

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2017

Coram

The Honourable Dr.Justice S.VIMALAC.P.No.201 of 2013
and C.A.No.738 of 2013

1. Sri Abiraami Agency,
Partnership Firm,
Rep. by its Partner,
S.Senguttuvan,
14, Raja Rao Street,
Tirupur – 641 601.

2. Saravana Distributors
Partnership Firm
Rep. by its Partner,
S.Senguttuvan,
14, Raja Rao Street,
Tirupur – 641 601.

... Petitioners

versus

Lakshman Ganesan Processing Private
Limited,
693/1A Dharapuram Road,
Tirupur,
Coimbatore District,
Tamil Nadu – 641 604.

... Respondent

Company Petition filed under Sections 433(1)(e), 433(1)(f), 434(1)(a) and Sec.439 of the Companies Act 1956, Read with Rules 95 of the Companies (Court) Rules, 1959.

a) that the respondent company, namely Lakshman Ganesan Processing Private Limited, a company incorporated under the Companies

Act, 1956 having its Registered Office at 693/1A Dharapuram Road, Tirupur Coimbatore District, Tamil Nadu – 641 604, be ordered to be wound up under the orders and directions of this Court under the provisions of the Companies Act, 1956;

b) that this Court may be pleased to appoint the Official Liquidator of the Respondent Company and to conduct the affairs of the Respondent Company in the course of winding up and to distribute its assets in accordance with law;

c) for costs.

For Petitioners : Mr.Juhulin Jinu Jebarson

ORDER

Petition has been filed under Section 434 (i)(a) of the Companies Act, on the ground that the respondent has become commercially insolvent and consequently, liable to be wound up in terms of Section 433(e) of that.

2. The specific allegation is that as on the date of filing of the petition, respondent Company was liable to pay a sum of Rs.2,58,016/- to the second petitioner, who supplied dyes and chemicals to the respondent.

3. Learned counsel for the petitioner has made the following endorsement dated 08.03.2017:

“It is submitted that this Hon'ble Court may allow us to withdraw the above C.P.No.201 of 2013 and C.A.No.738 of

2013 and thus render justice.”

3.1. This endorsement is treated as petition seeking leave of this Court to withdraw the Company Petition.

4. The petition did not provide details of any other secured/unsecured creditors. 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.

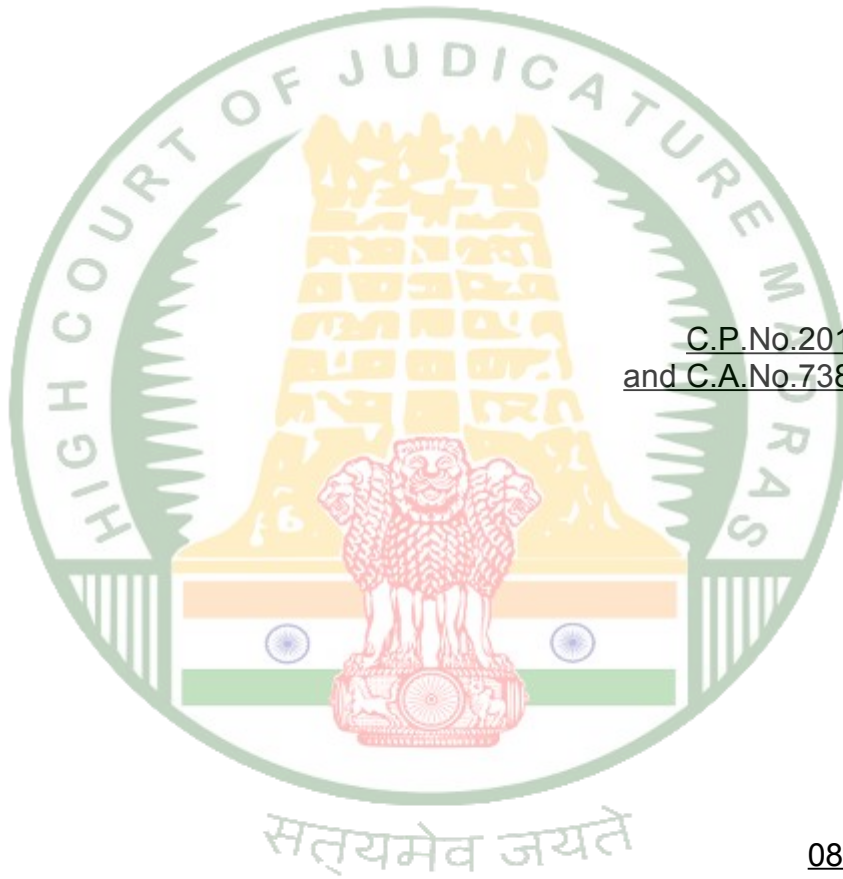
5.6. Hence, Leave is granted to withdraw the petition and the petition stands dismissed as withdrawn.

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Dr.S.VIMALA, J.

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