IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **22.03.2019**

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

Comp.Application No.511 of 2018
and C.P.No.106 of 2016

The Official Liquidator,
High Court, Madras
as the Liquidator of Rishyashringa
Jewellers Ltd (in liquidation) .. Applicant

This application is preferred, under Section 481 of the Companies Act, 1956 Read with Rules 9,11(b) of the Companies (Court) Rules, 1959, prays

a)To take this report on record of the Hon'ble Court.

b) To dispense with the audit of final accounts by the Local Fund Audit as there was no expenses incurred by the Official Liquidator during the course of the liquidation proceedings of the subject company.

c) To form an opinion that the liquidator cannot proceed with the winding up and that it is just and reasonable dissolve the company u/s.481 of the Companies Act, 1956.

d) To permit the Official Liquidator to transfer the initial deposit to Common Pool Account maintained by the Official Liquidator after meeting the incidental expenses, if any related to the winding up proceedings of the subject company.

e) To pass any such other orders that the Hon'ble Court deem fit and proper in the circumstances of the case.

For Applicant : Mr.Bavishetty Sridhar,
Deputy Official Liquidator

ORDER

Company Application No.511 of 2018 is for dissolution under Section 481 of 'The Companies Act, 1956' (hereafter 'said Act' for brevity) and the Company under liquidation is 'Rishyashringa Jewellers Ltd.,' (hereinafter 'said Company' for brevity).

2. Read this in conjunction with and in continuation of earlier order of this Court dated 15.03.2019. Mr.G.Sivashankaran, counsel on record for the petitioner in the main Company Petition (C.P.No.106 of 2016) is before this Court. To be noted the main C.P. is one for voluntary winding up. Therefore the company under liquidation and the petitioner are one and the same i.e., said Company.

3. Adverting to the earlier order of this Court dated 15.03.2019 Mr.G.Sivashankaran submitted that no application other than the instant company application No.511 of 2018 taken out by the Official Liquidator for dissolution under Section 481 of the said Act is pending in this C.P.No.106/2016.

4. On the aforesaid basis, learned Deputy Official Liquidator

requests this Court to consider the instant application under Section 481 of the said Act for dissolution *inter alia* to dissolve said Company finally and consequential, incidental and collateral orders have also been that have been made by OL.

5. Along with this application, 'report of OL dated 30.08.2018' (hereinafter 'said report' for brevity) has been annexed. A perusal of said report of the OL reveals that OL was appointed as Provisional Liquidator for said company vide orders dated 12.07.2016 made in C.P.No.106 of 2016 by this Court, *inter alia* with a direction to take consequential steps in the matter and file a status report. To be noted, copy of the said order of this Court is also annexed to the report. Thereafter, the trajectory which the liquidation proceedings qua said company took have been adumbrated and articulated in paragraph Nos. 2 to 4 of said report of OL, which read as follows:

> *'2. It is submitted that pursuant to the said direction, meeting was convened by the Official Liquidator with Ex-directors of the subject company and it is ascertained that the company (In Liquidation) had no assets which was also indicated in the winding up order passed by the Hon'ble Court. The Ex-directors had submitted Statement of Affairs of the company as required under section 454 of the Companies Act, 1956. Then, the Official Liquidator deputed his officials to the Registered Office of the subject company to find out the status and learnt that the Registered office premises is an*

independent house situated off the main road and they are using a small room in the rear side of the house as their Registered Office for communication purpose.

3. It is submitted that Managing Director of the Company under liquidation has filed an application in C.A.No.635 of 2017 in C.P.No.106 of 2016 to dissolve the company and the same was disposed by the Hon'ble Court by an order dated 13.11.2017.

4. It is submitted that the Hon'ble High Court vide its order dated 04.10.2016 directed the ex-directors to provide a balance sheet as 31.03.2015 and the same was submitted to the Official Liquidator belatedly. It is submitted that on verification of the balance sheet and the Statement of Affairs filed by the Ex-directors, it is observed that the Company (In Liquidation) having contingent liabilities pertaining to Income Tax dues to the extent of Rs.13.31 lakhs and Sales tax dues to the extent of Rs.119.84 lakhs and cases related on this aspect was pending before the Hon'ble High Court, Madras. However, no case papers related to the above matter was furnished by Ex-directors with the official Liquidator though they agreed for the same in the meeting. Apart, from the above no other proceedings are pending against the subject company. Even, if the cases pertaining to sale tax/income tax issue are disposed, Official Liquidator has no funds to settle the same, if any arising out such cases. However, the Hon'ble Court has to fix the responsibility of such default on the ex-directors and they have to be directed to pay the same, if any, demanded by the said authorities on the disposal of the said cases. It is submitted that in these circumstances, no fruitful purpose would be served by *allowing this company to continue its existence, rather it would be more appropriate to dissolve the company and amount deposited towards initial deposit may be permitted to transfer to Common Pool Fund maintained by the Official Liquidator after meeting the incidental expenses, if any related to the winding up proceedings of the subject company.*

6. Apart from the aforesaid trajectory of the liquidation qua said company, final accounts statement has also been annexed to said report. A perusal of the final accounts statement annexed to said report reveals that there has been realisation to the tune of Rs. 50,000/-. Disbursements are Nil. The balance is only Rs.50,000/-.

7. It is also submitted by learned Deputy OL Mr.Bavishetty Sridhar, who is before this Court that no assets of said company are now available. Therefore, it would be viable to have the dissolution prayer acceded to, is his further say.

8. It is submitted that OL will transfer the aforesaid available balance of Rs.50,000/- to the Public Account of India in the Reserve Bank of India as per Section 555 of said Act. The prayer in the aforesaid application reads as follows:

a) To take this report on record of the Hon'ble Court.

b) To dispense with the audit of final accounts by the Local Fund Audit as there was no expenses incurred by the Official Liquidator during the course of the liquidation proceedings of the subject company.

c) To form an opinion that the liquidator cannot proceed with the winding up and that it is just and reasonable dissolve the company u/s.481 of the Companies Act, 1956.

d) To permit the Official Liquidator to transfer the initial deposit to Common Pool Account maintained by the Official Liquidator after meeting the incidental expenses, if any related to the winding up proceedings of the subject company.

e) To pass any such other orders that the Hon'ble Court deem fit and proper in the circumstances of the case.

9. In the light of the narrative supra, the aforesaid prayed is acceded to and the application is ordered as prayer for, albeit with the rider that fiscal liability if any shall be met by ex-Directors of said company in the light of averments in this regard in paragraph 4 of report of OL and subject to deposit of remaining balance as per Section 555 of the said Act.

Consequently, OL is discharged and the main C.P.No.106 of 2016 will stand closed as the said company is dissolved.

22.03.2019

dpq

M.SUNDAR.J.,

dpq

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