**Comp.Appl.No.572 of 2016**

**RAJIV SHAKDHER, J.**

1. This is an application moved by the Official Liquidator (in short "OL"). The application is in the form of a report.

2. In the application/report, the following substantive prayers have been made by the OL.

> " (a) To take on record this report of the Official Liquidator filed under Section 497(6) of the Act, 1956 in the above matter;
>
> (b) To pass an order ratifying the action of the liquidator distributing the freehold properties of the company comprised of 46 residential flats situated at Aminjikarai, Chennai among the shareholders / contributories in proportion to their respective shareholding in the company.
>
> (c) To pass an order to dissolve M/s. Nelson Type Foundry Private Limited (in Voluntary Liquidation) after considering the prayer (b) made supra."

3. This application came up for hearing before me for the first time on 24.3.2016.

3.1. Upon perusal of contents of the application/report dated 18.04.2016, I had issued notice to the Assistant/Deputy Commissioner of Income Tax, Corp.Circle 4(2). In addition, notice was also issued to the counsel for the Income Tax Department. The matter was posted, thereafter, on 18.7.2016.

3.2. Mr. Venkataraman, who appeared before me on behalf of the Standing Counsel for the Income Tax Department, sought time, to file an affidavit in the matter. It was made clear that the Standing Counsel or the concerned officer of the Income Tax Department should remain present in Court on the next date of hearing. I had also indicated in the order, that, in case, the Standing Counsel was not available, the concerned Officer of the Income Tax Department should remain present in Court. The matter was posted today i.e. 11.8.2016.

4. Regrettably, neither the Standing Counsel for the Income Tax Department nor the concerned officer of the Income Tax Department is present in Court.

5. In view of the above, these proceedings, would, ordinarily, have to be adjourned, because of the absence of the representatives of Income Tax Department, however, this Court is saved from this situation, in view of the fact that, the OL has placed before me, his correspondence with the Income Tax Department, which, reveals that, according to the said Department, no income tax dues are payable by the company-in-liquidation, i.e., Nelson Type Foundry Private Limited.

5.1. This aspect of the matter is, adverted to, by the OL in his recent report, dated 11.8.2016. Along with the said report, the OL has appended a letter, dated 15.7.2016, addressed to the Standing Counsel by the Income Tax Department, a copy of which has been marked to the Deputy Official Liquidator. The relevant extracts, from the said letter, are set out herein below.

> "..... Subsequently, the assessee company has filed a letter on 15.07.2016 along with a copy of consequential order passed by the then Assessing Officer i.e. ITO, erstwhile Company Ward IV(1), Chennai giving effect to the order of the Hon`ble ITAT. <u>As per this consequential order dated 24.07.2012, the assessee company has paid regular</u>

> tax of Rs.73,57,720/- on 24.09.2011 which has resulted in a refund of Rs.32,90,080/- including interest under Section 244A and the same was received by the assessee company. As such there is no demand outstanding for the asst. year 2006-07 in this case.
>
> Further as per the AST data screen shots of which are already provided to you, there is no demand outstanding for any asst.year in this case. Hence, your are requested to take necessary action as deem fit in this case. ...."
>
> (emphasis is mine)

6. A perusal of the said letter would show, as indicated above, that no Income Tax dues are payable by the company-in-liquidation.

7. This apart, the earlier report of the OL shows that, on 01.4.2009, the company, presently in-liquidation, at its Board of Directors meeting, has passed a resolution to wind up its affairs, albeit, voluntarily.

8. Furthermore, the Declaration of Solvency was also made on 23.4.2009. The shareholders, at a General Meeting held on 29.4.2009, approved the proposal, to wind up the company, presently, in- liquidation and appointed Thiru. A.M.Kandasamy, as Voluntary Liquidator.

8.1. As per this resolution, no remuneration was to be paid to the Voluntary Liquidator. The said resolution was filed with the Registrar of Companies (in short ROC), on 01.5.2009. The resolution was published in the Official Gazette on 13.5.2009. Furthermore, the resolution was also published in two newspapers on 10.5.2009.

8.2. The Voluntary Liquidator has intimated to the ROC, the factum of appointment, by filing the prescribed Form i.e. Form No.62, on 12.05.2009.

8.3. To be noted, the final meeting was held by the Voluntary Liquidator on 10.4.2014. Notice, with regard to the same, was published in the newspapers, on 03.03.2014 and, in the Official Gazette, on 05.03.2014.

8.4. It appears that, the Voluntary Liquidator has filed his resolution based on the final meeting held on 10.4.2013, in the prescribed form, with the ROC, on 01.5.2014.

9. The OL, in his report, has indicated that, the estimated value of assets, on the date of commencement of winding up, was Rs.4,02,21,986/- as against liability of Rs.2,26,618/-. Evidently, the Voluntary Liquidator through efforts, realised, in fact, an amount equivalent to Rs.5,76,75,007/-.

9.1. It appears that, out of the amount realised, a sum of Rs.17,578/- was spent towards publication charges. Further, a sum of Rs.5,68,97,297/- was paid to the creditors. The balance amount i.e., Rs.7,60,132/- was disbursed amongst the contributories in the form of return of capital.

9.2. Evidently, the Voluntary Liquidator, vide letter, which is dated nil, informed the OL, that the company-in-liquidation, has freehold properties which comprise of 46 residential flats. These flats, according to the said communication, were situate at Municipal Door No.47, Old No.116, Nelson Manickam Road, Aminjikarai, Chennai -600 029. This communication was received by the OL on 19.02.2016.

9.3. It appears that, during the course of the proceedings, the Voluntary Liquidator, has distributed the said 46 residential flats amongst the shareholders/contributories in proportion to their respective equity stake in the company-in-liquidation. This action, it appears, had been taken by the Voluntary Liquidator with the consent of the shareholders/contributories. Apparently, the Voluntary Liquidator has also executed deed of allotment of flats, and has had the said deeds registered with the Sub Registrar, Kodambakkam.

9.4. The Voluntary Liquidator, has also, it appears, filed his return with the final statement of accounts, as required under Section 497 (3) of the Companies Act, 1956.

9.5. The OL avers in his report that the scrutiny of books of account of the company-in-liquidation, does not reveal that its affairs, at the relevant point, were conducted in a manner, which was inimical to the interests of its members or, the public at large.

9.6. It is in these background that the OL makes the aforementioned prayers.

10. As indicated, at the very outset, I had concern about whether or not income tax dues were outstanding. That concern has been put on rest, in view of the communication received by the OL.

11. As regards the conduct of the affairs of the company, the OL, seems to be satisfied that nothing has emerged, which would have him believe that its affairs were being run in a manner, which was contrary to the interests of the Members or, the public at large.

12. In view of the above, prayers made by the OL are allowed.

13. The application is accordingly disposed of.

14. At this stage, Mr.T.Ravikumar, Mr.T.R.Senthilkumar, Senior Standing Counsels for Income Tax along with Mr.Anilkumar, Assistant Commissioner of Income Tax appeared before the Court. They have been apprised of the order passed by the Court, today.

ga 11.8.2016

**RAJIV SHAKDHER, J.**

**ga**

**Comp.Appl.No.572 of 2016**

11.08.2016