IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **05.04.2019**

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

Comp.A.No.91 of 2019 in
C.P.No.56 of 1998 and
C.P.No.56 of 1998

The Official Liquidator,
High Court, Madras
as the Liquidator of
M/s.Asmarox Pvt. Limited
(In Liquidation) .. 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 the report on record on the file of this 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 above period, if the Hon'ble Court may think deem fit and propert.

c) To form an opinion that the Official Liquidator cannot proceed with winding up and that it is just and reasonable in the circumstances of the case to dissolve the company under Section 481 of the Companies Act, 1956.

d) To grant permission to transfer the unpaid/undistributed amount into Companies Liquidation Account as required under Section 555(2) of the Companies Act, 1956 after meeting out all the expenses related to the liquidation proceeding, including the present application.

e) To pass such or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

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 the report on record on the file of this 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 above period, if the Hon'ble Court may think deem fit and proper.

c) To form an opinion that the Official Liquidator cannot proceed with winding up and that it is just and reasonable in the circumstances of the case to dissolve the company under Section 481 of the Companies Act, 1956.

d) To grant permission to transfer the unpaid/undistributed amount into Companies Liquidation Account as required under Section 555(2) of the Companies Act, 1956 after meeting out all the expenses related to the liquidation proceeding, including the present application.'

2. 'Asmarox Private Limited' (hereinafter 'said company' for

brevity) is the company, which went into liquidation pursuant to orders of this Court made on 20.12.2002 in the main Company petition being C.P.No.56 of 1998.

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 2 to 8 of the report of OL dated 18.03.2019 which has been annexed to the instant application for dissolution, which read as follows:

> *'2. It is submitted that in pursuant to the said order, the Official Liquidator took possession of the factory premises of the company situated at Plot No.A-12 Sipcot Industrial Complex, Gummidipoondi- 601 201, Tamil Nadu and brought the same for auction and sold the said assets for a sum of Rs.1,66,00,000/- per the orders dated 18.04.2007 passed in C.A.No.2269/2008 in C.P.No.56 of 1998 passed by this Hon'ble Court.*
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> *3.It is submitted that by an order dated 16.11.2007 in C.A.No.2936 of 2007 in C.P.No.56 of 1998, this Hon'ble Court directed the Official Liquidator to call for claims from the creditors of the company. Accordingly, claims were invited and received two claims from the creditors, out of which one claim pertains to State Industries Promotion Corporation of Tamil Nadu Ltd., whose claim was considered as a Secured claim and another claim was received from an Ex-worker of the company in liquidation and it was considered under Section 529A of the Companies Act, 1956.*
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> *4.It is submitted that by an order dated 19.07.2013*

in Company Application No.387 of 2013 in C.P.No.56/1998, this Hon'ble Court directed the Official Liquidator to disburse the payment of 17 paise in rupee to both secured /workmen creditors amounting to Rs.1,93,31,618/- as first and final dividend. Accordingly, payment of Rs.1,93,30,146/- was paid as Sipcot. However, the amount of Rs.1472/- earmarked for the workmen creditor was not paid as the dividend warrant issued to the worker returned undelivered.

5.It is submitted that the Official Liquidator filed Company Application No.633 of 2014 in C.P.No.56 of 1998 before this Hon'ble Court seeking direction for further payment of 1.40 paise in a rupee to both secured/workmen creditors and also dissolve the company in terms of section 481 of Companies Act, 1956. By an order dated 23.06.2014, this Hon'ble Court while hearing the said application directed to declare a further payment of dividend 1.40 paise in a rupee to both secured/workmen creditors and posted the application for further clarification.

6.It is submitted that by an order dated 10.10.2014, this Hon'ble Court in Company Application No.633 of 2014 in C.P.No.56 of 1998 while passing an order in the aid application directed the Local Fund Audit to audit the final accounts and permitted the Official Liquidator to transfer the rest of the amount to "Public Account of India" i.e. "Company Liquidation Account" in terms of Section 555 (2) of the Companies Act, 1956. Accordingly, payment was effected to secured creditor and payment pertaining to the worker was not considered as the dividend notice pertaining to earlier payment was returned undelivered. Subsequently, Final statement of Accounts was forwarded for the period of 1.4.2014 to 17.2.2016 to the Local Fund Audit through the Deputy Registrar, Original Side, High Court, Madras. However

Local Fund Audit yet to submit their audit report which causing delay in filing the application for dissolution of the said company as directed by the Hon'ble Court. In view of this, the Official Liquidator is not able to dissolve the company. Therefore, this Court is to permit the Official Liquidator to file application to dissolve the company without audit of the Accounts.

7. The funds position of the as on 05.03.2019

Cash	*Nil*
Bank	*Rs.35,051.40*
Investment	*Rs.2,50,000/-*

8.It is submitted that the Official Liquidator is filing the final statement of accounts as Annesure - B with the prayer to dispense with audit of the same by the Local Fund Audit as there was no expenses incurred during the above period and also taking into consideration of the fact mentioned in para (6) supra.'

4. A perusal of the final account statement of OL reveals that a total sum of Rs.3,45,63,058.61 (Rupees Three Crores Forty Five Lakhs Sixty Three Thousand Fifty Eight and Sixty One paise only) alone has been realized throughout the liquidation proceedings, which commenced in 2002 more than one and half decades ago. Disbursements are Rs.3,42,78,007.21 (Rupees Three Crores Forty Two Lakhs Seventy Eight Thousand Seven and Twenty One paise only). The balance is Rs.2,85,051.40 (Rupees Two Lakhs Eighty Five Thousand Fifty One and Forty 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 one and half decade old.

7. It would be appropriate to have the balance 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 as prayed for and OL is discharged qua said company and the main Company petition being C.P.No.56 of 1998 stands closed.

05.04.2019

gpa/mp

M.SUNDAR.J.,

gpa/mp

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