IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2021

CORAM:

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

Comp.A.No.659 of 2017
in
C.P.No.104 of 2002
and
C.P.No.104 of 2002

The Official Liquidator,
High Court, Madras as
The Liquidator of M/s.Millenium Pulps
and Concretrates (India) Ltd.,
(In Liquidation) ... Applicant

Company Application filed under Section 460(4) and 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 of the Official Liquidator on record on the file of this Hon'ble High Court.

b) To hear the pending applications filed by the Official Liquidator in C.A.No.792 of 2005 and C.A.No.361 of 2008 filed under Sections 454, 542 and 543 of the Companies Act, 1956 respectively along with the subject application.

c) 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 in liquidation as required under Section 481 of the Act, and discharge the Official Liquidator from the aforesaid company in liquidation.

d) To dispense with the audit of accounts, since there are no transactions in the company's account during the present filing period.

e) To grant permission to deposit the unspent money in the company's credit, after meeting all incidental expenses of the winding process, to the Undistributed Assets Account and

f) To pass such order/orders of this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Applicant
in Comp.A.No.659 of 2017 : Ms.K.Latha Parimala Vadana, Official Liquidator.

For petitioner
in C.P.No.104 of 2002 : Mr.Derrick Sam

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COMMON ORDER

This common order will dispose of captioned application i.e., Company Application No.659 of 2017 and captioned Company Petition i.e., 'C.P.No.104 of 2002' [hereinafter 'main CP' for the sake of convenience and brevity]. Captioned main CP is vintage in every sense of the matter as it would turn 20 next year.

2. 'Millinieum Pulps and Concentrates (India) Limited' [hereinafter 'said company' for the sake of brevity and convenience] is the company under liquidation in main CP which as mentioned supra will be two decades old next year. Captioned application has been taken out by learned 'Official Liquidator attached to this Court' [hereinafter 'OL' for the sake of brevity and convenience] *inter-alia* under Sections 460(4) and 481 of 'The Companies Act, 1956' [hereinafter 'said Act' for the sake of brevity] read with rules 9 and 11(b) of 'The Companies (Court) Rules,

1959' [hereinafter 'said Rules' for the sake of brevity] for dissolution of said company. Prayer in captioned application is a multi-limbed prayer and this multi-limbed prayer in captioned application as culled out from judges summons reads as follows:

> *'a) To take this report of the Official Liquidator on record on the file of this Hon'ble High Court.*
>
> *b) To hear the pending applications filed by the Official Liquidator in C.A.No.792 of 2005 and C.A.No.361 of 2008 filed under Sections 454, 542 and 543 of the Companies Act, 1956 respectively along with the subject application.*
>
> *c) 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 in liquidation as required under Section 481 of the Act, and discharge the Official Liquidator from the aforesaid company in liquidation.*
>
> *d) To dispense with the audit of accounts, since there are no transactions in the company's account during the present filing period.*
>
> *e) To grant permission to deposit the unspent money in the company's credit, after meeting all incidental expenses of the winding process, to the Undistributed Assets Account and*
>
> *f) To pass such order/orders of this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.'*

3. Ms.K.Latha Parimala Vadana, learned OL is before this Court.

4. Mr.Derrick Sam, learned counsel on record for petitioning creditor in main CP i.e., 'IPA Weighbridge Private Limited' [hereinafter 'IPAL' for the sake of brevity] has joined the web hearing on a video conferencing platform i.e., Virtual Court.

5. In support of captioned application, a 'report of OL dated 21.07.2017' [hereinafter 'said report' for the sake of brevity] and 'further report dated 11.02.2021' [hereinafter 'further report' for the sake of brevity] have been filed.

6. Adverting to said report/further report, learned OL submits that this Company Court in and by an order dated 21.02.2003, appointed OL as liquidator of said company and gave further directions to take charge of assets and effects of said company. It is further submitted that pursuant to this order, OL had taken possession of assets of said company on 30.07.2003. It is also submitted that certain sums of money were realized by way of sale of immovable property, secured creditors have

been paid out pursuant to Court orders and no claim has been received from workmen creditors who are covered by Section 529-A of the said Act. Factual details (including those set out thus far) and the manner in which liquidation/winding up of said company unfurled post aforementioned 21.02.2003 order of this Company Court have been captured in Paragraph Nos.2 to 6 of said report which read as follows:

'2. The Official Liquidator submits that pursuant to the order passed by the Hon'ble High Court, Madras the Official Liquidator had taken possession of the assets of the company in liquidation on 30.07.2003 at the factory premises of the company in liquidation situated at Paleru Village, Bangaru Palayam, Mandal, Chittor District, Andhra Pradesh. The Official Liquidator realised a sum of Rs.5,00,00,000/- (Rupees Five Crores Only) by way of sale of immovable and movables by the orders of this Hon'ble High Court.

3. That as per the orders of the Hon'ble Court the Official Liquidator had called for claims from the creditors of the company in liquidation. No claim from the workmen creditors falling under the purview of Section 529A of the Companies Act, 1956 was received by the Official Liquidator whereas he has *received 3 claims from the secured creditors viz., IIBI, IDBI and State Bank of Indore and 2 claims from ordinary creditors. The secured claims were adjudicated and divided @ 14.72% was paid to them in terms of the Hon'ble Court orders dated 01.04.2009 made in C.A.Nos.399 of 2009 and 30.08.2013 made in C.A.Nos.897 of 2013.*

It is also submitted that in pursuant to the Hon'ble High Court, Madras order dated 27.06.2008 made in C.A.No.1732 of 2007 the claim submitted by the Customs & Central Excise Department was taken into consideration as preferential claim and adjudicated the claim and paid a sum of Rs.2,10,60,000/- as full and final settlement of their claim.

4. That the Ex-Directors of the company in provisional liquidation had not filed Statement of Affairs as per the provisions of the Companies Act. In this connection, the Official Liquidator had filed application under Rule 132 of Companies Court Rules, 1959 and for non-compliance of Section 454 of the Companies Act, 1956. The said application is pending before the Hon'ble High Court, Madras in C.A.No.792 of 2005.

5. The Official Liquidator further submits that the ex-

directors have not submitted any statutory Books and records pertaining to the company in liquidation due to which the Official Liquidator could not frame charges under Sections 542 and 543 of the Companies Act, against the ex-directors and in this connections the Official Liquidator filed a factual report under Sections 542 and 543 of Companies Act, 1956 in C.A.No.361 of 2008 before the Hon'ble Court which is pending.

6. That as on dated the funds available with the Official Liquidator is Rs.4,03,198.50 and 14 years have passed since the date of winding up order and that there are no further assets to be sold or funds to be realized no fruitful purpose would be served by allowing this company to continue its existence rather it would be more appropriate to dissolve the company and deposit the remaining amount in the Undistributed Assets Account under Section 555(1) of the Companies Act, 1956 after meeting the incidental expenses of dissolution.'

7. Though there is oral submission qua said report and further report, this Court deems it appropriate to extract and reproduce Paragraph Nos.2 to 10 of further report which read as follows:

2. It is submitted that the Official Liquidator filed an application in Company Application No.659 of 2017 u/s.481 of Companies Act,1956 seeking direction for dissolution of the company. The Hon'ble High Court, Madras while hearing the said application on 22.01.2021 has directed the Official Liquidator to furnish a report regarding details of payment made to creditors of the subject company. Accordingly this report is submitted.

3. That this Hon'ble High Court vide its order dated 10.11.2006 made inC.A.No.1966 of 2006 in C.P. No. 104 of 2002 permitted the Official Liquidator to call for claims fixing the last date for filing claims on 6.12.2006. It is submitted that this office received 6 claims i.e. 3 from secured creditor, viz., Industrial Investment Bank of India, Industrial Development Bank of India and State Bank of Indore , one claim from Preferential creditor viz., Customs & Central Excise Department ,Tirupathi. and two ordinary claims from the petitioning creditor and one more creditor viz., New Lakshmi Traders no workmen claims was received by the Official Liquidator. Normally, the Official Liquidator considered the claim of the Petitioner creditor as No.1. As there seems change in Name of the company once again the Petitioner Creditor has filed his claim and the numbered as claim No.6.

4. It is submitted that one of the Secured creditors i.e. State Bank of Indore obtained a decree from DRT-II Chennai in I.A.No.429 of 2004. It is stated by State Bank of Indore that they have a pari-passu charge with Industrial Development Bank of India and Industrial Investment Bank of India in addition to the title deeds of the Factory Premises at Paleru Village, Bangaru Palayam Mandal, Chittoor Division, comprised in Survey No.126/B, 132/B, 132/A in all 16-36 Acres within the Registration District

of Chittoor, Andhra Pradesh. Decree was for a sum of Rs.2.11 crores in addition to the interests from the date of decree i.e. 22.01.2001. The claimant filed its claim after getting condonation of delay.

5. It is submitted that the Hon'ble Court vide its order dated 16.07.2007 made in C.A.No.1732/07 filed by Customs and Central Excise directed the Official Liquidator to issue notice to the secured creditors and also directed the Official Liquidator not to disburse the amount received from the purchaser until further orders. However, subsequently this Hon'ble Court by its order dated 27.06.2008 made in C.A.No.1732 of 2007 in C.P.No.104/2002 dismissed the said Company Application filed by the Customs & Central Excise, Tirupati, and directed the said applicant to place all the legal submissions before the Official Liquidator and also directed the Official Liquidator to adjudicate their claim in accordance with law and pass orders thereon. Accordingly, the Official Liquidator admitted their claim for Rs.7,26,98,811/- as preferential claim after taking into consideration their submissions. Minutes were recorded on 14.11.2008 and notice of admission of proof was issued to them on 14.11.2008.

6. The Official Liquidator submits that a sum of Rs. 4,98,54,036/- was realized by way of disposal of properties of the company. In this regard it is submitted that a sum of Rs. 2,10,60,000/- was realised by way of sale of Plant and Machinery being the capital goods imported by the company as a 100% Export Oriented Unit, and the company has not commenced its commercial production, and the entire property being the Imported Plant and Machinery kept under Bonded warehouse., and customs duty was not paid. Further the said Customs Department has also filed an

application in C. A No. 387 of 2009 seeking direction to release a sum of Rs. 2,10,60,000/-, and the Hon'ble High Court vide order dt. 31.3.2009 in 387 of 2009 has directed the OL to release the said amount

7. Pursuant to the above orders, the Official Liquidator has filed an application in C.A No. 399 of 2009 for payment of dividend seeking prayer for disbursement of dividend to Customs & Central Excise, Tirupathi being the amount of Rs. 2,10,60,000/- realised on the sale of Plant and Machinery being the capital goods imported by the company as a 100% Export Oriented unit , the entire property being Plant and Machinery kept under Bonded Warehouse, as stated in above para , and also sought directions to pay 11 paise in a rupee which amounts to a sum of Rs. 2,57,76,592/- to 3 secured creditors., and the amount was disbursed upon the orders of the Hon'ble High Court dated 1.4.2009

8. Subsequent to the above, the Official Liquidator has filed.CA.No.897/2013 in C.P. No.104/2002 for making further payment of 2.72% which was also disbursed to the 3 secured creditors in pursuance to the orders of this Hon'ble Court dated 30.8.2013. The details of adjudication and payment to the claimants are furnished below:

Sl.No	Name of the Claimant/ Creditors and claim No.	Nature of the Claim	Amount claimed Rs.	Admitted amount Rs.	Details of dividend Amount so far disbursed Rs.
1	Industrial Investment Bank of India Claim no 4	Secured	9,30,77,693/-	8,85,34,233/-	1,21,46,897/-

2	Industrial Development Bank of India Claim No.5	Secured	13,33,81,326/-	12,46,60,059/-	Rs.1,71,03,359/-
3	State Bank of Indore Claim No.7	Secured	2,11,38,364/- (DRT-II decree amount)	2,11,38,364/-	Rs.29,00,183/-
4	Customs & Central Excise, Tirupathi Claim No.3	Preferential	7,26,98,811/-	7,26,98,811/-	2,10,60,000-
5.	Winding Up petitioner M/s. Stateweigh India P.Ltd Formerly known as M/s IPA Weigh bridge Private Limited on 9.7.2007 which was given as Claim 1 & 6.	Ordinary	2,10,000/-	Since Official Liquidator could not settle 100% to secured creditors due to paucity of funds this claim being the ordinary claim Official Liquidator did not adjudicate the claim	
6.	New Lakshmi Traders represented by Sri.G.Ramesh proprietor Claim No.2	Ordinary	82,524/-	Since Official Liquidator could not settle 100% to secured creditors due to paucity of funds this claim being the ordinary claim Official Liquidator has not taken up the claim for adjudication.	
7	Work Men Claim	NO workmen claims were received by this office till the date of disbursement.			

9. The Official Liquidator submits that so far 13.72 % were paid to the secured creditors, on realization of assets besides payment of Rs. 2,10,60,000/- the Customs Department. However in the application filed under section 481 of Companies Act, 1956,the Official Liquidator has stated that the secured claims were adjudicated and dividend @ 14.72% was paid which is a typographical error which has crept in inadvertantly.

10. That it is further submitted that the Official Liquidator has not adjudicated the other claims received as the same were ordinary claims and due to paucity of funds and there were no assets left for realization. The Official Liquidator could not settle 100% to the secured claims.

8. In the aforesaid backdrop, learned counsel for petitioning creditor submits that petitioning creditor is a ordinary creditor and in response to the 'Right to Information Act' ['RTI'] query, OL has stated that ordinary creditors will be paid after secured creditors are paid. Relevant portion of this reply of OL reads as follows:

In reply to the [illegible] the details of total No. of [illegible] are as follows:

Sl.No.	Claim No.	[illegible]	Amount
1	2 (Ordinary)	[illegible]	82,524.00 (Ordinary Claim) (Not yet adjudicated)
2	3 U/S 530 Govt. Claim	Dy. C[illegible]	7,26,96,911 (adjudicated and Fully Admitted U/S 530)
3	4 U/S 529 (S.C.)	[illegible]	Claimed [illegible] Rs.[illegible] admitted and Rs.45,43,460 rejected.
4.	5 U/S 529 (S.C.)	IDBI	Claimed Amount: 13,33,01,[illegible]/- Admitted amount: 12,46,60,059/- Rejected: 86,41,067/-
5	6 (Ordinary)	M/s.[illegible] (1)	Claimed 2,10,000 + 24% Interest p.a.) (Not yet adjudicated)

In reply to the question 5, [illegible] granted.

In reply to the request [illegible], claim No.6 comes under ordinary creditors as per the Companies Act. The said claim will be settled only after paying 100% to the preferential creditors, if there are to be any surplus funds remains.

9. Be that as it may, it is clear from said report and further report that a sum of Rs.4,03,201.50 [Rupees Four Lakhs Three Thousand Two Hundred One and Paise Fifty Only] is now available for disbursement. This Court is informed that of the two ordinary creditors, now (besides petitioning creditor) money has to be paid to one ordinary creditor which is shown as S.No.1 in the above said tabulation i.e., New Lakshmi Traders, Chittoor, Pin-517 001 (a proprietor carrying on business in this name and style) [Amount : Rs.62,524.00 (Ordinary Claim) (Not yet adjudicated)]. Learned OL undertakes to pay out this sum from the aforementioned balance to said ordinary creditor within five weeks from today i.e., on or before 29.04.2021.

10. Regarding petitioning creditor who figures as S.No.5 in the tabulation, learned counsel for petitioning creditor, on instructions, submits that petitioning creditor will accept Rs.3 Lakhs in all as full and final settlement of his claim of Rs.2,10,000/- with interest. This submission is recorded. Learned OL undertakes to pay out the petitioning creditor also within five weeks from today i.e., on or before 29.04.2021. Thereafter, post audit fee and Government commission

balance if any shall be deposited in the public account in this regard in the Reserve Bank of India under Section 555(2) of said Act. In any event there is one limb of prayer in captioned application and that is limb (e) (though provision of law has not been mentioned with specificity). It is made clear that this deposit under Section 555(2) of said Act shall be balance if any after paying out the aforementioned 2 ordinary creditors in the aforementioned manner within five weeks from today i.e., on or before 29.04.2021.

11. In the light of the narrative thus far, it comes to light that no useful purpose would be served by keeping the vintage main CP pending in this Court. To put in terms of a old adage, it would be a penny wise pound foolish exercise. Owing to this reason, this Court is of the opinion that it is just and reasonable in the facts and circumstances of this case to order dissolution of said company i.e., Millinieum Pulps and Concentrates (India) Limited under Section 481 of the said Act. Under normal circumstances, said company will stand dissolved from the date of this order, but in this case, by exercising inherent powers of this Company Court, owing to peculiar circumstances and trajectory which

has been set out, it is made clear that said company will stand dissolved on and from 30.04.2021. To be noted, this is to facilitate payments to the two ordinary creditors in the manner set out in this order elsewhere supra.

12. Captioned Company Petition and Company Application disposed of in the aforesaid manner. There shall be no order as to costs.

26.03.2021

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Note : Issue order copy on 01.04.2021

Speaking/Non-speaking
Internet : Yes/No
Index : Yes/No

M.SUNDAR, J

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