

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

Coram

The Honourable Dr.Justice S.VIMALA

C.P.No.79 of 2016

M/s.Lloyd Insulations (India) Ltd.,
Rep. by its AGM (credit control)/authorized
signatory Mr.M.K.Satheesh,
No.5, Haddows Lane,
Nungambakkam, Chennai – 600 006.

... Petitioner

versus

M/s.Makwuds India Pvt. Ltd.
F8, Sipcot Industrial Park,
Sunkuvarchatram,
Sriperumpudur – 602 106.

... Respondent

Petition filed under Section 433 (e), 434 (1)(a), (c) and Section 439 of the companies Act, praying for the following relief:

(i) the Respondent, M/s.Makwuds India Pvt. Ltd. be ordered to be wound up under the orders and directions of this Court under the provisions of the Companies Act, 1956;

(ii) the Official Liquidator, High Court, Madras be appointed by this Hon'ble Court as the Liquidator of the assets, properties, income and business of the Respondent viz. M/s.Makwuds India Pvt. Ltd. with all powers under the provisions of the Companies Act, 1956;

(iii) that the costs of the petition be provided for.

For Petitioner : Mr.K.Balamurali

ORDER

Petition has been filed under Section 433 (e) and (f) 434(i)(a) and 439(i) and (b) of the Act for winding up of the respondent Company.

1.1. This petition has been filed by the Creditor for non-payment of debt by the respondent, which was due on account of supplies made and work carried out for the respondent Company. Settlement has been arrived at before the Tamil Nadu Mediation and Conciliation Centre, wherein, the respondent has agreed to pay a sum of Rs.40,00,000/- after getting the waiver of interest from the petitioner. As the respondent failed to pay, this Company Petition has been filed and it has been admitted.

2. Now, at this stage, the learned counsel for the petitioner has sought the leave of this Court to withdraw the company petition after making the following endorsement:

“The petitioner instructed us that balance sum of Rs.6,00,000/- is paid by the respondent Company yesterday and the petitioner seeks permission to withdraw this petition as settled out of court”.

3. A perusal of the petition would go to show that the winding up has been sought for only on the ground that the respondent is unable to pay the

debt of the petitioner. The details of the other creditors/debts are not furnished. It is simply stated that the respondent is facing number of other proceedings. In the absence of those details being furnished, this Court can safely come to a conclusion that the petitioner is only affected party and therefore, there is no impediment in granting permission to withdraw the petition.

4. Moreover, from the nature of allegations made, the likelihood of any contributory or persons interested, who are likely to be affected, appears to be remote.

5. The statutory requirement providing for leave to withdraw by the Court has to be considered:

5.1. As per Rule 100(2), an application for leave to withdraw a petition for winding-up which has been advertised in accordance with the provisions of rule 99 shall not be heard at any time before the date fixed in the advertisement for the hearing of the petition.

5.2. Rule 99 provides that the petition (for winding up) shall be advertised within the time and in the manner provided by rule 24 of these rules and the advertisement shall be in Form No. 48.

5.3. Rule 24 of the Companies (Court) Rules, 1959 reads as under:

“24. Advertisement of petition

- (1) Where any petition is required to be advertised, it shall, unless the Judge otherwise orders, or these rules otherwise provide, be advertised not less than fourteen days before the date fixed for hearing, in one issue of the Official Gazette of the State or the Union Territory concerned, and in one issue each of a daily newspaper in the English language and a daily newspaper in the regional language circulating in the State or the Union Territory concerned, as may be fixed by the Judge.
- (2) Except in the case of a petition to wind-up a company, the Judge may if he thinks fit, dispense with any advertisement required by these Rules.

5.4. Form No.48 is in the following form:

FORM NO. 48

[See rule 99] [HEADING AS IN FORM NO.1]

Company Petition No of 19 .

..... -Petitioner

Advertisement of petition

Notice is hereby given that a petition for the winding-up of the above-named company by the High Court at.. . (or the District Court of... ..) was on the day of... 19 presented to the said Court by the said company [or. where the petition was not presented by the company. state the name and address of the petitioner and the capacity in which he presents the petition e.g., creditor. contributory etc.] and that the said petition is directed to be

heard before the Court on the day of 19. Any creditor, contributory or other person desirous of supporting or opposing the making of an order on the said petition should send to the petitioner or his advocate notice of his intention signed by him or his advocate with his name and address. so as to reach the petitioner or his advocate not later than 5 days before the date fixed for the hearing of the petition. and appear at the hearing for the purpose in person or by his advocate. A copy of the petition will be furnished by the undersigned to any creditor or contributory on payment of the prescribed charges for the same. Any affidavit intended to be used in opposition to the petition should be filed in Court. and a copy served on the petitioner or his advocate. not less than 5 days before the date fixed for the hearing.

Advocate for Petitioner

5.5. A perusal of Form No.48 and the relevant rules would go to show that the impediment to grant leave for withdrawal of the petition is in the interregnum period of 14 days between the date of advertisement in Form No.48 and the date of hearing. No such impediment has been pointed out.

5.6. Under the stated circumstances, leave is granted to withdraw the petition and the petition stands dismissed as withdrawn.

11.04.2017

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Dr.S.VIMALA, J.

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