COMP.A. No.77 of 2019
in C.P.No.205 of 2012

P.T.ASHA.J,

The above application has been taken out by the Director of the Company in liquidation seeking return of the share capital for Rs.18,36,080/- based on the annual returns for the period 2006-2007 to 2010-2011 without insisting on the production of the original share certificates, which the applicant would submit has been lost at his end.

2. In the affidavit filed in support of the said application, the applicant would submit that the Company in question had been wound up, by orders of this Court dated 30.01.2013 in C.P.No.205 of 2012. Pursuant to the orders of this Court, the Official Liquidator had also taken possession of the Company and the applicant, as the Director had co-operated with the Official Liquidator and submitted the statement of affairs etc., He would further submit that the Official Liquidator had filed an application in C.A.No.640 of 2018 to settle the creditors of the Company out of the monies recovered by him and from the funds available in the name of the Company. He had sought directions of this Court to return the capital to the contributories at Rs.8 per equity share. The said application came to be allowed on 14.11.2018. The applicant would submit that he had originally owned 450010 equity shares, of

which, he had sold 220510 equity shares on 10.06.2011 leaving with balance of Rs.229510 equity shares. The applicant would submit that he had made a claim with the Official Liquidator and subsequently, when he had searched for the original share certificates, he found that the same has been misplaced and should have been lost while the house was being painted and his efforts to trace out the same has turned in vain. The applicant would further submit that even according to the Official Liquidator, the applicant is a contributory to the Company, as he is holding 229510 equity shares. In these circumstances, he has taken out the above application.

3. The learned Official Liquidator had filed his report dated 27.03.2019, in and by which, he has contended that the applicant has not produced the original share certificates within the stipulated time, despite the fact that the winding up had commenced on 19.06.2012 and the winding up order had taken place on 30.01.2013. The applicant has not taken steps to get the share certificates all along. The Official Liquidator has stated that the application is therefore not maintainable.

4. This Court, by order dated 08.11.2019, had directed fresh notice to the other contributory to ascertain as to whether the transaction had taken place during the financial year 2011.2012. The

applicant was also directed to get instructions as to whether the applicant was willing to provide Bank Guarantee for the full amount payable to the contributory. The matter was directed to be listed on 22.11.2019. On 22.11.2019, the learned counsel for the applicant had undertaken to issue paper publication with reference to the missing of original share certificates and the matter was directed to be listed on 06.12.2019. On 06.12.2019, further request for extending the time for making the publication was sought for and the matter was directed to be listed on 03.01.2020 and once again, the matter was adjourned to the present date.

5. The learned counsel for the applicant has produced the publication taken by him in an English daily "News Today" dated 11.12.2019 and in the vernacular paper, namely, "Makkal Kural" of the same date. Although the notice issued to the other contributory has been served, none have entered appearance on his behalf.

6. Heard the learned counsel for the applicant and the learned Deputy Official Liquidator.

7. A perusal of the annual returns would clearly show that the applicant has been the Director of the Company under liquidation since 28.10.1997 and that he owned 450010 equity shares, the same possession continued up to the filing of the annual returns for the period 2010-2011. The share holding was reduced to an extent 229510. The affidavit filed in support of the application would indicate that the remaining shares have been sold by the applicant. The applicant has also taken out necessary publication. The other contributory, though served, has not entered appearance.

8. Considering the above circumstances and the fact that the applicant is a Director / Contributory of the Company in liquidation, I am inclined to allow the application as prayed for. Accordingly, this application is allowed. However, it is made clear that the applicant shall provide necessary indemnity for the release of the money in his favour. The Official Liquidator, after the amount is disbursed to the applicant, shall issue notice to the other contributory informing him about such disbursement. The Official Liquidator undertakes to effect the disbursement as expeditiously as possible.

10.01.2020

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P.T.ASHA.J,

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