IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:11.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

Company Application No.188 of 2020 &
Company Application No.691 of 2017
in
C.P.No.306 of 2013
&
C.P.No.306 of 2013

Company Application No.188 of 2020

The Official Liquidator
High Court, Madras as the
Provisional Liquidator of
M/s. Sri Viswha Foundary Private Limited
S.F.No.791/1B, Gas Company Road ... Applicant

Company Application filed under Section 481 of the Companies Act, 1956 read with Rule 9, 11(b) of the Companies (Court) Rule, 1959 to take this report on record of this Hon'ble Court, to pass an order that it is just and reasonable to dissolve M/s.Sri Vishwa Foundary Private Limited (under liquidation) finally ad accordingly to pass consequential and appropriate orders; to pass an order permitting the Official Liquidator to file the final account without auditing; to call for the application filed in C.A.No.691/2017 under Section 454(5A) and 468 of the Companies Act, 1956 and close the same as the Offical Liquidator may not be able to proceed with in the said application; to permit the Official Liquidator to transfer the available amount to undistributed assets as envisaged under Section 555 of the Companies Act, 1956 after meeting all incidental expenses including the present application and to pass any such other orders that the Hon'ble Court deem fit and proper in such circumstances of the case.

Company Application No.691 of 2017

The Official Liquidator
High Court, Madras as the
Provisional Liquidator of
M/s. Sri Viswha Foundary Pvt.Ltd., ... Complainant

Vs.

1. S.A.Balasubramaniam
2. Kumaraswamy Parvatthavarthini .. Accused

For Petitioner : Mr.Bavisetty Sridhar
Deputy Official Liquidator

ORDER

Captioned two applications have been taken out by 'Official Liquidator attached to this Court' ('OL' for the sake of brevity) and 'Deputy Official Liquidator' ('Deputy OL' for the sake of brevity) Mr.Bavisetty Sridhar is before this Company Court (on behalf of OL) in this web-hearing on a video-conferencing platform.

2.Out of the two captioned applications C.A.No.691 of 2017 has been taken out by OL under Section 454(5A) and 468 of 'The Companies Act, 1956' (hereinafter 'said Act' for the sake of brevity) and Deputy OL, on instructions, submits that the same is not pressed.

3. Adverting to prayer limb (d) in the other captioned application, learned Deputy OL submits that C.A.No.691 of 2017 may please be

dismissed as withdrawn. This prayer is acceded to and C.A.No.691 of 2017 stands dismissed as withdrawn.

4. This takes us to the other captioned application, namely C.A.No.188 of 2020, which is inter alia under Section 481 of said Act with a prayer for dissolution of 'Sri Viswha Foundary Private Limited' (hereinafter 'said company' for the sake of brevity). To be noted, said Company is the Company under liquidation in the captioned main CP and the multi-limbed prayer in captioned C.A.No.188 of 2020, as can be culled out from the judges summons, reads as follows:

> *'a) to take this report on record of this Hon'ble Court;*
>
> *b) to pass an order that it is just and reasonable to dissolve M/s.Sri Vishwa Foundary Private Limited (under liquidation) finally ad accordingly to pass consequential and appropriate orders;*
>
> *c) to pass an order permitting the Official Liquidator to file the final account without auditing;*
>
> *d) to call for the application filed in C.A.No.691/2017 under Section 454(5A) and 468 of the Companies Act, 1956 and close the same as the Offical Liquidator may not be able to proceed with in the said application;*
>
> *e) to permit the Official Liquidator to transfer the available amount to undistributed assets as envisaged under Section 555 of the Companies Act, 1956 after meeting all incidental expenses*

including the present application;

and

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

5. As already alluded to, C.A.No.188 of 2020 is an application *inter alia* under Section 481 of said Act and the same has been taken out by OL. Learned Deputy OL adverting to a 'report of OL dated 07.02.2020' (hereinafter 'said report' for the sake of brevity) submits that said report has been filed in support of the dissolution application. Adverting to said report, it is submitted that this Company Court appointed OL as Provisional Liquidator of said Company vide order dated 26.02.2015 made in the captioned main CP and OL was directed to take charge of assets and effects of said company. It is submitted that thereafter winding up process unfurled.

6. Adverting to paragraphs 7 to 9 of said report, learned Deputy OL submits that *inter alia* the most relevant averments are contained in these paragraphs, which read as follows:

'7. It is submitted that the Official Liquidator has not called for any claims from the creditors of the company in liquidation as no particulars of assets and books and account were furnished by the Ex-directors and he has also not received any voluntary claims

from the creditors and as on date no such claim is pending for adjudication and settlement.

8. It is submitted that as on date of filing of the present application only an amount of Rs.28,676/- is available with the Official Liquidator. Therefore the Official Liquidator is to be permitted to transfer the amount as envisaged under Section 555 of the Act after meeting all the expenses towards Audit fee, Government Commission including filing of this present application.

9. It is submitted that due to non-availability of funds the Official Liquidator is not able to declare any dividend to the creditors of the company in liquidation and no assets to be realized and the Official Liquidator has no other option except filing the present application under Section 481 of the Act for dissolving the company finally. It is also submitted that no fruitful purpose would be served by allowing this company under liquidation to continue as a company under liquidation.'

7. This Court, having perused said report, having heard the submissions of learned Deputy OL, having noticed that only a very meagre amount of Rs.28,676/- (Rupees Twenty Eight Thousand Six Hundred and Seventy Six only) is in the hands of OL, having noticed that even with regard to this meagre amount there is a prayer for deposit of the same in the appropriate public account in Reserve Bank of India in accordance with Section 555(2) of said Act, is left with the considered

opinion that it would be just and reasonable in the circumstances of this case to order dissolution of said company.

8. To be noted, limb (d) of the prayer in C.A.No.188 of 2020 being the dissolution application has already been acceded to, as C.A.No.691 of 2017 has been dismissed as not pressed. Limbs (b), (c) and (e) are acceded to and C.A.No.188 of 2020 and main CP stand disposed of on these terms. C.A.No.691 of 2017 stands dismissed as withdrawn. To conclude, it is made clear that said company, namely Sri Viswha Foundary Private Limited shall stand dissolved from the date of this order. There shall be no order as to costs.

11.09.2020

gpa

M.SUNDAR.J.,

gpa

Company Application No.188 of 2020 &
Company Application No.691 of 2017 in
C.P.No.306 of 2013 &
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