IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

CORAM:

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

Company Application No.252 of 2020
in
CP.No.66 of 1974
and
CP.No.66 of 1974

The Official Liquidator,
High Court, Madras as the
Provisional Liquidator of
M/s.Unity Benefit Fund (P) Limited
(in 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 on the file of this Hon'ble Court; b) To permit the Official Liquidator to file the final account without audit as there will be no transactions from the account of the company in liquidation; c) To form an opinion that the Liquidator cannot proceed with the winding up and that it is just and reasonable to make an order to dissolve M/s.Unity Benefit Fund Limited under Section 481 of the Companies Act, 1956; d) To permit the Official Liquidator to transfer the balance amount lying in the credit of the company in liquidation after adjusting all the incidental expenses including the present application to the Undistributed Assets Account as envisaged under Section 555 of the Companies Act, 1956 and; e) To pass such other order/s that this Hon'ble Court may 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 Application i.e., Company Application No.252 of 2020 has been taken out *inter alia* under Section 481 of 'The Companies Act, 1956' (hereinafter 'said Act' for the sake of brevity) with a multi limbed prayer, which as culled from the Judge's Summons reads as follows:

> *'a) To take this report on record on the file of this Hon'ble Court;*
>
> *b) To permit the Official Liquidator to file the final account without audit as there will be no transactions from the account of the company in liquidation;*
>
> *c) To form an opinion that the Liquidator cannot proceed with the winding up and that it is just and reasonable to make an order to dissolve M/s.Unity Benefit Fund Limited under Section 481 of the Companies Act, 1956;*
>
> *d) To permit the Official Liquidator to transfer the balance amount lying in the credit of the company in liquidation after adjusting all the incidental expenses including the present application to the Undistributed Assets Account as envisaged under Section 555 of the Companies Act, 1956 and;*
>
> *e) To pass such other order/s that this Hon'ble Court may deem fit and proper in the circumstances of the case.'*

2. 'Unity Benefit Fund Limited' [hereinafter 'said Company' for the sake of brevity] is the Company which has gone into liquidation in the captioned 'Company Petition No.66 of 1974' [hereinafter 'main CP' for the sake of convenience and clarity].

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

4. Learned Deputy OL submits that a 'report of OL dated 27.10.2020' (hereinafter 'said report' for the sake of convenience and clarity) has been filed in support of captioned application.

5. A perusal of said report reveals that it sets out the trajectory of the winding up proceedings.

6. Before proceeding further, as the captioned application is one *inter alia* under Section 481 of said Act, this Court notices that in 4 years from now, the main CP will be half a century old in this Court. In other words, main CP is a vintage, nay ancient matter, which has been pending in this Court.

7. Reverting to said report, it unfurls from the said report that in and by an order made way back on 15.07.1974 in main CP, this Company Court directed said Company to be wound up and also gave further directions to OL *inter alia* to take charge of all the assets and effects of said Company. Thereafter, the manner in which the winding up proceedings unfurled in accordance with said Act and Rules thereunder has been set out in paragraphs 3 to 8 of said report, which read as follows:

> *'3. It is submitted that the Ex-Managing Director has not filed the Statement of Affairs.*
>
> *4. It is submitted that the Official Liquidator after debt realization invited claims from the creditors as per the Hon'ble High Court order dated 30/11/1979 in C.A.No.2116/1979.*
>
> *5. It is submitted that this Hon'ble Court vide its order dated 09/09/1983 made in C.A.No.489/1983 has permitted the Official*

Liquidator to declare 100 paise dividend to the Preferential Creditors and 50 paise to Ordinary Creditors.

6. It is submitted that as on the date, the funds position of the company in liquidation is Rs.4,60,488.44. The available funds are very meagre and 46 years have passed from the date of winding up. There will be no recovery or payment of dividend in future. It is respectfully submitted that no fruitful purpose would be served by allowing this company to continue to its existence, rather it would be more appropriate to dissolve the company.

7. It is also submitted that the balance amount remaining in the account of company the Official Liquidator can be transferred to undistributed assets account as envisaged under section 555 of the Companies Act, 1956 after meeting all the incidental expenses including the present application.

8. It is submitted that the Official Liquidator to be permitted to file final account without audit of the same as there will be no other transactions in the account of the company in liquidation. The final account is attached herewith and marked as ***Annexure-B.'***

8. A perusal of said report Annexure-B to said report, more particularly, paragraphs 3 to 8, which have been extracted and reproduced supra, leaves this Court with the considered opinion that it is just and reasonable in the circumstances of this case to make an order of dissolution of said Company as continuing with the winding up proceedings would

clearly be a penny wise pound foolish exercise. The fund position of said Company has been articulated in paragraph 6 of said report and with regard to this small balance also one of the limbs of prayer in the multi-limbed prayer in captioned application is for transfer of this money into the appropriate public account in Reserve Bank of India *inter alia* under Sub Section (2) of Section 555 of said Act.

9. In the light of the narrative thus far which *inter alia* articulates the opinion this Company Court has arrived at, captioned application and main CP are ordered by acceding to prayer limbs (b) to (d) in the multi-limbed prayer in the captioned application as a result of which, said Company will stand dissolved on and from the date of this order.

Captioned Company Application and main CP disposed of in aforesaid manner. There shall be no order as to costs.

20.11.2020

kmi

M.SUNDAR. J

kmi

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