

THE HON'BLE Ms. JUSTICE G.ROHINI

COMPANY APPLICATION No.1 OF 2011

AND

COMPANY APPLICATION (SR) No.7797 OF 2010

IN

C.P.No.39 of 2002

-
Dated: 02.02.2011

Between:

M/s. Armour Pharmaceuticals Limited

..... Applicant

The Court made the following:-

THE HON'BLE Ms. JUSTICE G. ROHINI

COMPANY APPLICATION No.1 OF 2011
AND
COMPANY APPLICATION (SR) No.7797 OF 2010
IN
C.P.No.39 of 2002

COMMON ORDER:

The Official Liquidator attached to this Court representing M/s. Armour Pharmaceuticals Limited, the company in liquidation is the applicant in these two applications.

C.A.No.1 of 2011 is filed under Section 460 (4) of the Companies Act read with Rule 167 of the Companies (Court) Rules, 1959 to condone the delay in filing the Certificate in Form No.71 in terms of Rule 167 of the Companies (Court) Rules, 1959 and to take the same on record.

The Official Liquidator also seeks permission to dispense with the adjudication of claims of other creditors whose claims are not likely to yield any dividend.

C.A.(SR) No.7797 of 2010 is filed to declare dividends to the secured creditors and the workmen/employees of the company in liquidation and for other reliefs as under:

- "i. Declare a dividend @ 42.66% in a rupee to IDBI secured creditor in respect of all the assets realizations of Bollaram Unit, a dividend @ 0.78% in a rupee to Canara Bank and ARCIL in respect of Kukatpally Unit and @ 47.80% to workmen/employees to aggregating a sum of Rs.1,22,33,682.55ps as detailed in the statement marked as Annexure-B.
- ii. authorise Official Liquidator to open a separate dividend account in Punjab National Bank and pay the dividend to secured creditors/workmen out of the said account, in terms of Rule 290 of the Companies (Court) Rules, 1959.
- iii. Permit the OL to dispense with the adjudication of claims of preferential/unsecured creditors whose claims are not likely to yield any dividend.
- iv. dispense with the publication of notice of dividend in newspapers.
- v. authorise Official Liquidator to send individual notices of

dividend in Form No.138 along with 139.

- vi. authorise Official Liquidator to fix the schedule for making payment.
- vii. authorise Official Liquidator to transfer the un-paid, if any, remaining in the dividend account, after the expiry of the 6 (six) months period to Companies Liquidation Account, in terms of Section 555 of the Companies Act, 1956.
- viii. authorise Official Liquidator to pay dividend due to any deceased creditor to his legal heirs upon production by such legal heirs, a family member certificate issued by MRO or such other certificate instead of producing a succession certificate and also upon furnishing personal indemnity, in terms of Rule 280 of the Companies (Court) Rules, 1959.
- ix. authorise Official Liquidator to take all necessary actions and steps which are incidental to declaration and payment of dividend and to effectively implement the orders of this Hon'ble Court in that regard.
- x. order that the costs of this application do come out of the Estate of the Company (In Liqn.)”

I have heard Sri M. Anil Kumar, the learned counsel for the Official Liquidator.

M/s. Armour Pharmaceuticals Limited was directed to be wound up by this Court by order dated 16.07.2003 made in C.P.No.39 of 2002 and the Official Liquidator attached to this Court was appointed as its Liquidator. Pursuant thereto, having taken possession of the assets of the company, the Official Liquidator sold the same and in terms of the order passed by this Court, interim dividend was paid to the secured creditors. Thereafter in terms of the order passed by this Court dated 9.3.2007 in C.A.No.431 of 2007 the Official Liquidator invited the claims from the creditors of the company in liquidation by publishing a notice in Form No.63 in the newspapers dated 14.5.2007 fixing the last date for receipt of claims as 15.6.2007. In response to the same, altogether 32 claims were received from secured creditors, unsecured creditors, individual workmen, Government Departments as well as the workmen union. Though the claims received from the Government Departments and the unsecured

creditors could not be adjudicated for want of proof, the other claims were adjudicated and admitted to the tune of Rs.17,59,68,281-31ps as against Rs.4,16,08,787/- of the sale proceeds realized. Since the sale proceeds realized is not sufficient even to dispose the claims of the secured creditors and workmen and moreover the claims yet to be adjudicated rank only second and third respectively, the Official Liquidator seeks permission to proceed with the distribution of dividends to the entitled secured creditors by dispensing with the adjudication of the other claims. It is proposed to declare a dividend @ 42.66% to IDBI in respect of Unit-I situated at Bollaram for an amount of Rs.1,22,14,917.03ps after deduction of the interim dividend and @ 0.78% in a rupee to Canara Bank and ARCIL in respect of Unit No.II situated at Kukatpally and @ 47.80% to the workmen of the company as detailed in the statement enclosed as Annexure-B.

It is to be noticed that under Rule 167 of the Companies (Court) Rules, 1959 the Certificate in Form No.71 should have been filed by the Official Liquidator within three months from the date fixed for submission of the proofs. In the present case, the notice inviting claims from the secured and other creditors of the company in liquidation was published fixing the last date for receipt of claims as 15.06.2007. As such the certificate in Form No.71 should have been filed before this Court on or before 14.09.2007. However the Certificate could be filed before this Court only in December, 2010 and thus there is a delay of about 1185 days in filing the Certificate in Form No.71.

In the affidavit filed in support of the application, it is explained by the Official Liquidator that the claims received from the secured creditors and workmen, Preferential creditors like ESI, Commercial Taxes, Income Tax etc., and unsecured creditors like trade debtors etc., were processed and the requisite information which was found not supportive to the claims had been called from the respective creditors. Whereas, the secured creditors and the workmen furnished

all the requisite information supporting and justifying their respective claims and their claims were adjudicated, the next category of the claimants i.e., preferential creditors had not furnished supporting documents in spite of the reminders. As there was no response from the said creditors for a long time and in the meanwhile as the office of the Official Liquidator had to concentrate on the process and adjudication of the claims received from the other companies in liquidation, the claim of the said preferential creditors could not be finalized and remained pending for a long time. It is stated that during the special drive initiated in the office of the Official Liquidator to clear all the pending claims for adjudication, the files relating to the creditors of M/s. Armour Pharmaceuticals Limited (company in liquidation) have been traced. It is stated that immediate steps have been taken to complete the adjudication of the said claims and immediately thereafter the certificate in Form No.71 has been placed before this Court in terms of Rule 167 of the Companies (Court) Rules, 1959. While stating that the delay in filing the Form-71 Certificate is only due to the circumstances explained above and it is neither wilful nor wanton it is prayed to take on record the said certificate by condoning the delay.

It is true that the certificate in Form No.71 should be filed within three months from the date of fixing for submission of proofs. However the explanation offered by the Official Liquidator in the affidavit filed in support of the application shows that the delay was occasioned for genuine reasons and there is no reason to hold that the delay had occurred in the office of the Official Liquidator deliberately or on account of negligence.

The law is well-settled that the powers conferred under Rule 167 read with Rule 7 of the Companies (Court) Rules, 1959 are very wide and can be exercised by enlarging the time fixed by the rules to meet the ends of justice. It is also relevant to note that the condonation of the delay in the present case does not adversely affect the rights of

any of the parties, but on the other hand it would enable the winding up proceedings to reach the logical conclusion. Hence I deem it appropriate to condone the delay in filing the Certificate in Form No.71.

Accordingly, the delay in filing the Certificate in Form No.71 is hereby condoned and the said certificate is taken on record with a direction to the Registrar to notify the same as provided under Rule 169 of the Companies (Court) Rules, 1959.

So far as the dividend proposed to be declared and disbursed to the secured creditors and the workmen of the company in liquidation is concerned, the learned counsel for the Official Liquidator submits that the proposals made in the Annexure-B statement are in order. Hence the Official Liquidator is hereby permitted to declare and disburse the dividend as proposed.

Since the dividend is proposed only to the secured creditors and the workmen of the company in liquidation, the publication of notice of dividend by advertisement in newspapers in Form No.137 is hereby dispensed with. Instead the Official Liquidator is permitted to send the notice of dividend to the creditors as well as the workmen individually in Form No.138. Accordingly, all the reliefs sought by the Official Liquidator in C.A.(SR) No.7797 of 2010 are also hereby granted.

In the result, both C.A.No.1 of 2011 and C.A.(SR).No.7797 of 2010 are allowed.

G. ROHINI, J

Dt. 02.02.2011
lvd/gbs