IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.12.2020

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THE HON'BLE MR.JUSTICE M.SUNDAR

Company Application No.284 of 2020
in
Company Petition.No.106 of 2003
and
Company Petition No.106 of 2003

The Official Liquidator,
High Court, Madras
as the Liquidator of
M/s.Skoda (India) Engineering Private Limited
(in liquidation) .. Applicant

This application is preferred, under Section 481 of the Companies Act, 1956 read with Rule 9, 11(b) of Companies (Court) Rule, 1959, prays

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.Skoda (India) Engineering (p) 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 as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Applicant : Mr.Bavishetty Sridhar
Deputy Official Liquidator

<u>COMMON ORDER</u>

Captioned Company Application ie., Company Application No.284 of 2020 has been filed *inter-alia* under Section 481 of 'The Companies Act, 1956' (hereinafter 'said Act' for the sake of brevity) read with Rules thereunder i.e., 'The Companies (Court) Rules, 1959' (hereinafter 'said Rules' for the sake of brevity) with a multi-limbed prayer and this multi-limbed prayer as culled out from the judges 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.Skoda (India) Engineering (p) 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 as this Hon'ble Court may deem fit and proper in the circumstances of the case.'

2. Captioned Company Petition i.e.,'Company Petition No.106 of 2003' shall be referred to as 'main CP' for the sake of convenience and clarity.

3. 'Skoda (India) Engineering (P) Limited' [hereinafter 'said company' for the sake of brevity and clarity] is the company which has gone into liquidation in main CP at the instance of a petitioning creditor.

4. Captioned application has been taken out by 'Official Liquidator attached to this Court' [hereinafter 'OL' for the sake of convenience and brevity] and Mr.Bavishetty Sridhar, learned 'Deputy Official Liquidator'

[hereinafter 'Deputy OL' for the sake of convenience and brevity] is before me in this web hearing on a video conferencing platform on behalf of OL. Learned Deputy OL, submits that a 'report of OL dated 02.11.2020' [hereinafter 'said report' for the sake of brevity] has been filed in support of captioned application. Adverting to said report, learned Deputy OL submits that in and by an order dated 27.08.2003 made in main CP by this Company Court said company was ordered to be wound up, OL was appointed as liquidator qua said company and *inter-alia* directions were given to OL to take charge of all the assets and effects of said company. Learned Deputy OL submits that the manner in which liquidation process or in other words, winding up process in accordance with said Act and said Rules unfolded thereafter, i.e., post 27.08.2003 order of this Company Court, has been captured in said report.

5. A perusal of the said report brings to light that the manner in which the winding up proceedings unfolded has been captured in said report and most relevant paragraphs qua prayer in captioned application are paragraph Nos.3 to 6 of the said report which read as follows:

'3. It is submitted that pursuant to the HHC orders the Official Liquidator took possession of all the movable and immovable assets of the company in liquidation situated at G4, G1, 14 Industrial Estate, Winterpet, Arokonam and sold the movable and immovable assets through public auction and realized a sum of Rs.27,55,000/-. As per the ROC records the Secured Creditors are Federal Bank Limited and State Bank of India. They have not claimed the dues.

4. It is submitted that the Ex-directors have filed the Statement of Affairs.

5. It is submitted that pursuant to orders passed by this Hon'ble Court in Company Application No.1739 of 2006 dated 17.10.2006 claims were invited from the creditors of the company in terms of Rule 148 of the Companies (Court) Rules, 1959 by publishing the notice in newspapers. Consequently, this office has received 82 claims from various creditors of the company in liquidation. Out of 82 claims, 76 claims from the workmen creditor were adjudicated under Section 529A and also paid dividend pursuant to the directions of this Hon'ble Court on various dates as detailed below and remaining 6 claims from preferential under Section 530 and ordinary creditors were not paid due to paucity of funds.

S.I. Nos.	***List of Creditors***	***No. of workmen***	***Dividend amount paid @***	***Amount paid in Rs.***
1	*Workmen Creditors*	*28*	*As per Hon'ble High Court, Madras order*	*20,36,093.00*

S.I. Nos.	***List of Creditors***	***No. of workmen***	***Dividend amount paid @***	***Amount paid in Rs.***
			dated 15/06/2015 in C.A.No.585/2015 the Official Liquidator paid 100 paise in a rupee to workmen creditors	
2	*Workmen Creditors*	*48*	*As per the Hon'ble High Court, Madras order dated 28.03.2018 in C.A.No.301/2018 the Official Liquidator paid 8 paise in a rupee to Workmen Creditors.* *2. As per Hon'ble High Court, Madras order dated 21.06.2019 in C.A.No.141/2019 the Official Liquidator paid 2 paise in a rupee to workmen creditors*	*20,95,534.00* *5,23,882.00*

6. It is submitted that as on the date, the funds position of the company in liquidation is Rs.1,72,947.25. The available funds are very meager and 17 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.'

6. This Court notices that details of disbursement made to workmen

creditors has been set out by way of a tabulation in paragraph No.5 of the said report.

7. Adverting to Paragraph No.6 of said report, learned Deputy OL submits that the fund position of said company or in other words balance monies in the hands of OL qua said company now is Rs.1,72,947.25 (Rupees One Lakh Seventy Two Thousand Nine Hundred Forty Seven and Paise Twenty Five). This is set out in Paragraph No.6 of said report and it has also been reflected in the account statement annexed to said report.

8. This Court notices that main CP has been pending in this Court for nearly 17 years and it is clearly a vintage matter. A perusal of the said report also brings to light that the purpose of main CP has been largely achieved and keeping main CP pending in this Company Court may not be of any avail.

9. It is also necessary to notice that there is one limb of prayer in the multi-limbed prayer in captioned application which pertains to transfer of

the balance amount in the hands of OL into appropriate public account in Reserve Bank of India *inter-alia* under Section 555 of said Act. To be noted, this is prayer limb (d). In this prayer limb (d), the balance quantum has not been set out. Learned Deputy OL, adverting to paragraph No.6 of the said report as well as the account statement filed as annexure to the said report, submits that the balance amount is 1,72,947.25 (Rupees One Lakh Seventy Two Thousand Nine Hundred Forty Seven and Paise Twenty Five Only) and that this amount would be transfered into appropriate public account in Reserve Bank of India (after incurring permissible expenses) *inter-alia* under Section 555 of the said Act. This submission is recorded and this aspect of the matter shall stand incorporated in limb (d) of the prayer in multi-limbed prayer while the Registry prepares draft of this order.

10. In the light of the narrative thus far, this Company Court is of the considered opinion that it is just and reasonable in the facts and circumstances of this case to make an order of dissolution of said company. Therefore, captioned application and captioned main CP are

disposed of by acceding to the prayer limbs (b) to (d) in captioned application. Though obvious, it is made clear that said company will stand dissolved from the date of this order. There shall be no order as to costs.

04.12.2020

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M.SUNDAR. J

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