

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**COMPANY APPLICATION Nos. 1901, 1902 & 1903 OF 2015**

**COMMON ORDER:**

These three Applications have been taken out seeking the following respective prayers:

- 1) to declare the applicant/Ex-Director (i.e. Thomas J. Sheehan) ceased to be the director of the 1<sup>st</sup> respondent company with effect from 23.10.2008;
- 2) to direct the Assistant P.F. Commissioner (PD) of the Employees' Provident Fund Organization, Sub-Regional Office, Vuda Lay Out, N.A.D. Post, Visakhapatnam to take note of the applicant/Ex-Director's resignation dated 23.10.2008 from the 1<sup>st</sup> respondent company; and
- 3) to direct the Official Liquidator of the High Court of Andhra Pradesh to take note of the Applicant/Ex-Director's resignation dated 23.10.2008 from the 1<sup>st</sup> respondent company.

The applicant, who is a resident of the United States of America, was appointed as a Director in the Board of M/s MDL Technologies India Private Limited (company in liquidation) on 21.08.2006. However, on 23.10.2008, he submitted his resignation to the Board, which was acknowledged by the respondent company on 24.10.2008.

Subsequently, on 11.12.2012, the respondent company was also ordered to be wound up. While so, on 09.05.2013, the Official Liquidator issued notices to the applicant; one to hand over the books of accounts and other records and the other to submit the statement of affairs of the company under Section 454 of the Companies Act, 1956. In response thereto, the applicant had addressed a letter dated 05.06.2013 to the Official Liquidator

bringing to his notice the factum of his (applicant) submitting resignation on 23.10.2008 and its acceptance by the respondent company. The applicant now seeks necessary directions, as sought supra, to the Official Liquidator, by way of these Company Applications.

The Official Liquidator has filed a common report dated 01.07.2016, stating that on verification of the records of the company in liquidation, it has been revealed that the applicant was the Director as on the date of the order winding up the company has been passed. To substantiate the same, the certified copy of Form No. 32 has also been annexed. In those circumstances, according to the Official Liquidator, the applicant cannot escape from the obligation of submitting the statement of affairs with respect to the company in liquidation.

Having considered the respective submissions, it may be noted that the stand of the Official Liquidator in the facts of the present case is not sustainable.

It is not in dispute that the applicant had submitted his resignation, which was accepted by the company in liquidation, as is evident from the communication dated 24.10.2008. The winding up order was passed by this Court on 11.12.2012. Therefore, it is clear that on the date of winding up of the company, the applicant was no more its Director. Hence, it can safely be said that he was under no obligation to comply with the statutory requirements, as contemplated under Section 454 of the Act. On the other hand, it is the duty of the respondent company to fulfill the same.

So far as the resignation of the applicant is concerned, the same will come into force the moment it is tendered and/or accepted by the company, unless the articles of the company prescribe otherwise. In fact, no such prescription was raised by the Official Liquidator in the present case. Further, this aspect of the matter has also been dealt with, in detail, in the judgment rendered by this Court in ***Renuka Datla v. Biological E. Limited***<sup>1</sup> as well as the judgments of the High Courts of Madras and Karnataka in ***T. Murari v. State***<sup>2</sup>, ***S.S. Lakshmana Pillai v. Registrar of Companies***<sup>3</sup>, ***Renuka Ramanath v. Yes Bank Ltd.***<sup>4</sup> and ***Mother Care (India) Ltd. v. Prof. Ramaswamy P. Aiyar***<sup>5</sup>.

In that view of the matter, the issue being no longer *res integra*, this Court is of the opinion that reliefs 1 and 2 deserve to be allowed. Ordered accordingly. Insofar as the 3<sup>rd</sup> relief is concerned, it is for the applicant to inform the Official Liquidator the factum of his ceasing to be the Director of the respondent company with effect from 23.10.2008.

With this, Company Applications No. 1901 and 1902 of 2016 stand allowed and Company Application No. 1903 of 2016 stand dismissed.

**CHALLA KODANDA RAM, J**

22<sup>nd</sup> September 2016  
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<sup>1</sup> (2015) 193 Company Cases 356 (AP)

<sup>2</sup> (1976) 46 Company Cases 613 (Mad)

<sup>3</sup> (1977) 47 Company Cases 652 (Mad)

<sup>4</sup> (2012) 174 Company Cases 465 (Mad)

<sup>5</sup> ILR 2004 Karnataka 1081