

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.03.2021

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

Company Application No.1215 of 2001
in C.P.No.90 of 2000

Company Application No.187 of 2020
in C.P.No.90 of 2000

&
C.P.No.90 of 2000

Company Application No.1215 of 2001

M/s.Hyundai Motor India Limited
Plot H-1, SIPCOT Industrial Estate
Irrungattukottai, Sriperumbudur Taluk
Kancheepuram District, Tamil Nadu ... Applicant

Vs.

Official Liquidator, High Court, Madras
As the Liquidator of
M/s. Donghee Vision Industrial Company Limited ... Respondent

Company Application filed under Order XIV Rule 8 of O.S.Rules read with Rules 9,11(b), 19 and 117 of the Companies (Court) Rules read with Section 446(3) of Companies Act, 1956 to grant leave to the applicant to implead the Official Liquidator and to continue C.S.No.160 of 2001 pending on the file of the High Court, Madras against the company in liquidation herein.

For Applicant : Mr.Kalyan Jhabakh
of M/s.Surana and Surana

Company Application No.187 of 2020

Official Liquidator, High Court, Madras
As the Liquidator of
M/s. Donghee Vision Industrial Company Limited
(in liquidation)
Corporate Bhawan, IInd Floor
29, Rajaji Salai
Chennai – 600 001 ... Applicant

Company Application filed under Section 481 of the Companies Act, 1956 to take this report on record on the file of this Hon'ble Court, to form an opinion that the liquidator cannot proceed with the winding up and that it is just and reasonable in the circumstances of the case to order for the dissolution of the company finally and to pass consequent and appropriate orders, to permit the Official Liquidator to file the final Accounts without auditing since there will be no transactions in the company's account, to pass an order to transfer the C.S.No.160 of 2001 to this Hon'ble Court taking into consideration the facts mentioned at para 8 supra and take the said suit along with the this application and to dispose the same, to grant permission to transfer the balance amount lying in the credit of the company in liquidation to the undistributed assets account as envisage under Section 555 (2) of the Companies Act, 1956 after meeting all the expenses related to the winding up including filing this present application, and to pass such other order/orders that this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Ms. Latha Parimala Vadana
Official Liquidator

ORDER

This common order will dispose of captioned two applications and captioned main Company Petition.

2. Captioned first application i.e., Company Application No.1215 of 2001 has been taken out by Hyundai Motor India Limited *inter alia* under Section 446(3) of 'The Companies Act, 1956' (hereinafter 'said Act' for brevity) with a prayer *inter alia* to continue C.S.No.160 of 2001 pending on the file of Original Side of Madras High Court. Captioned second application has been taken out by 'Official Liquidator attached to this Court' ('OL' for the sake of brevity) under Section 481 of said Act *inter alia* with a prayer for dissolution of 'Donghee Vision Industrial Company Limited' (hereinafter 'said company' for the sake of brevity), which is the company under liquidation in C.P.No.90 of 2000 (hereinafter 'main CP' for the sake of convenience).

3. First application was filed way back in 2001 i.e., 08.08.2001 to be precise, it came to be dismissed by a Hon'ble single Judge of this Company Court on 21.03.2002. It was carried in appeal by way of an intra-court appeal in O.S.A.No.259 of 2002 and the intra-court appeal was disposed of by a Hon'ble Division Bench by an order dated 12.06.2008 setting aside the order of dismissal dated 21.03.2002 restoring the first company application and directing the same to be listed along with application taken out by OL being Company Application

No.1018 of 2006. This Company Application No.1018 of 2006 turns on alleged misfeasance *inter alia* under Sections 542 and 543 of said Act and learned OL informs this Court that the same has been dismissed by this Company Court on 26.03.2013. Learned OL also informs this that this has been given quietus.

4. Mr. Kalyan Jhabakh, learned counsel of M/s.Surana and Surana (Law Firm), who is before me through video-conference on behalf of the applicant in captioned first application submits that C.S.No.160 of 2001 has been filed by the applicant in first application against said company and its Managing Director, who this Court is informed is a major shareholder in said Company. Suit is primarily a money claim though there some declaratory limbs of prayers is learned counsel's say.

5. However, the report of the OL being 'report dated 03.01.2020' (hereinafter 'said report' for the sake of brevity) filed in support of second application reveals that the fund position of said company is such that the suit claim cannot be made even if the applicant in the first application succeeds in getting a decree. In other words, it will only be a paper decree is learned OL's say. The suit claim is in the region of Rs.6 crores.

There are also some declaration prayers regarding capital goods. Learned counsel for applicant in first application submits that though a decree from which money can be realized may not be reality, an order giving legal closure to the matter is necessary for fiscal law purposes. Captioned second application taken out by learned OL is *inter alia* for dissolution of said company under Section 481 of said Act and therefore, if there is an order of dissolution and if a copy of the same is made available to the counsel for applicant in the first application that would serve the purpose.

6. In the light of the narrative thus far, this Court now proceeds to examine the second application taken out by OL. As already alluded to supra, second application taken out by OL is supported by a 'report dated 03.01.2020' (hereinafter 'said report' for brevity). A perusal of said report reveals that said company was ordered to be wound up by an order dated 14.06.2001 made by this Company Court in main CP. This Court is informed that by this order the OL was appointed as Liquidator qua said Company with further directions 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 have been set out in

said report in Paragraphs 3 to 10, which read as follows:

'3. It is respectfully submitted that pursuant to the directions of this Hon'ble Court, the Official Liquidator has taken possession of the Registered Office cum Factory premises of the company Liquidation situated at No.89 & B-10 SIPCOT Industrial Park, Irrungattukottai, Sriperumbudur T.K. Kancheepuram District on 19-11-2001 in the presence of the ex-directors and the representative of the secured creditors.

4. It is respectfully submitted that by an order dated 01-09-2004 in C.A.No.539/2003 this Hon'ble Court has confirmed the sale of movable and immovable properties of the company in liquidation in favour of M/s.Inkar Autotech (P) Limited and the purchaser has remitted the entire sum of Rs.12,30,00,000/- towards sale consideration and possession of the property/assets has been handed over to the auction purchaser on 08-09-2004.

5. It is submitted that the Ex-Directors of the company have filed Statement of Affairs with the Official Liquidator which was found to be defective. In this connection, the Official Liquidator has filed Company Application in C.A.No.1034 of 2001 against the Ex-Directors under Section 454 of the Companies Act, 1956. This Hon'ble Court vide order dated 05.09.2003 made in C.A.No.1034 of 2001 directed the Ex-Directors of the Company to rectify the defects in the Statement of Affairs failing which the Official Liquidator was at liberty to proceed against the Ex-Directors. Since the whereabouts of the Ex-Directors could not be identified, the Official Liquidator could not proceed further in the matter.

6. It is submitted that as per the orders of the Hon'ble High Court, Madras dated 21.03.2005 made in C.A.No.44 of 2005 claims from all the creditors were called for. In response to the same 153 claims

were received from various creditors of the company out of which 135 claims pertain to the workmen creditors of the company in liquidation, 5 claims from the secured creditors, 3 claims from the preferential creditors and 9 claims from the ordinary creditors of the company in liquidation. It is pertinent to mention that 135 claims belonging to the workmen creditors of the company in liquidation were rejected as the same did not reflect in the Statement of Affairs.

7. It is submitted that by orders of the Hon'ble High Court, Madras dated 10.11.2005, 22.03.2006, 22.12.2006, 22.08.2007, 22.09.2017 respectively made in C.A.Nos. 377 to 380/2006, 2006, 2270 to 2272/2006, 1894 to 1896/2007 and 2162/2007, 660/2017 dividend @60.75% was paid to all the secured creditors of the company in liquidation.

8. It is submitted that the Misfeasance application filed under section 542 & 543 of Companies Act, 1956 against the Ex-Directors of the company in liquidation in C.A.No.1018 of 2006 has been dismissed by this Hon'ble Court vide order dated 26.03.2013.

9. It is submitted that M/s.Hyundai Motor India Limited, being an ordinary creditor of the company in liquidation have filed C.S.No.160 of 2001 against the subject Company and the Ex-Managing Director of the company in liquidation in his individual capacity of recovery of money and other reliefs. Further the applicant in the said civil suit has filed application in C.A.No.9124 of 2018 to obtain leave of the Hon'ble Court to proceed further in the matter. However, it is pertinent to state that subsequent to payment made to the secured creditors, there are no further assets to be realised and no funds available for further payment, upon submission of the said fact the Hon'ble Court by order dated 22.09.2017 in C.A.No.660 of 2017 in C.P.No.90 of 2000 has permitted the Official Liquidator to file application for dissolution of the subject

*company under section 481 of the Companies Act, 1956 to conclude the liquidation proceedings of the aforesaid company and thereafter to discharge the Official Liquidator from the affairs of the company in liquidation. (copy of order dated 22.09.20178 is enclosed as **Annexure “B”** with this report)*

10. It is submitted that the funds position of the company as on 24.12.2019 is Rs.1,05,252.52 and since all the assets pertaining to the company in liquidation as per the records have been sold and no further realisation is possible, it is felt 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 finally as envisaged under section 481 of the Companies Act, 1956. It is to the Hon'ble Court to form an opinion that the Liquidator cannot proceed with the winding up and it would be put and reasonable to dissolve company finally.

*10. The Official Liquidator is to be permitted to file final Accounts without auditing the same as there will be no further transaction in the account or the company under liquidation. **The copy of the Final Accounts is attached herewith and marked as Annexure-C.***

7. A perusal of Annexure C reveals that the balance or in other words, the fund position of said Company is a meagre sum of little over Rs.1.04 lakhs (Rs.1,04,451.52 to be precise). This Court notices that main CP is a vintage matter as it is more than two decades old. It may be more appropriate to describe the main CP as ancient as the same has been pending in this Court for over 20 years now. A perusal of said report of OL leaves this Court with the considered opinion that keeping the main

CP pending in this Court or any attempt to pursue it any further would be a penny wise pound foolish exercise. Therefore, this Court is of the considered view that it is just and reasonable in the circumstances of this case to order dissolution of said company under Section 481 of said Act. In this regard, multi-limbed prayer in captioned second application taken out by OL is relevant and the same as can be culled out from the Judge's summons read as follows:

- 'a) To take this report on record on the file of this Hon'ble Court.*
- b) To form an opinion that the liquidator cannot proceed with the winding up and that it is just and reasonable in the circumstances of the case to order for the dissolution of the company finally and to pass consequent and appropriate orders;*
- c) To permit the Official Liquidator to file the final Accounts without auditing since there will be no transactions in the company's account;*
- d) To pass an order to transfer the C.S.No.160 of 2001 to this Hon'ble Court taking into consideration the facts mentioned at para 8 supra and take the said suit along with the this application and to dispose the same. T*
- e) To grant permission to transfer the balance amount lying in the credit of the company in liquidation to the undistributed assets account as envisage under Section 555 (2) of the Companies Act, 1956 after meeting all the expenses related to the winding up including filing this present application. and*
- f) To pass such other order/orders that this Hon'ble Court may*

deem fit and proper in the circumstances of the case.'

8. In the light of the narrative thus far, the following order is passed:

a) Captioned first application being Company Application No.1215 of 2001 is closed.

b) Captioned second application being Company Application taken out by OL is ordered by acceding to prayer limbs (a) to (e);

c) Regarding deposit under Section 553(1) and (2) of said Act, OL shall do the needful within four weeks from the date of receipt of a copy of this order.

9. Captioned second application taken out by OL being Company Application No.187 of 2020 ordered on above terms. Captioned main CP being C.P.No.90 of 2000 is disposed of by passing an order of dissolution of said company i.e, Donghee Vision Industrial Company Limited. Though obvious, it is made clear that said Company will stand dissolved on and from the date of this order. There shall be no order as to costs.

10. Captioned two applications and main CP are disposed of on above terms.

11. Copy of this order will be made available to learned counsel

for applicant in Company Application No.1215 of 2001 and it is open to
the applicant to produce this order before the authorities concerned
including the fiscal authorities.

19.03.2021

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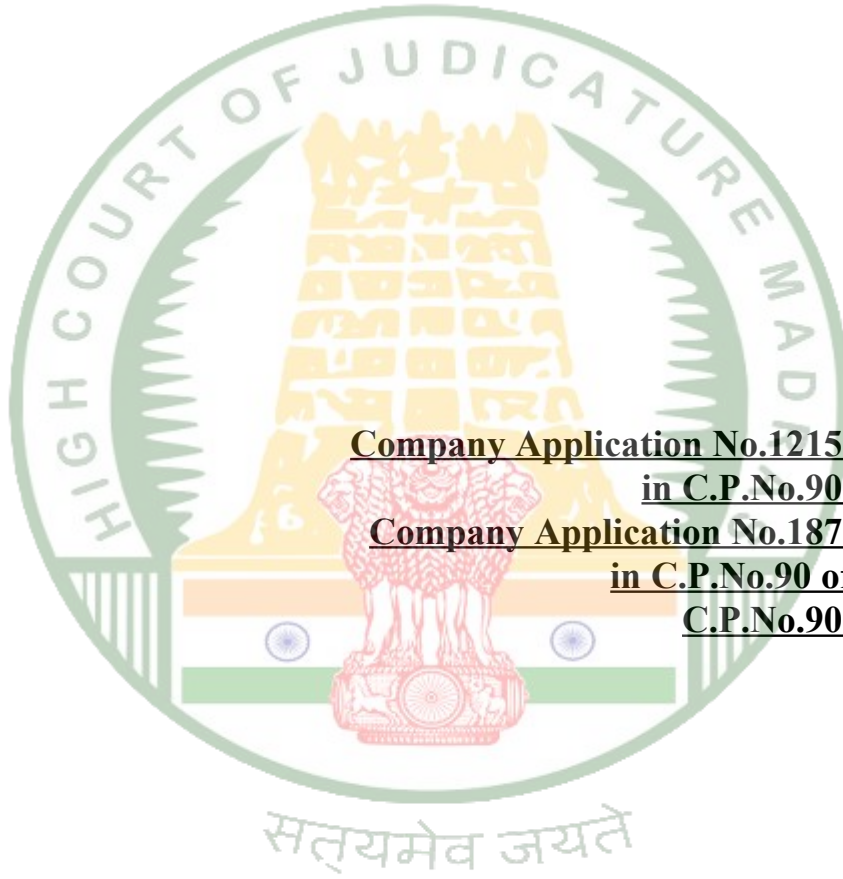


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Comp. A. No.1215 of 2001 &
Comp. A. No.187 of 2020
in C.P.No.90 of 2000

M.SUNDAR.J.,

gpa



Company Application No.1215 of 2001
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