herein M/s ITCOT Limited had transferred the proceeds of the sale to the Official Liquidator on 17.04.2013. In this regard, it may be observed there is a delay of eleven years and the same is attributed to repeated appeals filed by ICICI Bank Limited, Mumbai in various forums against the said transfer of sale proceeds.

Having received the sale proceeds, the Official Liquidator is taking all possible measures to declare dividend to the list of creditors already settled within the next 6 months and to any further creditors who may submit their claims with proof.

Standard Motor Products of India Ltd

A Case Study

Standard Motor Products of India Limited a public limited company incorporated under the Companies Act, 1956 on 01.04.1956 having its registered office at No.16, GST Road, Perungalathur, Madras was in the business

of manufacturing automobiles. By an order dated 04.10.1995 made in C.P.No. 02 of 1989 the Hon'ble High Court, Madras ordered winding up of the company and appointed the Official Liquidator attached to the said court as the Liquidator of the company.

The Official Liquidator following the order of winding up took possession of assets of the company on 27.11.1996, subsequently a meeting with the secured creditors were called for on 18.03.1997 to ascertain the extent of properties belong to the company in liquidation. Further, the Hon'ble High Court, Madras in an order dated 19.02.1997 appointed a valuer to value the assets of the company in liquidation and the valuer had filed his final report on 09.11.1999, more than two and a half year after the date of appointment.

The Official Liquidator, pursuant to the orders of the Hon'ble High Court, Madras dated 03.02.2005 in C.A.No.1448/2000 had auctioned the movables belonging to the company in liquidation kept at a Customs bonded warehouse for a sum of Rs.4,57,00,000/-. Immovable property of the company in liquidation was sold for a sum of Rs.154.10 Crores vide orders of the Hon'ble High Court, Madras dated

Conditions causing delay

- The court appointed Valuer was able to submit his final report after a period of two and a half years
- The application for sale of assets was pending for over five years due to litigation in the Hon'ble High Court, Madras
- Appointment of Tamil Nadu Mediation and Conciliation Centre as adjudication agency has effectively restricted the role of the Official Liquidator only to make payments as per the orders of the Hon'ble Court.

28.10.2005 made in C.A.No.1448/2000. It may be pertinent to point out that though both these applications were made in the year 2000 it was ordered only in the year 2005 owing to various litigations before the Hon'ble Court. Hence a delay of five years.

Further, the Hon'ble High Court, Madras in C.A.No 241/2006 dated 04.07.2006 had referred the process of adjudication of claims of the creditors, including workmen creditors, to Tamil Nadu Mediation and Conciliation Centre, Madras. And upon receipt of the reports of the said center dated 14.9.2006 and 12.02.2007 the Hon'ble Court has ordered payment of dividend in various orders spanning between 2006 and 2011 and the same was effected by the Official Liquidator. Here it is pertinent to point out that the appointment of Tamil Nadu Mediation and Conciliation Centre as adjudication agency has effectively restricted the role of the Official Liquidator only to make payments as per the orders of the Hon'ble Court.

As on date, a few other claims have been filed with the Official Liquidator since filing of the reports by Tamil Nadu Mediation and Conciliation Centre and the same is pending adjudication for want of original proof and other related documents and efforts are being made to complete the adjudication process in the next 12 months.