Comp.A.No.37 of 2021

M.SUNDAR.J.,

Captioned Company Application has been taken out by 'Official Liquidator attached to this Court' ('OL' for the sake of brevity) *inter alia* under Section 497(6) of 'The Companies Act, 1956' (hereinafter 'said Act' for the sake of brevity) with a prayer for dissolution of 'International Container Terminal Services (India) Private Limited' (hereinafter 'said company' for the sake of brevity).

2. Ms.K.Latha Parimala Vadana, learned OL, who is before this Company Court, submits that said company resorted to voluntary winding up pursuant to a Special Resolution passed by its members on 14.11.2014. A 'report of the OL dated 31.12.2020' (hereinafter 'said report' for the sake of brevity) has been filed in support of captioned application.

4. Post 14.11.2014 Special Resolution of the members of the company, the manner in which voluntary winding up proceedings unfurled has been captured in Paragraphs 2 to 13 of said report, which read as follows:

'2.That M/s.International Container Terminal Services (India) Private Limited (hereinafter called as the Company under liquidation) went into Members Voluntary winging up pursuant to a Special Resolution passed by its members on 14.11.2014 and Shri.G.Mahadevan, Chartered Accountant has been appointed as

Voluntary Liquidator of M/s.International Container Terminal Services (India) Private Limited. Subsequently, upon resigning of Shri.G.Mahadevan, Shri.R.Thamizhvanan was appointed as Voluntary Liquidator in the general meeting held on 04.02.2016.

3. That the Voluntary Liquidator has reported to the Official Liquidator that the affairs of the Company in liquidation have been fully wound up and the final meeting was held on 30.10.2020 as required under Section 497(1) and (2) of the Act, 1956. He has also stated that the final accounts were laid in the said final meeting. Thereafter, the Voluntary Liquidator had sent to the Official Liquidator a copy of the accounts and other relevant returns about holding of final meeting as required under Section 497(3) of the Act, 1956.

4.That on receipt of the accounts and other records mentioned in sub section (3) of Section 497 of the Act, 1956, the Official Liquidator has scrutinized the books of accounts and records of the Company in liquidation in terms of the provision of section 497(6) of the Act, 1956 and submitting his report before the Hon'ble High Court as follows:

5. That the Company under liquidation was incorporated in the State of Tamil Nadu under the Act, 1956 in the year 2011. The main objects of the Company are to carry on the business of operation, management and maintenance of facilities and provision of services to container, conventional and bulk cargo/container terminal operations, stevedoring, handling, storage, delivery, pilotage, towage and assistance to vessels, fresh water suppliers, ship-to-shore communications, berthing and un-berthing, carriage, *diving, cargo handling bunkering, warehousing, cargo and area security, delivery, receipt internal haulage etc. The copy of the Memorandum of Association and Articles of Association is attached herewith in the type set of documents and marked as* ***Annexure I.***

6. That the directors of the Company in the board meeting held on 31.10.2014 have passed necessary resolution for winding up the company voluntarily and also made a Declaration of Solvency dated 31.10.2014 and filed the same with the Registrar of Companies, Tamil Nadu, Chennai (hereinafter called the ROC) on 03.11.2014 and copy of the Declaration of Solvency dated 31.10.2014 is attached collectively in the type set of documents and marked as ***Annexure II.***

7. That the members of the Company in the General Meeting held on 14.11.2014 approved the proposal for voluntary winding up of the Company and appointed Shri.G.Mahadevan, Chartered Accountant as the Voluntary Liquidator. Subsequently upon resigning of Shri.G.Mahadevan, Shri.R.Thamizhvanan was appointed as Voluntary Liquidator in the general meeting held on 04.02.2016. The company has filed the Resolutions passed on 14.11.2014 and 04.02.2016 with the ROC respectively on 18.11.2014 and 13.04.2016. The copies of Form MGT 14 and Form GNL 2 are collectively attached herewith in the type set of documents and marked as ***Annexure III.***

8. That the Company has published the Form No.151 in this regard to the appointment of Voluntary Liquidator in the Official Gazette on 26.11.2014 as required under section 485(1) and 516 of the Act, 1956. The copy of the Official Gazette is attached herewith *in the type set of documents and marked as **Annexure IV.** The company has also published the Resolution in the two newspapers on 27.11.2014 as required under section 481(1) of the Act, 1956 and the copies of the same are collectively attached herewith in the type set of documents and marked as **Annexure V.***

*9. That the Voluntary Liquidator has filed his appointment with ROC on 18.11.2014 and copy of the GNL 2 and the Form No.152 are attached herewith in the type set of documents and marked as **Annexure VI.***

*10. That the Voluntary Liquidator has fixed the Final Meeting on 30.10.2020 and as contemplated under Section 497 of the Act, 1956 read with Companies (Court) Rules, 1959 has published the Final Notice in the Official Gazette on 23.09.2020 and in the Newspapers on 30.09.2020 as required under section 497(2)(b) of the Act, 1956. The copies of the Official Gazette and the newspapers are collectively attached herewith in the type set of documents and marked as **Annexure VII**.*

11. That the Voluntary Liquidation took over the charge of the Company under liquidation. The estimated value of the assets on the date of commencement of winding up was Rs.1,10,00,58,986/- (Rupees One Hundred Ten Crore Fifty Eight Thousand Nine Hundred and Eighty Six Only) and the liabilities were Rs.36,74,11,088/- (Rupees Thirty Six Crore Seventy Four Lakh Eleven Thousand and Eighty Eight only). The Voluntary Liquidator realized an amount of Rs.112,47,05,266/- (Rupees One Hundered Twelve Crore Forty Seven Lakh Five Thousand Two Hundred and Twenty Six only) and out of the said realization he has spent an *amount of Rs.3,90,000/- (Rupees Three Lakh Ninety Thousand only) towards legal Charges, Rs.60,799/- (Rupees Sixty Thousand Seven Hundred and Ninety Nine Only) towards cost of publication of notices, Rs.56,44,000/- (Rupees Fifty Six Lakh Forty Four Thousand Only) towards incidental outlay, Rs.59,08,92,000/- (Rupees Fifty Nine Crore Eight Lakh Ninety Two Thousand only) to the debenture holders, Rs.16,98,93,695/- (Rupees Sixteen Crore Ninety Eight Lakh Nienty Three Thousand Six Hundred and Ninety Five Only) to the unsecured creditors and he has paid Rs.35,78,24,392/- (Rupees Thirty Five Crore Seventy Eight Lakh Twenty Four Thousand Three Hundred and Ninety Two Only) to the shareholders as return of capital. The Voluntary Liquidator has filed the returns with the final statement of accounts in pursuance of section 497(3) of the Act, 1956 with the ROC on 05.11.2020 and the copy of the final accounts is attached herewith in the type set of documents and marked as* ***Annexure VIII.***

12. That the Official Liquidator respectfully submits that the company under liquidation is a private Company. There was no complaint against the company during the conduct of liquidation proceedings. The ROC has also intimated his No Objection vide his letter dated 23.12.2020 wherein the ROC has indicated that the directors of the Company were disqualified due to non-filing of DIR 3 KYC and a copy of which is attached herewith in the typed-set of documents and marked as ***Annexure IX****. The Income Tax department has also issued NOC vide letter dated 18.03.2015 and a copy of which attached herewith in the type set of documents and marked as* ***Annexure X****.*

13. That the Official Liquidator submits that the special resolution for Members Voluntary Winding up was passed in the general meeting on 18.04.2014 and the final meeting was held on 13.09.2014 in terms of provisions of section 497(1)(b) of the Act, 1956 and that the scrutiny of books of accounts and records of the company in liquidation did not reveal any instance which would lead to a conclusion that the affairs of the Company were being conducted against the interest of its members or public interest.'

(underlining in paragraph 13 has been made by this Court for supplying emphasis)

5. Learned OL, who is before this Court (physical Court), reiterated the contents of said report and submitted that records of the company under liquidation does not reveal any instance of conduct of affairs of the company being conducted against the public interest.

6. This takes us to the prayer in the captioned application, which is for dissolution of a said company.

7. In the light of stated position of OL, more particularly the emphatic averment in Paragraph 13 of said report (underlined portion), this Court is left with the considered opinion that learned OL has made out a case for prayer in captioned application being acceded to. Captioned application ordered as prayer for.

In the result, said company i.e., International Container Terminal Services (India) Private Limited will stand dissolved. There shall be no order as to costs.

19.03.2021

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M.SUNDAR.J.,

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