IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

Company Application No.278 of 2020
in
CP.No.350 of 2014
and
CP.No.350 of 2014

The Official Liquidator,
High Court, Madras as the
Provisional Liquidator of
M/s.Sabari Exim Private Limited,
(In Provisional Liquidation)
... Applicant

Company Application filed under Section 481 of the Companies Act, 1956 read with rules 9, 11(b) of the Companies (Court) Rules, 1959, praying to a) To take this report on record of the Hon'ble Court; b) To permit the Official Liquidator to sell the movable items as stated in para-4 of this report after giving pamphlets to local area junk traders and to appropriate the sale amount towards liquidation expenses and remit the same to the Government Account; c) To pass an order that it is just and reasonable to dissolve M/s.Sabari Exim Pvt. Ltd (Under Liquidation) finally and accordingly to pass consequential and appropriate orders; d) To pass an order permitting the Official Liquidator to file the final account without auditing; e) To pass any such other orders that the Hon'ble Court deem fit and proper in the circumstances of the case.

For Applicant : Mr.Bavisetty Sridhar
Deputy Official Liquidator.

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ORDER

Captioned 'Company Petition No.350 of 2014' shall hereinafter be referred to as main CP for the sake of convenience and clarity. 'Sabari Exim Private Limited' [hereinafter 'said company' for the sake of brevity] is the Company which has gone into liquidation in captioned main CP, which is at the instance of a petitioning creditor.

2. Captioned application i.e., Company Application No.278 of 2020 has been taken out by 'Official Liquidator attached to this Court' [hereinafter 'OL' for the sake of brevity] with a multi-limbed prayer, which as culled out from Judge's Summons reads as follows:

> *'a) To take this report on record of the Hon'ble Court;*
>
> *b) To permit the Official Liquidator to sell the movable items as stated in para-4 of this report after giving pamphlets to local area junk traders and to appropriate the sale amount towards liquidation expenses and remit the same to the Government Account;*
>
> *c) To pass an order that it is just and reasonable to dissolve M/s.Sabari Exim Pvt. Ltd (Under Liquidation) finally and accordingly to pass consequential and appropriate orders;*
>
> *d) To pass an order permitting the Official Liquidator to file the final account without auditing;*

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

3. On behalf of OL, who has taken out the captioned application, Mr.Bavisetty Sridhar, learned 'Deputy Official Liquidator' [hereinafter 'Deputy OL' for the sake of brevity] is before this Company Court in this web hearing on a video conferencing platform. Learned Deputy OL submits that a 'report of OL dated 17.09.2020' [hereinafter 'said report' for the sake of brevity] has been filed in support of captioned application.

4. It is also submitted by learned Deputy OL that captioned application is *inter alia* under Section 481 of 'The Companies Act, 1956' [hereinafter 'said Act' for the sake of brevity] with a primary prayer for dissolution of said Company.

5. Be that as it may, adverting to said report, learned Deputy OL submits that vide an order dated 30.04.2015 made by this Company Court in main Company Petition, OL was appointed as Provisional Liquidator qua said Company with a further direction to take charge of assets and effects of said company.

6. OL took charge and what unfurled thereafter, i.e., the winding up proceedings in accordance with said Act, has been articulated in the said report is learned Deputy OL's say. A perusal of said report brings to light that paragraphs 3 to 14 are most relevant qua prayers in captioned application and the same read as follows:

> *'3. It is submitted that the secured creditor of the company in Provisional liquidation viz., State Bank of India has taken possession of the properties other than the properties in the name of the company in Provisional Liquidation under SARFAESI Act. The State Bank of India vide their letter dated 22.07.2015 informed that they have filed a suit under SARFAESI Act before DRT-II, which is numbered as OA.372/2014 and also informed that they are standing outside the winding up proceedings. Further the Official Liquidator also received a letter dated 19.11.2015 from the State Bank of India stating that they are constrained to take further legal action including action under SARFAESI Act to recover their dues.*
>
> *4. That the Official Liquidator had taken possession of the registered office of the company in Provisional liquidation situated at Flat No.2, IInd floor, Trade Centre, No.117, Wallajah Road, Chennai-600 002. There was no plant and machinery except the following movable items lying in a single room.*
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> 1. *Steel Cub Board - 3 Nos.*
> 2. *Damaged revolving Chair - 2 Nos.*
> 3. *Damaged cushion chair - 1 No.*
> 4. *Trunk Box - 3 Nos.*

5. *Old TV type monitor - 2 Nos.*
6. *Wooden table one side 3 drawer - 3 Nos.*
7. *Small wooden cub board - 1 No.*

5. It is submitted that upon inspection of the above premises it was noticed that the entire room was covered in Pigeons excreta as Pigeons were entering the room from ventilators (Report & Photos enclosed as ***Annexure-B.*** *The movable items are completely covered by pigeon's excreta and thus are in a very damaged condition and hence the movable items may not fetch much value. The sale of such items might not even cover the cleaning and transport costs of those items. Hence, the Official Liquidator seek permission of this Hon'ble Court to dispose the above movable items on the spot to local junk dealers those who are available near by area after giving pamphlets without placing separate application for sale of movable items and confirm the same on the spot and appropriate the sale amount towards liquidation expenses and remit the same to the Government Account.*

6. The ex-directors of the company have filed Statement of Affairs dated 21.07.2015 in the office of the Official Liquidator. On verification of the said Statement of Affairs it is noticed that the fixed assets are taken over by State Bank of India. It is also seen from the Statement of Affairs that there were 23 trade debtors. The Official Liquidator issued letters to the debtors in December 2016 demanding to repay the debts. Since there was no reply from them, reminder letters were sent in June 2020. Only a few have replied. It is noticed from the replies that these debtors were under insolvency proceedings in NCLT.

7. In this connection the Official Liquidator has sent notices to the Ex-Directors on 15.06.2020 to provide information on the debtors. In response to the said notice, one of Ex-Director viz., Sri.Shashi Kumar

Nair appeared in this office on 7.8.2020 and informed that the debt dues could not be realised because the steel sector was in recession since 2011 and that all the debtor companies are under NCLT/BIFR for insolvency due to the recession. Upon further verification it is notice that one of the debtor M/s.Emas Engineers and Contractors Pvt. Ltd., is under liquidation with Official Liquidator attached to the Hon'ble High Court, Madras. Other debtor companies M/s.NSR Steels Pvt. Ltd., M/s.Varadha Steels Pvt. Ltd and M/s.Paragon Steels Pvt., Ltd were under insolvency proceedings in NCLT. Replies of NSR Steels and Paragon Steels are attached as ***Annexure-C.*** *NCLT order in case of Varadha Steels appointing a Liquidator is attached as* ***Annexure-D.*** *Further, the fixed assets of M/s.Sabari Alloys & Metals Pvt. Ltd was attached by the Commercial Tax Department vide order dated 04.12.2017. (Copies attached as* ***Annexure-E)*** *and its movable assets are taken possession by State Bank of India as per the Punchnama dated 09.01.2017. In the light of the above it is ascertained that most of the debtors are under insolvency proceedings or that their assets are attached by statutory authorities and banks. Moreover since all the debts pertain to the period from 2008 to 2013, it is highly unlikely that the debts of the company under liquidation could be realised now.*

8. It is submitted that the Official Liquidator has 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.

9. 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.

10. It is submitted that the Official Liquidator has not called for any claims from the creditors of the company in liquidation and he has also not received any voluntary claims from the workmen and secured creditors and as on date no such claim is pending for adjudication and settlement.

11. The funds position of the company in liquidation as on 29.07.2020 is as follows:-

Cash	-	*Nil*
Bank	-	*9,561/-*
Investment	-	*Nil*

12. It is further submitted that since no assets are available except the movable items as stated in para-4 and no payment could be made out of the funds, it is inevitable to the Official Liquidator to file the final account without audit of the same in view of the prevailing facts and circumstances of the present application. The final accounts is attached herewith and marked as ***Annexure-F.***

13. 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 to continue as a company under liquidation.

14. It is submitted that in view of the above submission, the Hon'ble Court is to form an opinion that the Official Liquidator could not proceed with the winding up of the company in liquidation and it would *be just and reasonable in circumstances of the case to dissolve the company under liquidation as envisaged under section 481 of the Act. Hence, this application.'*

7. To be noted, fund position of said company as of 29.07.2020 has been set out in paragraph 11 of said report, which is part of paragraphs, which have been extracted and reproduced supra.

8. This Company Court also notices that prayer limb (b) in captioned application pertains to giving pamphlets in local area for traders, who deal in scrap (mentioned as 'junk' in said report) and thereafter, appropriate the sale amount towards liquidation expenses and remit this also into the Public Account, obviously in Reserve Bank of India and more obviously, under sub section (2) of Section 555 of the said Act.

9. Adverting to paragraph 4 of said report, learned Deputy OL submits that the seven items of effects, which need to be disposed of to traders dealing in scrap are of negligible value and all the seven items put together may not fetch anything significant.

10. This Court, having perused paragraph 4 of said report, has no difficulty in accepting this submission and owing to this scenario, considers

it appropriate to accede to the dissolution prayer albeit with a rider that limb(b) of captioned application prayer shall be completed within a period of eight (8) weeks from today and the proceeds from the same however infinitesimally small or however, insignificant in terms of numbers should be deposited into the public account under Section 555 of the said Act.

11. In the light of the narrative thus far, this Court is of the considered view that in the facts and circumstances of this case, an order of dissolution of said company should be made as keeping the captioned Company Petition i.e., main CP pending would only be a penny wise pound foolish exercise.

12. In the light of the narrative thus far, captioned application and captioned Company Petition i.e., main CP are disposed of by acceding to prayer limbs (b) to (d). This means that said Company will stand dissolved on and from the date of this order. To be noted prayer limb (b) to be completed within eight weeks time frame mentioned supra.

Captioned Company application and main Company Petition disposed of on above terms. There shall be no order as to costs.

20.11.2020

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M.SUNDAR. J

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and
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