

HON'BLE SRI JUSTICE S.V.BHATT

COMPANY APPLICATION No.468 OF 2017

IN

R.C.C.No.13 of 1999

ORDER:

Heard the Official Liquidator, representing the applicant company and Mr.Dishit Bhattarjee for 2nd respondent.

This application is filed by the Deputy Official Liquidator, representing M/s Raghunath Cotton & Oil Products Limited (hereinafter referred to as company in liquidation), against two respondents, including M/s Shiva Texyarn Limited/2nd respondent under Section 446(3) of the Companies Act, 1956 seeking transfer of C.S.No.393 of 2008 pending before the High Court of Madras to this Court.

It is not disputed that this Court by order dated 08.10.2001 in R.C.C.No.13 of 1999 directed winding up of the company in liquidation and consequently the Official Liquidator attached to this Court was appointed as Liquidator in respect of the said company. It is also not disputed that the respondents herein, including the 2nd respondent i.e., M/s Shiva Texyarn Limited filed C.S.No.393 of 2008 before the High Court of Madras against the company in liquidation. This Court directed the Official Liquidator to file an application under Section 446(3) of the Companies Act for transfer of the civil suit to this Court. Thereafter, the Official Liquidator filed the present Company Application No.468 of 2017. It is further stated in the report filed by the Official Liquidator that the company has a sum of only Rs.5,51,171-71 Ps to its credit and it is not feasible for the

Official Liquidator to appoint an Advocate at Chennai to represent the case before the High Court of Madras on account of dearth of funds and hence it is just and necessary to transfer C.S.No.393 of 2008 pending before the High Court of Madras to this Court.

Respondent No. 2 filed counter affidavit.

Learned counsel representing the Official Liquidator relied on a decision of this Court in Company Application No.679 of 2005 in R.C.C.No.11 of 1999 rendered on 24.10.2005 wherein the case pending against the company in liquidation therein before the Court of the Civil Judge at Delhi was ordered to be transferred to this Court. In the said decision, the judgment of Calcutta High Court in UNION OF INDIA V. P.C.RAY & CO. (INDIA) (P.) LTD (Company Cases 1989 Vol-65 Page 625) was referred to wherein it was held as under:-

“That, under Section 446(3), the winding up Court had the jurisdiction to get any matter pending anywhere by or against the company in liquidation, transferred to itself and to try the same. Since the application under Section 5 of the Arbitration Act was made before the winding up Court, all the four private references stood transferred to the winding up Court by the conduct of the parties, and the winding up Court entertained and disposed of them by order dated March 7, 1978. There was no provision in the Companies Act to re-transfer such matters to any other Court having concurrent jurisdiction to try the same.”

Thus, the jurisdiction of this Court to pass orders under Section 446(2) or 446(3) of the Companies Act cannot be doubted. It cannot also be disputed that as the company in liquidation is starved of funds, either for prosecuting the suit filed by the company or defending the suit filed against the company in liquidation in the High Court of

Madras by the Official Liquidator would certainly impose additional financial burden and liability on the company in liquidation resulting in further depletion of resources, which are already meagre. Such a course would not be in the interest of the creditors themselves in the long run.

In the circumstances, having regard to the fact that the applicant-company (in liquidation) is not having sufficient funds and the contest of the suit pending before the High Court of Madras would involve considerable expenditure, resulting in further depletion of its meagre resources and in order to avoid incurring of unnecessary expenditure by the Official Liquidator, it is considered that C.S.No.393 of 2008 pending before the High Court of Madras be transferred to this Court for being tried in this Court and hence transferred accordingly. The Registrar (Judicial) of this Court is directed to transmit a copy of this order to the High Court of Madras in terms of Rule 118 of the Company Court Rules.

The company application is, accordingly, ordered.

S.V.BHATT,J

24th January 2018

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