IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Comp.A.Nos.198, 199, 200 of 2019
in C.P.No.216 of 2002

A.M.O.Gurunarayana Rao ... Applicant in all Applications

vs.

1.The Official Liquidator,
Madras High Court as Liquidator of
M/s.Thiru-vi-ka Nagar Benefit Fund Ltd.,
2nd Floor, Corporate Bhavan,
29, Rajaji Salai,
Chennai 600 001.

2.K.Jayavelu

3.L.Subba Rao

4.Jayabalan Raju

5.V.R.Parthasarathy ... Respondents in all Applications

PRAYER in Comp.A.No.198 of 2019: This application filed under Order XIV Rule 8 of Original Side Rules r/w Rules 9, 11(b), 19 and 100 of the Company (Court) Rules, 1959, pleased to stay all further proceedings in C.P.No.216 of 2002 till the disposal of the above applications.

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PRAYER in Comp.A.No.199 of 2019: This application filed under Order XIV Rule 8 of Original Side Rules r/w Rules 9, 11(b), 19 and 100 of the Company (Court) Rules, 1959, pleased to discharge the Official Liquidator from the affairs of the company.

PRAYER in Comp.A.No.200 of 2019: This application filed under Order XIV Rule 8 of Original Side Rules r/w Rules 9, 11(b), 19 and 100 of the Company (Court) Rules, 1959, pleased to direct the Official Liquidator to handover all the Books and Records, including Bank Records, Pass Books, Cheque Books and all other assets and things, etc., relating to the Company viz., "M/s.Thiru-vi-ka Nagar Benefit Fund Ltd., (in Liquidation)" available in possession of the Official Liquidator to the applicants herein.

For Applicant	:	Mr.Anirudh Krishnan for M/s.C.Deepa Nandhini and Associates in all Company Applications
For Respondents	:	Mr.Bavisetty Sridhar for R1 in all Company Applications Mr.J.Nithiyanandan for Purchaser

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COMMON ORDER

This application is filed for stay of all further proceedings in C.P.No.216 of 2002, to discharge the Official Liquidator from the affairs of the company and to direct the Official Liquidator to handover all the books and records, which are in the possession of the Official Liquidator to the applicants.

2.I heard the learned counsel for the applicant, the Deputy Official Liquidator and the learned counsel for the purchaser of the Registered Office Premises of the Company.

3.The learned counsel for the applicant submits that the applicant has undertaken to discharge any unsettled depositors claims and also the claims of statutory and non statutory bodies as and when such claims are received, if the Official Liquidator is discharged and the company is handed over to the applicant / Ex-Director. At the previous hearing, the Official Liquidator was directed to file a report quantifying the aggregate expenses incurred in the course of liquidation proceedings. Pursuant to the said order the Official Liquidator filed a further report dated 15.11.2019 wherein the Official Liquidator quantified the expenses incurred in respect of the company in

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liquidation at Rs.2,14,514/-. In addition, the Deputy Official Liquidator submits that further amounts may be payable to the counsel who handled the contempt petition. Therefore, he requested that the total expenditure be taken as Rs.2,55,000/-. In the said report, the Official Liquidator has set out a statement of income and expenses, wherein the total income has been quantified as Rs.4,83,45,367.70/- and the total disbursements / expenses as Rs.3,34,94,327.34/- leaving a balance of Rs.1,48,51,040.36/- as on 31.10.2019. In the earlier report of the Deputy Official Liquidator dated 01.11.2019, the Official Liquidator had stated that Income Tax proceedings are pending before the appellate authorities in respect of a demand of Rs.2,91,32,568/-. He had further stated that a total of 951 claims were received from the depositors and about 5411 depositors did not make claims. It was further stated therein that four claims were adjudicated later and that the admitted sum of Rs.1,33,750/- has not been paid. Therefore, it is submitted that the Ex-Directors should undertake to discharge all pending and future claims.

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4.The learned counsel for the purchaser of the Registered Office Property submitted that the original title deeds of the said property have not been handed over by the Official Liquidator and that, therefore, the purchaser is unable to take further action. Therefore, he submitted that a direction

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should be issued to the Official Liquidator to hand over the said original documents.

5.The records were examined and the oral submissions of the learned counsel for the respective parties was considered.

6.It is clear from the further report dated 15.11.2019 of the Official Liquidator that the total expenditure incurred as on date is Rs.2,14,514/-. Even after taking into consideration the additional estimated pay out to the counsel for the Official Liquidator, the total expenditure would not be more than Rs.2,55,000/-. Therefore, this amount can be adjusted by the Official Liquidator by making an appropriation from the balance of Rs.1,48,51,040.36/- which is available to the credit of the company in liquidation. In addition, the Official Liquidator has stated in the report dated 01.11.2019 that the sum of Rs.1,33,750/- is payable in respect of 4 claims made by depositors belatedly. This amount would have to be discharged by the Ex-Directors after take over. Similarly, the Official Liquidator has stated that Income Tax appellate proceedings are pending and that it is possible that claims may be made by the remaining 5411 depositors. Any such claims would also have to be discharged by the Ex-Director after he takes over the company in liquidation. In this

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connection, the said Ex-Director has given an undertaking in paragraph 16 of the affidavit dated 31.05.2019 in support of these applications and the said undertaking is set out below.

> *"I humbly submit that in case we are again handed over with the management of the company, we as Ex-Directors of the Company, we assure this Hon'ble Court to discharge our duties sincerely, honestly and efficiently and as per the provisions of Companies Act. We are also willing to give an undertaking to this Hon'ble Court to the effect that we will settle any unsettled depositors' claims, and also the claims of Statutory and Non-Statutory bodies against the Company as and when such claims are received in future, out of the funds of the company."*

7.Upon taking into consideration the aforesaid facts and circumstances, it is clear that the interests of creditors / depositors is protected and neither Commercial Morality nor Public interest would be affected, if relief is granted as prayed for. Therefore, the following directions are issued:

i) The Official Liquidator is permitted to appropriate the sum of Rs.2,55,000/- from and out of the funds available to the credit of the company in liquidation.

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ii) The applicant shall discharge the claims of the 4 depositors, as specified in paragraph 7 of the report dated 01.11.2019 of the Official Liquidator, amounting to a sum of Rs.1,33,750/- from and out of the funds of the Company after take over, without recourse to the Official Liquidator. The applicant shall make payment of Rs.1,33,750/- to the 4 depositors within two weeks from the date of taking over the assets and affairs of the company from the Official Liquidator.

iii) The Applicant shall deal with and discharge the liabilities to depositors based on claims that may be made in future from and out of the funds of the company after take over without recourse to the Official Liquidator.

iv) The Applicant shall discharge all statutory and non statutory liabilities of the company without recourse to the Official Liquidator.

v) The Official Liquidator would stand discharged after the above mentioned appropriation is made and upon handing over the available books and records of the company to the applicant.

vi) The Official Liquidator is directed to hand over all available books and records of the company in liquidation, except the original title deeds of the Registered Office to the Applicant after preparing a proper inventory and obtaining an acknowledgment from the Applicant.

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vii) The Official Liquidator is directed to hand over the available original title deeds of the Registered Office Premises to Mr.J.Naina Mohamed, S/o.Jamaludeen, No.16/62, Pari Street, Choolaimedu, Chennai 54, the successful bidder in whose favour the sale of the said property was confirmed.

viii) The Applicant shall indemnify and keep the Official Liquidator indemnified in respect of all claims, without limit, against the company.

ix) Subject to the aforesaid conditions, there shall be a permanent stay of the order of winding up dated 24.10.2008 in C.P.No.216 of 2002.

8.All the above directions shall be complied with on or before 13.12.2019.

9.Accordingly, these Company Applications are disposed of on the above terms. List C.P.No.216 of 2002 on 13.12.2019 "for reporting compliance and for further directions".

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15.11.2019

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