IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **05.04.2019**

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

Comp.A.No.93 of 2019 in
C.P.No.105 of 2015 and
C.P.No.105 of 2015

The Official Liquidator,
High Court, Madras
as the Provisional Liquidator of
M/s.Brovis Wireless Networks Private Limited
(in Provisional Liquidation)
Corporate Bhavan 2nd Floor
29, Rajaji Salai, Chennai- 600 001 .. Applicant

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

a)To take this report on record.

b) To form an opinion that the liquidator cannot proceed 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 finally and to pass consequent and appropriate orders.

c) To permit the Official Liquidator to file the final Accounts without auditing with the audit of accounts since there will be no transactions in the company's account.

d) To permit the Official Liquidator to pay a sum of Rs.5,00,000/- to the Commercial Tax Office and to transfer the balance amount to the undistributed assets of the company liquidation account as envisaged under Section 555 of the Companies Act, 1956 and after adjusting all the incidental expenses in the liquidation proceedings of the company in liquidation including the present application and

e) To pass such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Applicant :Mr.Bavishetty Sridhar, Deputy Official Liquidator

ORDER

Instant application has been filed by the 'Official Liquidator attached to this Court' (hereinafter 'OL' for brevity) *inter alia* under Section 481 of 'The Companies Act, 1956' (hereinafter 'said Act' for brevity) primarily with a prayer for dissolution. To be noted, there are some incidental and ancillary prayers also. The prayer in the instant application as culled out from the Judge' s summons reads as follows:

' a)To take this report on record.

b) To form an opinion that the liquidator cannot proceed 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 finally and to pass consequent and appropriate orders.

c) To permit the Official Liquidator to file the final Accounts without auditing with the audit of accounts since there will be no transactions in the company's account.

d) To permit the Official Liquidator to pay a sum of Rs.5,00,000/- to the Commercial Tax Office and to transfer the balance amount to the undistributed assets of the *company liquidation account as envisaged under Section 555 of the Companies Act, 1956 and after adjusting all the incidental expenses in the liquidation proceedings of the company in liquidation including the present application'*

2. 'Brovis Wireless Networks Private Limited' (hereinafter 'said company' for brevity) is the company, which went into liquidation pursuant to orders of this Court made on 24.06.2015 in the main Company petition being C.P.No.105 of 2015.

3. The OL took charge of assets and effects of the said company and thereafter the trajectory which the liquidation proceedings took has been articulated in paragraphs 3 to 8 of the report of OL dated 21.02.2019, which has been annexed to the instant application for dissolution, which read as follows:

> *'3. It is submitted that in compliance with the order stated supra the Official Liquidator deputed his officials to take possession of the assets of the company's registered office situated at No.206, First Floor, Bharathi Salai, Royapettah, Chennai- 600 014 on 03.08.2015. At the time of taking possession the Ex-Directors have informed that the Registered office is a rented premises and the Officials observed that there were some movable items like furnitures and some books were available.*
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> *4.it is submitted that as per the Hon'ble High Court order dated 13.04.2016 in C.A.No.40 of 2016 in C.P.No.105 of 2015 company's assets were valued and brought for auction*

sale and thereafter sole for a sum of Rs.75,000/- in favour of Shri.G.Prabhakaran and upon receipt of entire sale consideration the assets were handed over to the purchaser.

5.It is submitted that the Ex-Director of the company have filed statement of Affairs on 3107.2015. Subsequently, the Official Liquidator has called for explanation from the Ex-Director vide letter dated 17.07.2017. Based on the Statement of Affairs filed by the ex-director the Official Liquidator could release only Rs.16,047/-as 'Cash in Hand' and a sum of Rs.43,006/- towards Bank Balance. Further the demand notices sent to debtors were returned with Postal endorsement 'Left/No such address'. Further the Ex-Director have clarified that the cash and Bank balances mentioned in the Statement of Affairs has gone down due to operational expenses and the Trade Debtors have returned the materials borrowed. In the said circumstances further realisation was not possible.

6.It is submitted that there were no statutory books and records maintained by the company for which the Official Liquidator had issued notices as required in Form No.99 of Companies Court Rules, 1959. The Ex-Director has replied through the counsel that no books and records are there in their custody.

7.It is submitted that due to insufficient funds available in the credit of the company in liquidation, claims were not called for from the creditors of the company in liquidation and there are no voluntary claims received.

8.It is submitted that the funds available with Official Liquidator is only Rs.1,89,285.98 as on January 2019 and no assets to be sold or funds to be realised and no fruitful purpose would be served by allowing this company to continue to its existence rather it would be more appropriate to *dissolve the company finally as envisaged under Section 481 of the Companies Act, 1956.*

9.It is submitted that if an amount of Rs.50,000/- is transferred to the infrastructure fund of the Official Liquidator and the same can be utilised for the maintenance and development of infrastructure facility of the office of the Official Liquidator. The remaining balance will be transferred to the undistributed assets of the companies Liquidation Account as envisaged under Section 555 of the Companies Act, 1956.'

4. A perusal of the final account statement of OL reveals that a total sum of Rs.1,71,799.98 (Rupees One Lakh Seventy One Thousand Seven Hundred and Ninety Nine and Ninety Eight paise only) alone has been realized throughout the liquidation proceedings, which commenced in 2015, more than three years ago. Disbursements are a mere Rs.16,314/- (Rupees Sixteen Thousand Three Hundred and Fourteen only). The balance is Rs.1,55,485.98/- (Rupees One Lakh Fifty Five Thousand Four Hundred and Eighty Five Ninety Eight paise only).

5. Learned counsel for petitioning creditor is before this Court, but in the light of this application being one under Section 481 of the said Act for dissolution, there may be no effective role for the petitioning creditor.

6. Having perused the record of OL and having perused the final account statement, this Court is of the considered view that no useful purpose will be served by continuing the liquidation proceedings, which is already more than three years old. As per account statement, the balance in the hands of the OL qua said company is little over Rs.1.55 lakhs. To be precise, Rs.1,55,485.98/- (Rupees One Lakh Fifty Five Thousand Four Hundred and Eighty Five Ninety Eight paise only), but in the judges summons, permission has been sought to pay Rs.5 lakhs to the Commercial Tax office and thereafter transfer the balance under Section 555 of the said Act. This is obviously an error. Besides this, there is also a prayer in the report (paragraph 11(d)) for transfer of Rs.50,000/- to the infrastructure fund of the OL. Having noticed this, this Court deems it appropriate to hold that OL shall transfer the balance, if any, in accordance with Section 555 of the said Act. The payment to Commercial Tax office, if any, can obviously be only to the extent of the balance available in the hands of OL.

7. Therefore, It would be appropriate to have the balance, if any after payment to Commercial Tax Office and transfer to infrastructure fund of OL and after deduction of incidental expenses (as adumbrated in the prayer) to be transferred to the Public Account of India with the Reserve Bank of India as per Section 555 of the said Act.

In the light of the narrative supra, this application is ordered on above terms and OL is discharged qua said company and the main Company petition being C.P.No.105 of 2015 stands closed.

05.04.2019

gpa/mp

M.SUNDAR.J.,

gpa/mp

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