

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

Company Application No.554 of 2018

in

C.P.No.126 of 2011

&

C.P.No.126 of 2011

The Official Liquidator
High Court, Madras as the
Provisional Liquidator of
M/s. Hex Cargo Mover Private Limited
(in Provisional Liquidation)

... 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 his report on record on the file of Hon'ble Court, to call for the pending application in C.A.No.390/2013 filed under Section 454(5(A) of the Companies Act, 1956 filed against the Ex-Directors and close the same as nothing could be proceeded in the affairs of the company in liquidation, to form an opinion that the liquidator cannot proceed further with the winding up and that it is just and reasonable in the circumstances of the case to order for the dissolution of the company, to permit the Official Liquidator to transfer the money lying in the company's credit, after meeting all incidental expenses of the winding up process, including the present application to undistributed companies liquidation account as envisaged under Section 555 of the Companies Act, 1956, to permit the Official Liquidator to file the final account without audit as there will be no further transactions in the company's account.

For Petitioner : Mr.Bavisetty Sridhar
Deputy Official Liquidator

ORDER

This common order will dispose of captioned application and captioned 'Company Petition' (hereinafter 'CP' for the sake of brevity).

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

3. Prayer in captioned application, as can be culled out from the Judge's summons, reads as follows:

'a) Take this application as urgent;

b) To take this report on record on the file of Hon'ble Court;

c) To call for the pending application in C.A.No.390/2013 filed under Section 454(5(A) of the Companies Act, 1956 filed against the Ex-Directors and close the same as nothing could be proceeded in the affairs of the company in liquidation;

d) To form an opinion that the liquidator cannot proceed further with the winding up and that it is just and reasonable in the

circumstances of the case to order for the dissolution of the company;

e) To permit the Official Liquidator to transfer the money lying in the company's credit, after meeting all incidental expenses of the winding up process, including the present application to undistributed companies liquidation account as envisaged under Section 555 of the Companies Act, 1956;

f) To permit the Official Liquidator to file the final accounts without audit as there will be no further transactions in the company's account;

and

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

4. Captioned application has been taken out *inter alia* under Section 481 and Section 555 of 'The Companies Act, 1956' (hereinafter 'said Act' for brevity and convenience).

5. Learned Deputy OL submits that a 'report of the OL dated 05.09.2018' (hereinafter 'said report' for brevity) has been filed in support of captioned application. Adverting to said report, learned Deputy OL submits that 'Hex Cargo Mover Private Limited' (hereinafter 'said company' for the sake of brevity and convenience) is the Company under liquidation in main CP. It is also submitted that this Company

Court, in and by order dated 18.07.2012 made in captioned CP, appointed OL as Provisional Liquidator qua said Company. Thereafter, what unfurled has been articulated in Paragraphs 3 to 6 of said report which read as follows:

'3.It is submitted that in pursuance to the order stated supra, the Official Liquidator had deputed officials of his office to the registered office of the company situated at No.59, Thirunavukkarasu First Street, Indira Nagar, Rathinapuri, Coimbatore – 641 027 on 12.01.2013 after issuing due notices to the Ex-Directors and secured creditors for the purpose of taking possession of movable and immovable properties along with the books of accounts & records and other actionable claims of the company in provisional liquidation. The officials of this office had reported that the registered office premises had been sold by Corporation Bank under SARFAESI Act for their dues prior to liquidation.

4. It is submitted that ex-directors have not filed Statement of Affairs as required under Section 454 of the Companies Act, 1956 therefore, the official Liquidator filed an application in C.A.No.390/2013 under Section 454(5)(A) of the Companies Act, 1956 against the Ex-Directors for non-filing of Statement of Affairs. The said application is pending before the Hon'ble High Court as on date. It is also submitted that the Official Liquidator has not called for the claims as required under Section 446 of the Companies Act, 1956 due to non-availability of funds.

5. *It is also submitted that the Official Liquidator has not filed any misfeasance application as envisaged 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.*

6. *It is submitted that as on the date of filing of the present application only an amount of Rs.26,259/- (Rupees Twenty Six Thousand Two Hundred and Fifty Nine only) in the account of the company in liquidation is available with the Official Liquidator and no realization claim is pending for recovery as on date. Therefore the said fund is to be transferred to the undistributed assets of the companies liquidation account as envisaged under section 555 of the Companies Act, 1956.'*

6. The extracted portion of said report i.e., paragraphs 3 to 6 are self-explanatory and they speak for themselves. Learned Deputy OL submits that no claims are pending.

7. This Court also notices that the balance in the hands of OL is very meagre i.e., Rs.26,259/- (Rupees Twenty Six Thousand Two Hundred and Fifty Nine only).

8. In the light of said report read in the context of submissions of learned Deputy OL coupled with the fact that only a meagre sum of Rs.26,259/- is in the hands of OL, this Company Court is of the opinion that it is just and reasonable in the circumstances of this case to order

dissolution of said company. To be noted, there is one limb of prayer for deposit of this meagre amount also in the appropriate account in Reserve Bank of India under Section 555 of said Act. Before this Court does that, it is to be noticed that one limb of the prayer in captioned application, namely limb (b) talks about C.A.No.390 of 2013, which has been filed against ex-directors *inter alia* under Section 454(5)(A) of said Act. Registry has put up a note that this application i.e., C.A.No.390 of 2013 has been disposed of by the Company Court on 11.10.2017. Learned Deputy OL confirms this position and also further submits that this order has attained finality.

9. Owing to all that have been set out supra, this captioned application and captioned CP are disposed of by acceding to prayers (b) and (d) to (f). There shall be no order as to costs.

04.09.2020

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M.SUNDAR.J.,

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