

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:28.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

Company Application No.538 of 2018

in

C.P.No.209 of 2008

&

C.P.No.209 of 2008

The Official Liquidator
High Court, Madras as the
Provisional Liquidator of
M/s. Palani Murugan Mills Limited
(In Liquidation)

... Applicant

Company Application filed under Section 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 the Hon'ble Court, to form an opinion that the Official Liquidator could not proceed further with the winding up of the Company and to pass that it is just and reasonable to dissolve M/s.Palani Murugan Mills Limited (under liquidation) finally as envisaged under Section 481 of the Companies Act, 1956 and accordingly to pass consequential and appropriate orders; to pass an order permitting the Official Liquidator to file the final account without auditing as nothing survive in the company in liquidation; to permit the Official Liquidator to withdraw the unnumbered application under

Section 454(5A) of the Companies Act, 1956 and to permit the Official Liquidator to incur the expenditure for the present application out of Common Pool Fund Account.

For Petitioner : Mr.Bavisetty Sridhar
Deputy Official Liquidator

ORDER

Captioned company 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) is before me on behalf of Official Liquidator in this web-hearing on a video-conferencing platform.

2.To be noted, Mr.T.KBaskar, learned counsel for original petitioning creditor in the captioned main Company Petition has also joined this web-hearing and learned counsel submits that the prayer for dissolution that is being made *inter alia* under Section 481 of 'The Companies Act, 1956' (hereinafter 'said Act' for brevity) deserves to be acceded to.

3. In the aforesaid backdrop, learned Deputy OL, drawing the attention of this Court to report of OL filed in support of instant application submitted that the report is dated 05.09.2018, but the date

has not been given in the report forming part of the case file and expresses regret for the same. This submissions is recorded. Date of report of the OL in the captioned application is taken as 05.09.2018. This report of OL shall hereinafter be referred to as 'said report' for the sake of convenience and clarity.

4. Adverting to said report, learned Deputy OL submitted that 'Palani Murugan Mill Limited' (hereinafter said company for the sake of brevity) is a Company under liquidation. Learned Deputy OL drew the attention of this Court to Paragraphs 2 to 6 of said report, which read as follows:

'2.It is submitted that the Hon'ble High Court has appointed the Official Liquidator as Liquidator of M/s.Palani Murugan Mills Limited (under liquidation) vide its order dated 23.03.2017 made in C.P.No.209/2008 with a direction to take charge of the assets and effects of the company. The copy of the order dated 23.03.2017 is attached and marked as Annexure-A to this report.

3. It is submitted that the Official Liquidator in compliance with the directions given by the Hon'ble Court vide the order mentioned supra, deputed his officials to the factory premises of the company in liquidation to take charge the assets of the company. However, the officials deputed have

informed the Official Liquidator that there was an abandoned factory premises and on examination it was found that the documents belonging to one M/s.Trinity Pvt. Ltd., were available all over the premises. Subsequently Shri Chinnasamy the Ex-MD of M/s.Palani Murugan Mills Ltd., was contacted and he had informed this office that the said property belonging to the company in liquidation was sold by M/s.ING Vysya Bank as early as 2009 and he had assured to supply the relevant documents pertaining to such date. After that the officials of Official Liquidator visited the Registered Office of the company in liquidation situated at Tatabad, Coimbatore and it was found that one M/s.AB INFO TECH was occupying the premises and the Ex-MD of M/s.Palani Murugan Mills Ltd., is the CEO of the said institution. The Ex-MD has produced documents stating that the said premises had always been the private property of his family members and was used as the Registered Office of M/s.Palani Murugan Mills Ltd until 2004. He has produced the Tax receipts of Coimbatore Corporation which states that the owners of the building are C.Thayal Rajkumar and C.Mithun Rajkumar. He also informed that there was a fire accident in M/s.Palani Murugan Mills in 2004. Subsequently all operations had been stopped and M/s.ING Vysya Bank being the sole secured creditor had taken over the property under SARFEASI Act, later sold it towards settlement of dues. The Ex-MD has given copy of the Balance Sheet for the year ended 31.03.2015 wherein the assets of the company shown as nil. In view of the

above, the Official Liquidator could not take any assets of the company under liquidation into his custody.

4.It is submitted that the ex-directors of the company had not filed Statement of Affairs as required under Section 454 of the Companies Act, 1956 (the Act). Official Liquidator has filed an application under Section 454 (5A) of the Companies Act against the ex-directors of the company in liquidation for non-filing of statement of affairs of the company in liquidation under section 454(5A) of the companies Act, 1956 before this Hon'ble Court and the same is still pending for registration. Since is not yet numbered, the same may treated as withdrawn.

5. It is submitted that due to non-availability of the particulars of the debtors of the company in liquidation, the Official Liquidator could not file any application under section 446 of the Act for recovery of amount due to the company and as on date no such application is pending for disposal before the Hon'ble High Court.

6.It is also submitted that the Official Liquidator has not filed any misfeasance application under Section 542 and 543 of the Act and as on date no such application is pending for disposal before the Hon'ble High Court, Madras.'

5. With regard to application for alleged misfeasance by former Directors of said company inter alia under Sections 542 and 543 of said Act, learned Deputy OL submits, on instructions, that the same have not

been numbered as yet, OL would not press and withdraw the same. This submissions is recorded.

6. Having perused the said report and having heard Deputy OL as well as learned counsel for petitioning creditor, 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 as proceedings for winding up would serve no useful purpose. This Court has also noticed that there is no balance qua said company in the hands of OL. Critical limbs of prayer in captioned application are as follows:

a) to form an opinion that the Official Liquidator could not proceed further with the winding up of the Company and to pass that it is just and reasonable to dissolve M/s.Palani Murugan Mills Limited (under liquidation) finally as envisaged under Section 481 of the Companies Act, 1956 and accordingly to pass consequential and appropriate orders;

b) to pass an order permitting the Official Liquidator to file the final account without auditing as nothing survive in the company in liquidation;

c) to permit the Official Liquidator to withdraw the unnumbered application under Section 454(5A) of the Companies Act, 1956;

and

d) to permit the Official Liquidator to incur the expenditure

for the present application out of Common Pool Fund Account.

6. In the light of the narrative thus far, this Court is left with the considered 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 (extracted and reproduced in Paragraph 6 of this order supra. No costs.

28.08.2020

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C.P.No.209 of 2018 &
C.P.No.209 of 2018*

M.SUNDAR.J.,

gpa



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