

**IN THE HIGH COURT OF JUDICATURE AT PATNA
COMPANY PETITION No.17 of 1999**

HELIOS FINANCE and INVEST. LTD.

Appearance :

For the Petitioner/s : Mr. Chittaranjan Sinha No-1, Advocate
For the Respondent/s : Mr. Madhav Roy, Advocate
Mr. Rabindra Nath Tiwari, Advocate
Mr. Amit Prakash, Advocate

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

130 07-04-2023

Item (I):- I.A. No. 40/2023.

1. This I.A. has been filed by the applicant contributory and Ex-Managing Director of the company Helios Finance and Investment Ltd., which is a company under liquidation, wherein, a provisional liquidator has been appointed by this Court by an ex-parte order passed on 08.10.1999.

2. The orders of appointing a provisional liquidator was at the instance of the Company Petition filed by the Reserve Bank of India in terms of **Section 45 (M.C.)** of the **R.B.I. Act,1934** (hereinafter, referred as the Act of 1934) on the grounds that the provisions required prior permission from the Reserve Bank of India for accepting small deposits from the public in terms of the Act and on account of such deposits having been received by the company in liquidation without permission of the Reserve Bank. The R.B.I. was empowered to move a petition for seeking liquidation of the company under



the Act of 1934 as a Non-Banking Financial Company (N.B.F.C.). Since there were several depositors who had already deposited small amounts ranging between thousands of rupees to lakhs with the company, an application was moved on behalf of the management for allowing them to revive the company and take up necessary permission from the Reserve Bank of India, and at the same time, to return the amount deposited with them of the small depositors. It is stated that, in order to show their bona fides, the applicants had also deposited a sum of ₹1.2 crores with the provisional O.L. However, the said prayer made by the applicants earlier was rejected vide order dated 13.04.2009 by this Court. An appeal was preferred before the Appellate Court, who, vide its judgment dated 08.10.2009, allowed and set aside the order with a direction to renew the prayer for acceptance of the revival plan before this Company Court.



3. In the meanwhile, during the pendency of the aforesaid application, proceedings were initiated against the applicant under Section 454 of the Companies Act for non-filing of the statement of affairs and he was discharged ultimately by this Court vide order dated 19.01.2003. It is stated that a fresh revival scheme has, therefore, been filed for reviving the

company in liquidation in continuation of its earlier I.A. No. 6715/2012 with a modified scheme plan of repayment.

4. The learned counsel appearing for the management of the erstwhile company under liquidation submits that the company has no other claimant for dues except the small-time depositors. There is no secured creditor claiming any amount from the company or its assets. It is submitted that the process of liquidation will not benefit anyone in particular. On the other hand, it is submitted that the unsecured creditors, namely the short-term depositors, would be deprived of their amount till the entire process of liquidation is completed. The applicants also submit that they would seek necessary requirements under the Act of 1934 from the Reserve Bank of India for the revival of the Company. However, before the same is done, all the present depositors of the company who have deposited amounts with the company need to be refunded for which the management is ready to pay the same by submitting the scheme of repayment as suggested by them in their application.

5. Learned counsel appearing for the Reserve Bank of India states that, as per instructions received by him, the Reserve Bank of India does not object to the revival scheme. However, he submits that the revival scheme should be only



allowed after the payments are made to the depositors. It is stated that the deposits should be done under a strict supervision of the Court or any of its Officers or the O.L., as the case may be, to whom this Court may assign the duties.

6. The learned counsel appearing for the O.L. submits that the Official Liquidator has been provided with the statement of affairs but it does not have a complete list of the depositors who may have deposited their amount with the company in liquidation. He suggests that a notice be published in the Newspapers, which may have a wide publication, inviting attention of the depositors to put up their claim with regard to the money which they may have deposited with the company in liquidation.

7. He also agrees that such distribution of the deposited amount must be done under the supervision of a retired High Court Judge of this Court, in order to maintain clarity, transparency and authenticity to such transactions. It is stated that some immovable assets of the company in liquidation are in possession of the O.L., while some of them are yet to be put under possession and, if any of the assets of the company are required to be sold for the purpose of repayment of the deposits, the same should also be done under the supervision of



the person appointed by this Court.

8. I have considered the submissions. The application for revival mentions that the company got registered in the year 1990 and was classified by R.B.I. as a company and directions applicable to the loan company which is held as under:

“(4) That in year 1990 the company got registered from ROC Bihar and was classified by RBI as a loan Company so according to direction applicable to a loan company an investment of maximum 15 % of the total deposit was to be in Govt. Approved Securities and Bank FD's, and as per said direction the company was doing its business and Regularly Submitting the Balance sheet etc. before RBI as loan Company. On 18/07/1996 inspectors of RBI inspected the Book of Accounts of the company and on 21/05/1996, RBI informed company that initially it was classified as loan company but from the inspection Report of aforesaid officer of the Bank, the deposit taking activity of the company was found to be akin to a Residuary Non-Banking Company (RNBC) where company has to deposit 80% of its deposit towards Govt. Securities & Bank FD. On 22/11/1996 RBI forced company to follow RNBC directions and show cause was submitted in response on 6/12/1996 & 17/12/1996 in which the company submitted company's status as on that date and prayed for one year time to come in line to the tune of RNBC directions for investment of 80%



towards Govt. Securities and Bank FD.

(5) That in the mean while on 9/1/1997 RBI act was amended and all the RNBC/NBFC were directed for compulsory separate Registration with RDI. Helios Finance & Investment Limited Applied for Registration as RNBC/NBFC but all on a sudden on 15/7/1997 RBI prohibited the company from accepting fresh deposits. Company agitated many times before RII for lifting Ban order but it was not heard by RBI In October 1998 without any legal sanction RBI officer locked the Head Quarter of the company leaving only one floor for Audit. In the meanwhile on 18/8/1998 RBI rejected the application of Registration of the company. In year 1997 & 1998 facing all adverse after Ban order company earned a profit of Rs. 2.64,28,678 (Two crore sixty four lac twenty eight thousand six hundred and seventy eight only) and paid to depositors Rs. 32,24,61,912 (Thirty two crore twenty four lac sixty one thousand nine hundred and twelve only) towards its Maturity and loan to certificate holder against their deposit certificate/passbook was given Rs. 3,19,30,744 (Three crore nineteen lac thirty thousand seven hundred and forty four only) and all these has been incorporated in balance Sheet of the company which is available on site of MCA portal. But due to forceful closure of Head Office by RBI personnel without any legal sanction some depositors approached before CLB Kolkata and said CLB framed scheme of Repayment on



7/10/1999, whereas RBI being party before CLB, secretly moved before this Hon'ble High Court and on 8/10/1999 the Ex-parte provisional liquidator was appointed and Head office was further again locked and the order passed by CLB(Kolkata) was frustrated.

(6) That Company moved before this Hon'ble High Court against prohibitory order dated 15/7/1997 CWJC 5773/99 which was dismissed on 10/12/1999 observing that matter it is an administrative issue. Then LPA 26/1999 was filed and the same was disposed of on 21/7/2000 saying "Since Registration of Company is pending before Appellate authority. therefore unless and until such Registration is granted, the appellant company would not be able to transact the business even if the impugned order is set aside. That a part it looks absurd to allow the company to transact business without being Registered under section 45 IA of the Act. Thus as and when the registration is granted or the rejecting application for grant of Registration is set aside, the concerned authority will certainly permit the appellant company to transact business". And on 13/11/2000, the order passed by division bench was upheld by Hon'ble Supreme Court. Further on 27/4/2001 Appeal filed by company against Rejection of Registration was rejected by Appellate Authority. The order of Appellate Authority was challenged before Hon'ble High Court in CWJC No. 9539/2001, which was dismissed on a



ground that "Since the matter of liquidation is pending before company Judge so in that position Division bench will not express its opinion at present".

9. The present case is of a company, wherein a provisional liquidator was appointed under the Companies Act, 1956. **Section 466** of the **Companies Act, 1956** provides as under:-

“[466. Power of Tribunal to stay winding up-

(1) The Tribunal may at any time after making a winding up order, on the application either of the Official Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Tribunal that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Tribunal thinks fit.

(2) On any application under this section, the Tribunal may, before making an order, require the Official Liquidator to furnish to the Tribunal a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar,



who shall make a minute of the order in his books relating to the company.]”

10. In the aforesaid background, the locks were put on the office of the company on 12.02.2004, which was directed to be opened by this Court vide order dated 09.03.2004. Inspections were carried out as per the direction and this Court observed on 07.05.2004 that the Court is interested in reviving and observed as under:-

"In any case this court is not interested in winding up the company or selling its properties. The court is interested in reviving the company and see that the liabilities of the company are discharged and thousands of depositors get back their money which they have deposited in the company. If the respondent company is interested in providing financial package clearly specifying from where they will arrange the money and in what manner they will pay the amount to discharge their liability then this court certainly see their offer as a bonafide offer".

11. It appears that, from time to time, this Court had passed orders for the purpose that the payment may be made to the depositors and for that purpose, directions were issued to deposit a sum of ₹ 40 lakhs. Two installments of ₹ 40 lakhs were deposited, whereafter, the Managing Director was arrested and further deposits were not made. The company was put under



liquidation on 21.12.2006 as the company's Managing Director was in jail, and no reply had been filed to the company petition, whereafter, a fresh scheme for the payment was filed on 14.09.2007. On 02.11.2007, directions were issued not to take any coercive steps against the Ex-Managing-Director Mr. Sanjay Kumar Singh. It appears that, from time to time, an amount was deposited and a total sum of ₹1 crore 20 lakhs was deposited up to 14.08.2008 and the same is lying with the O.L. However, the learned Single Judge later rejected the application for revival on 13.04.2011.

12. The Division Bench of this Court allowed withdrawal of the appeal with the clarification that if any further scheme had been submitted by the Ex-Management, the same shall be considered by the Company Judge on its own merits in accordance with the law vide its order dated 08.10.2009.

13. In view of the above, the Ex-Management had submitted the present scheme. As per the statement of affairs submitted on 29.07.2015, the liabilities of depositors to be paid are ₹12,19,75,335/- as Unsecured liabilities (Principal and the Interest). During the pendency of winding up proceedings, ₹1,44,18,665/- has already been paid to depositors and presently ₹10,63,71,290/- towards principal and interest remains to be



paid. The interest has been calculated up to the date of appointment of the provisional liquidator i.e. 08.10.1999. The scheme submitted by the petitioner as Plan A and Plan B mentions that the amount may be repaid in 18 months by the O.L. and by the company.

14. In view of the above, during the course of the hearing the parties agreed to the following scheme:-

- (a) The amount may be disbursed under the supervision of a retired High Court Judge to be named by this Court after taking his consent and a fees may be fixed to be paid to him for the purpose.
- (b) The period of disbursement has also been agreed to be made as early as possible and it is stated that the management shall try its level best to get the disbursement done within a period of one year from the last date of submission of the claims as fixed in the advertisement to be notified in the newspapers.
- (c) The parties have also agreed that the money already deposited with the O.L. shall be excluded along with its interest as part of the total amount to be disbursed to the small-time depositors and the same shall be under the strict supervision of the retired Hon'ble Judge of this Court.
- (d) A separate account shall be opened in the name of the company and the cheques of refund shall be issued to the depositors under the signature of the Ex-Managing Director.
- (e) The depositors would also be entitled to payment of 7% per annum simple interest on their deposited amount after 08.10.1999.
- (f) The assets/properties of the company would be allowed to be sold for the purpose of payment of amount to the depositors. The sale of such properties shall be under the



supervision of the retired Hon'ble Judge nominated by this Court.

- (g) The properties of the company, which have come under the control of this Court, shall be treated to be without any encumbrance as no third party rights can be said to have been created after 08.10.1999.
- (h) Any claim of any third party shall stand rejected and no Civil Court shall be authorized to pass any injunction order with regard to the properties of the company.
- (i) After the aforesaid payment to the depositors, the expenses incurred by the O.L. in relation to the company shall be repaid upon submission of the requisite proof thereof from the accounts of the company.
- (j) The management, as was existing under Chairman-cum-Managing Director on 08.10.1999, shall stand revived. They or their legal representatives would be allowed to be on the Board and the O.L. as Registrar of companies shall put a note in the register of companies for the revival.



15. The aforesaid order has been passed on the basis of the statement and application moved along with the affidavit of the Ex-Chairman of the company. It is made clear that if the aforesaid promises as made are not adhered to by the company, the Ex-Chairman would be liable for penal consequences, including arrest, for non-payment to the depositors.

16. The remaining properties/assets of the company shall be reverted back to the company. The company would be entitled to move the appropriate application to the Reserve Bank of India and the Reserve Bank of India may

examine their application for restoring their license of N.B.F.C., if it so approves, failing which the company shall not be allowed to work as an N.B.F.C.

17. All the criminal cases registered by depositors relating to their claims shall stand withdrawn/closed/discharged after the aforesaid scheme is concluded. In the meanwhile, no Court shall take any coercive steps against the Ex-Manager Director-cum-Chairman or other members of the management, so that the company can be revived and payments can be made to the depositors under his signatures. State and its authorities are also restrained from taking any coercive steps against the Managing Director-cum-Chairman or other Directors of the Company.

18. Violation of this order would invite Contempt Proceedings.

19. A report shall be submitted after the conclusion of the above proceedings to this Court by the nominated retired Hon'ble Judge which shall be considered by this Court for the concluding of the present proceedings in the company petition.

20. A notice shall be published in two Newspapers of national publication, one Hindi and one English, mentioning the revival scheme and inviting depositors to submit their claims



with sufficient proof and documents to the Hon'ble nominated Judge, latest by June. The format of the advertisement shall be finalized by 15th of July,2023 by the Nominated Judge.

21. The name of the nominated judge shall be mentioned after taking due consent from the concerned Judge and his fees shall also be settled after taking his consent. A separate order in this regard shall be passed, which shall be treated as part and parcel of this order.

(Sanjeev Prakash Sharma, J)



In the Chambers

This Court, after having telephonic talks with The Hon'ble Retired Judge Shri Dinesh Kumar Singh, who has consented to supervise the aforesaid revival scheme, nominates Hon'ble Retired Judge Shri Dinesh Kumar Singh to supervise the aforesaid revival scheme, for which an amount of ₹12 lakhs to be paid in monthly installments has been fixed as his fees for the purpose. The same shall be paid by the Ex-Management from the company's account.

A copy of this order shall be sent by the registered post to the Hon'ble Mr. Justice Dinesh Kumar Singh, retired Judge. The Judge shall be allowed facilities of a Stenographer and shall be entitled for office expenses of a sum of ₹3 lakhs additionally.



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(Sanjeev Prakash Sharma, J)

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