IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.07.2022

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THE HON'BLE MR.JUSTICE M.SUNDAR

Company Application No.224 of 2022
in
Company Petition No.7 of 1976
and
Company Petition No.7 of 1976

C.P.No.7 of 1976:

M/s.Dwaraka Chit Fund Private Ltd.,
242-B, Ramnad Road, I Floor
Madurai - 625 009. ... Petitioner

Comp.A.No.224 of 2022:

The Official Liquidator
High Court, Madras
As the Liquidator of
M/s.Dwaraka Chit Fund Pvt. Limited (In Liquidation)
Corporate Bhavan, IInd Floor,
No.29, Rajaji Salai,
Chennai-600 001. .. Applicant

Prayer:

This Company Application has been preferred, under Section 481 of the Companies Act, 1956 read with Rules 9 and 11(b) of the

Companies (Court) Rules, 1959, praying

(a) To take this report on record;

(b) To permit the Official Liquidator to file the final account along with Auditor's Certificate received from Chartered Accountant M/s.Sarathy & Vasu, who was appointed by the Hon'ble Court;

(c) To form an opinion that the Official Liquidator cannot proceed with the winding up proceedings and that it is just and reasonable to make an order to dissolve the company under Section 481 of the Companies Act, 1956;

(d) The Official Liquidator may be permitted to transfer any refund from Income Tax Department if received on a future date to undistributed assets account u/s.555(2) of the Companies Act, 1956;

(e) To permit the Official Liquidator to transfer the balance amount lying at the credit of the company to Undistributed Assets Account u/s.555(2) of the Companies Act, 1956 after meeting all the expenses related to winding up proceedings of the subject company;

(f) To permit the Official Liquidator to dispose off books and papers of M/s.Dwaraka Chit Fund Limited (In Liquidation) immediately after the expiry 5 years from the date of dissolution of the company as per the Section 550(1) and (2) of the Companies Act, 1956;

(g) To incur cost of this application do come out of the funds of the company in liquidation;

(h) To pass such further or other order/s that this Hon'ble Court may deem fit and proper in the circumstances of the case;

For Applicant in Comp.A.No.224 of 2022	:	Mr.Bavisetty Sridhar Deputy Official Liquidator

COMMON ORDER

Captioned main Company Petition i.e., 'C.P.No.7 of 1976' [hereinafter 'main CP' for the sake of convenience and clarity] is of the year 1976 and this 46 years old main CP in four years from now will be half a century old in this Court. Half a century may be a reasonable period of normal and continuous activity in History but it is clearly ancient and vintage qua litigation.

2. Be that as it may, captioned application has been taken out by 'Official Liquidator attached to this Company Court' [hereinafter 'OL' for the sake of convenience and clarity] *inter alia* under Sections 481 of 'the Companies Act, 1956' [hereinafter 'said Act' for the sake of convenience and clarity] with a prayer for dissolution of 'Dwaraka Chit Fund Pvt. Limited' [hereinafter 'said company' for the sake of convenience and clarity] which has gone into liquidation in main CP.

3. Mr.Bavisetty Sridhar, learned 'Deputy Official Liquidator' [hereinafter 'Deputy OL' for the sake of convenience and clarity] who is before this Court on behalf of 'Official Liquidator attached to this Court' [hereinafter 'OL' for the sake of convenience and clarity] submits that a 'report dated 23.06.2022' [hereinafter 'said report' for the sake of convenience and clarity] has been filed in support of the captioned application.

4. A careful perusal of said report brings to light that by order made by this Company Court way back on 13.02.1976 in main CP, OL was appointed as Provisional Liquidator qua said company *inter alia* with directions to take charge of all assets and effects of said company. Thereafter, the trajectory which the winding up proceedings took / what unfurled has been captured in said report from paragraph Nos. 2 to 10 and a scanned reproduction of the same is as follows:

2. That pursuant to the orders of the Hon'ble High Court, the Official Liquidator took possession of all the assets, books of accounts and other records of the Company in liquidation available at its Registered Office at No.242-B, Ramnad Road, Ist Floor, Madurai-625009. Subsequently, the Official Liquidator took possession of landed properties at Sengottai Village in Survey No.38 admeasuring cents 2 acres and 15 cents and 6 acres and 45 cents, and in Survey No.129/1 to the extent of 1 acre 15 cents and 3 acres 44 cents and in Survey Nos 65/3 and 65/1 consisting of 54 cents and 91 acres and realized amount through sale of assets.

3. That this Hon'ble Court by an order dated 23.06.1980 in C.A. No.966/1980, permitted the Official Liquidator to invite claims against the company (In Liquidation). In response to the publication caused, the Official Liquidator received 3016 claims from various categories of creditors and the said claims were adjudicated based on

the documentary evidence submitted by them. The details of adjudication of claims are as follows:

SNo.	Nature of claim	No of Claims Received	Admitted amount (in Rs.)	Percentage of amount paid
1	Preferential Creditor	16	18,905/-	100% paid from 24.06.1994 to 23.12.1994 as per list filed before this Hon'ble on 10.02.1992 and 10.09.1993
2	Ordinary creditors	2454	60,55,329/-	1. 25%paid from 24.06.1994 to 23.12.1994 as per list filed before this Hon'ble on 10.02.1992 and 10.09.1993. 2. Further, as per Hon'ble High Court order dated 4.9.2020 and 12.11.2021 in C.A. No. 177/20 and 282/21, permitted the Official Liquidator to declare dividend @ 75% on the admitted amount to 2454 ordinary Creditors for the amount of Rs. 45,41,197/-
3	-do-	535	Rejected	Non –Submission of Original documents evidence
4	Preferential Creditor	11	Rejected	Non–Submission of Original documents evidence
	Total	3016		

4. That as per orders of the Hon'ble High Court, Madras dated 10.02.1992 and 10.09.1993, 100% dividend was paid to 16 No. of Preferential Creditors and 25% dividend was paid to 2454 ordinary creditors.

Further, the Hon'ble High Court, Madras vide its Orders dated 4.9.2020 and 12.11.2021 in C.A.No. 177/20 & 282/21 permitted the

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Official Liquidator to declare and pay dividend @ 75% on the admitted amount to 2454 ordinary creditors for the amount of Rs. 45,41,197/-. Based on the above order, the Official Liquidator could pay only to 184 creditors, out of 2454 creditors. However, as the last date was over on 12.1.2022, the dividend account was closed on 15.03.2022, and the balance amount of Rs. 40,85,194/- payable to 2270 claimants was transferred to Registrar of Companies, Tamil Nadu, Chennai on 04.05.2022, under the Provisions of section 555 (1) and (3) of the Companies Act,, 1956.

5. That the Official Liquidator submits that as per the records of this office a sum of Rs. 1510/-, Rs. 9670/- & Rs. 19900/- towards Income Tax refund for the Assessment Years 2018-2019, 2019-2020 and 2020-2021 respectively is due from the Income Tax Department. In this regard, the Official Liquidator is of the view that if the said refunds received from Income Tax Department on a future date the same may be transferred to undistributed assets account under section 555(2) of the Companies Act, 1956.

6. That the funds position of the company in liquidation as on 27.05.2022 is as follows :-

CASH -		Rs.	99.00
BANK -		Rs.	1,06,034.87
	Investment	Rs.	4,00,000.00
	Total	Rs.	5,06,133.87

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7. It is submitted that the final account along with the "Auditor's Certificate on Final Account" received from the Chartered Accountant M/s. Sarathy & Vasu, an auditor appointed by this Hon'ble Court are enclosed & collectively marked as **"ANNEXURE –"B"** for the kind perusal of this Hon'ble Court.

8. That the company under liquidation was ordered to be wound up in the year 1976 and after expiry of 46 years nothing survive in the affairs of the company and the Official Liquidator has no other option except filing the present application under section 481 of the Companies Act, 1956 for dissolving the company finally. It is also submitted that no fruitful purpose would be served by allowing this company under liquidation to continue as a company under liquidation.

9. That it is submitted that the Official Liquidator may be permitted to transfer the balance amount lying the credit of the company in liquidation to undistributed Assets Account as per section 555(2) of the Companies Act, 1956, after meeting all the incidental expenses related to the winding up proceedings of the subject company.

10.That it is submitted that the Official Liquidator may be permitted to dispose off the books and papers of M/s. Dwaraka Chit Fund Limited (In Liquidation) immediately after the expiry of 5 years from the date of dissolution of the company in liquidation as laid down in section 550 (1) & (2) of the Companies Act, 1956.

5. Paragraph No.11 of said report reads as follows:

'11. That is submitted that in view of the above submission, the Official Liquidator could not continue to proceed with the winding up of the company in liquidation and it would be just and reasonable in circumstances of the case to dissolve the company in liquidation as envisaged under Section 481 of the Act.'

6. The above is tell tale qua trajectory the matter has taken in this Company Court.

7. Considering the balance or in other words fund position qua said company is a little over Rs.5.06 Lakhs and in any event, there is a prayer for deposit of this balance and possible refund from Income Tax

Department into the Public Account of India in 'Reserve Bank of India' ['RBI'] under Section 555 of said Act, this Court has no hesitation in coming to the conclusion that continuing to have the main CP on the file of this Company Court will be a penny wise pound foolish exercise and it will not serve anybody's purpose.

8. This Court is informed that in and by order dated 25.06.1976, said company has been ordered to be wound up and there is some doubt as to whether that would tantamount to closure of main CP. In this view of the matter, in exercise of inherent powers of this Company Court under Rule 9 of the Companies (Court) Rules, 1959, being Rules under said Act, main CP is resuscitated only to be closed vide instant order as the dissolution of said company is imperative for closure of main CP.

9. In the light of the narrative thus far, this Company Court is of the opinion that OL cannot proceed with winding up of said company. Besides this, just and reasonable circumstance for dissolution exists *inter alia* in the light of penny wise pound foolish exercise narrative supra.

10. One of the limbs of prayer in a multi-limbed prayer in the captioned application i.e., limb (f) is for destruction of records in main CP in the office of OL. This Court is informed that destruction will be in accordance with Rules made by the Central Government which are traceable to sub-sections (1) and (2) of Section 550 of said Act. It is made clear that this prayer is answered in the affirmative as regards destruction of records in the office of OL. As regards the records of main CP in this Company Court are concerned, the same will be governed by digitization and destruction policy of this Court making of which is underway.

11. Owing to narrative thus far, prayer limbs (a) to (e) and (g) acceded to. Therefore, captioned application is ordered as prayed for.

12. As the small balance of a little over Rs.5.06 Lakhs and possible refund from Income Tax Department is going to be deposited in the Public Account of India in RBI, this Court has taken note of the fact that

the interest of creditors qua said company if any and if they surface at this distant point of time, the same also stands protected.

13. Sequitur is, Captioned application is ordered on above terms set out supra elsewhere in this order. Said company stands dissolved and OL stands discharged. This means that the captioned main CP is also disposed of as closed. There shall be no order as to costs.

01.07.2022

Index : Yes/No
Speaking/Non-speaking

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M.SUNDAR, J.,

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