

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.03.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

Comp.Application No. 534 of 2018
and C.P.No.197 of 2008

The Official Liquidator,
High Court, Madras
as the Provisional Liquidator of Biddas Apparel
Industries Tiruppur Private Limited
(In Provisional 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 take the case pending in C.A.No.370 of 2009 and close the same has nothing could be proceeded in the said application.
- c) To form an opinion that the liquidator cannot proceed further with the winding up and that it is just and reasonable in the circumstances of the case to order for the dissolution of the company in liquidation.
- d) To permit the Official Liquidator to transfer an amount of Rs.1,00,000/- out of the funds available in the credit of the company in liquidation to the infrastructure fund of the Official Liquidator and transfer the balance amount to the undistributed assets of the company under liquidation account as envisaged under Section 555 of the Companies Act, 1956 after meeting all the incidental expenses in the affairs of the company in liquidation including the expenses of present application.
- e) To permit the Official Liquidator to file the final accounts

without audit as there are no transactions in the company's account

f) 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.534 of 2018 is for dissolution inter-alia under Section 481 of 'The Companies Act, 1956' (hereafter 'said Act' for brevity) and the Company under liquidation is 'M/s.Bidass Apparel Industries Tiruppur Private Limited' (hereinafter 'said Company' for brevity).

2. Read this in conjunction with and in continuation of earlier order of this Court dated 15.03.2019 which reads as follows:

"Learned Deputy Official Liquidator submits that some interlocutory applications pertaining to misfeasance are pending and it is desirable to have those applications along with the instant application.

2. Learned Deputy Official Liquidator undertakes to give the list of pending interlocutory applications and seeks a week's time.

3. List this matter on 22.03.2019."

3. Today, learned Deputy Official Liquidator Mr.Bavishetty Sridhar representing the Official Liquidator attached to this Court ('OL' for

brevity) adverting to the earlier order of this Court dated 15.03.2019 submitted that no applications are pending.

4. On the aforesaid basis, learned Deputy Official Liquidator requests this Court to consider the instant application inter-alia under Section 481 of the said Act for dissolution of said Company finally and consequential, incidental and collateral orders have also been sought.

5. Along with this application, 'report of OL dated 05.09.2018' (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 12.11.2008 made in C.P.No.197 of 2008 by this Court, *inter alia* with a direction to take charge of the assets and effects of the company. 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. 3 to 5 of said report of OL, which read as follows:

'3. It is submitted that in compliance with the order of the Hon'ble Court mentioned supra, the Official Liquidator took possession of movable assets of the company in Liquidation from rented premises situated at No.51/1, 52/2, Ayyan Nagar, Sengundapuram, Tiruppur - 641 004. As per the order of this Hon'ble Court, the said movable assets and vehicles were sold and realised a sum of Rs.11,89,100/- (Rupees Eleven Lakhs Eighty Nine Thousand One Hundred

Only). Further, at the time of taking possession of the landed property of the company in provisional liquidation situated at No.15, Velambalayam Village, Tiruppur Taluk, comprised in SF No.636/1B, to an extent of 1.80 acres Vijaya Bank the secured creditor, informed that the said landed property had been sold to Shri.A.R.Sivashanmugam, Proprietor of Ace Housing projects under Tripartite Agreement (dated 28.05.2008) executed among the company M/s.Ace Housing Projects and Vijaya Bank and it was also informed by the secured creditor that in terms of the said agreement Vijaya Bank had recovered Rs.109 lakhs out of Rs.234 lakhs towards their claim. In these circumstances, the officials of the Official Liquidator could not take possession of the said landed property.

4. It is submitted that during January 2009, the Ex-Directors of the company in Liquidation had filed statement of Affairs with the Official Liquidator stating the aforesaid facts and assets. Further name of the following debtors were also mentioned in the Statement of Affairs. 1. M/s.Ontario Ltd., 2.M/s.JJ Basics LLC 3. M/s.DDX Clothing Inc., 4. M/s.Cheebec Inc., 5.Maya Desings Ins., In this regard, application, in C.A.No.370 of 2009 U/s 446 had been filed by the Official Liquidator against the aforesaid debtors and these applications are pending before this Hon'ble Court as on date.

5. It is submitted that the Official Liquidator submits that in pursuance of the orders of this Hon'ble Court dated 08.04.2009 made in C.A.No.370 of 2009, claims were invited in terms of section 446 of the Companies Act, 1956.

6. Apart from the aforesaid trajectory of the liquidation

proceedings 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. 14,80,720/- or in other words, little over Rs.14.80 lakhs. Disbursements are to the tune of Rs.11,74,197.42/-. In other words, disbursements are little over Rs.11.74 lakhs. The balance is only Rs.3,06,522.58/-.

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 has also been averred in the said report that OL will transfer the aforesaid available balance after deduction of Rs.1 lakh towards infrastructure funds to the Public Account of India in the Reserve Bank of India. The prayer in the aforesaid application reads as follows:

- a) To take this report on record of the Hon'ble Court.
- b) To take the case pending in C.A.No.370 of 2009 and close the same has nothing could be proceeded in the said application.
- c) To form an opinion that the liquidator cannot proceed further with the winding up and that it is just and reasonable in the circumstances of the case to order for the dissolution of the company in liquidation.

d) To permit the Official Liquidator to transfer an amount of Rs.1,00,000/- out of the funds available in the credit of the company in liquidation to the infrastructure fund of the Official Liquidator and transfer the balance amount to the undistributed assets of the company under liquidation account as envisaged under Section 555 of the Companies Act, 1956 after meeting all the incidental expenses in the affairs of the company in liquidation including the expenses of present application.

e) To permit the Official Liquidator to file the final accounts without audit as there are no transactions in the company's account

f) 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 prayer is acceded to and the application is ordered as prayed for subject to the deposit of available balance amount as per Section 555 of the said Act after detecting Rs.1 lakh towards infrastructure funds.

Consequently, OL is discharged and the main C.P.No.197 of 2008 will stand closed as the said company is dissolved.

22.03.2019

dpq

M.SUNDAR.J.,

dpq



Comp.Application No. 534 of 2018
and C.P.No.197 of 2008

WEB COPY

22.03.2019