IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

Company Application No.532 of 2018
in
C.P.No.72 of 1992
&
C.P.No.72 of 1992

The Official Liquidator
High Court, Madras as the
Provisional Liquidator of
Mc.Sharin Pharmaceuticals Ltd.,
(In – Liquidation) ... Applicant

Company Application filed under Section 460(4), 481 of the Companies Act, 1956 read with Rule 9, 11(b) of the Companies Act, 1959 to take his report on record on the file of Hon'ble Court, to dispose the pending misfeasance application filed by the Official Liquidator in C.A.No.710 of 2001 under Section 542 & 543 in the Companies Act, 1956 along with the present application, to form an opinion that the Official Liquidator cannot proceed further with the winding up and that it is just and reasonable to dissolve the company under Section 481 of the Companies Act, 1956, to permit the Official Liquidator to file the Final Account without audit of the same as there will be no transactions in the company's account and to permit the Official Liquidator to transfer the funds available at the credit of the company under liquidation to be undistributed Company Liquidation Account as envisaged under Section 555 of the Companies Act, 1956 after adjusting all the incidental expenses incurred including present application.

For Petitioner : Mr.Bavisetty Sridhar
Deputy Official Liquidator

ORDER

Captioned application has been taken out by 'Official Liquidator attached to this Court' ('OL' for the sake of brevity) and Mr.Bavisetty Sridhar, learned 'Deputy Official Liquidator' (hereinafter 'Deputy OL' for brevity) representing OL is before me in this web-hearing on a video-conferencing platform.

2. Learned Deputy OL drawing the attention of this Court to a 'report dated 03.09.2018 being a report of OL' (hereinafter 'said report' for brevity) submitted that said report has been filed in support of captioned application.

3.Adverting to the report, it was submitted that 'Mc.Sharin Pharmaceuticals Pvt. Ltd.,' (hereinafter 'said company' for the sake of brevity) is a company under liquidation in main Company Petition i.e., captioned company petition at the instance of a petitioning creditor. Learned Deputy OL submits that one application which is nearly two decades old, namely C.A.No.710 of 2001 for misfeasance against one of the ex-Directors of said company alone is pending and no useful purpose would be served in pursuing the same at this distant point of time. Saying so, learned Deputy OL submits, on instructions, that this application is being withdrawn as not pressed. This submission is recorded. On the aforesaid basis, adverting to said report, learned Deputy OL submits that it would be desirable to order dissolution of said Company.

4. Paragraph 2 to 6 of said report are of relevance and the same read as follows:

'2. It is submitted that the Hon'ble High Court was appointed the Official Liquidator as Liquidator of M/s.Mc Sharin Pharmaceuticals Ltd., (in liquidation) vide its order dated 19.06.1996 made in C.P.No.72/1996 with a direction to take possession of the assets and effects of the company in liquidation. The copy of the order dated 19.06.1996 is attached and marked as ***__Annexure-A__*** *to this report.*

3.It is submitted that in pursuance to the order stated supra, the Official Liquidator had deputed his officials to the registered office, Administrative Office & factory premises situated at three different places as per the records of the Registrar of Companies, Chennai and Statement of Affairs filed by the Ex-Directors and has taken possession of the available office equipments and books and *records of the company in liquidation at its Registered Office. As per the direction of the Hon'ble High Court, Madras vide its order dated 01.07.2003 made in C.A.No.861/2003 assets taken over from registered office was sole for a sum of Rs.5,000/-. The Officials deputed for taking possession of administrative office reported that the same was vacated by the company in liquidation 6 years before prior to liquidation. It is observed from Tamil Nadu Industrial Investment Corporation Ltd., that as regard the factory premises, same had been taken over by TIIC for their liability with erstwhile Mc.Sharin Pharma, a partnership firm which has taken over by the company in liquidation. The Hon'ble High Court, Madras vide its order dated 21.02.2008 declared that the property (factory premises) to be sold was not the property of the company in liquidation and also directed the TIIC to sell the property by exercising their rights as a mortgagee in the manner know to law.*

4.It is submitted that Statement of Affairs had been filed by the Ex-Directors as required u/sec. 454 of the Companies Act, 1956. The Official Liquidator has filed misfeasance application in C.A.No.710/2001 under Section 542 and 543 of the Companies Act, 1956, the said application is pending before this Hon'ble Court as on date. Taking into consideration of the above facts, the Hon'ble Court to direction to dispose the pending misfeasance application filed in C.A.No.710 of 2001 along with the present application.

5.It is submitted that as on the date of filing of the present application only an amount of Rs.32,585.79/- (Rupees Thirty Two Thousand Five Hundred and Eighty Five and paise Seventy Nine only) available in the credit of the company (under liquidation). Due to meager funds position claims could not be called from creditors of *the company (under liquidation) and also the Official Liquidator had not received any claims voluntarily from creditors. The aforesaid available funds to be transferred into the Undistributed Assets Account u/s.555(1) of the Companies Act, 1956.*

6.It is submitted that no payments will be made out of the funds available at the credit of company under liquidation, therefore, the OL is to be permitted to file the final accounts without audit of the same. A copy of the final A/c is attached and marked as ***Annexure-B*** *to this report.*

5. Aforementioned extracted Paragraphs 2 to 6 take us to Annexure-B. Learned Deputy OL submits that there is a typographical error and Annexure-B should be read as Annexure-A. Coming to Annexure-A, balance in the hands of OL is Rs.32,597.79 and there is a prayer for depositing the same in the relevant account in the Reserve Bank of India. Critical four limbs of prayer are as follows:

a) To dispose the pending misfeasance application filed by the Official Liquidator in C.A.No.710 / 2001 under Section 542 & 543 in the Companies Act, 1956 along with the present application;

b) To form an opinion that the Official Liquidator cannot proceed further with the winding up and that it is just and reasonable to dissolve the company under Section 481 of the Companies Act, 1956;

c) To permit the Official Liquidator to file the Final Account without audit of the same as there will be no transactions *in the company's account;*

and

d) To permit the Official Liquidator to transfer the funds available at the credit of the company under liquidation to be undistributed Company Liquidation Account as envisaged under Section 555 of the Companies Act, 1956 after adjusting all the incidental expenses incurred including present application.

6. In the light of the narrative thus far, this Court is left with the opinion that it would be just and reasonable in the circumstances of the case to order dissolution of said Company.

Captioned Company application and Company Petition are ordered by acceding to aforementioned four limbs of prayer. No costs.

28.08.2020

gpa

M.SUNDAR.J.,

gpa

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