



Comp.A.No.412 of 2022

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KRISHNAN RAMASAMY, J.,

This application was filed to seek leave of this Court to withdraw the company petition No.170 of 1995 against the respondent company.

2. This Court vide order dated 16.04.1999, passed an winding up order in the present case.

3. According to the applicant, his claim has been settled and though the winding up order was passed by this Court 21 years ago, the matter is still pending without any process for calling for the claims. He further submitted that the learned Official Liquidator has also not taken any steps to call for the claims.

4. It appears that till date, the claims have not been called for and some of the third parties filed an application to bring the properties for sale. One of the secured creditors submitted that the claims were settled



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by the third party.

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5. Under these circumstances, the ex-management people has not come forward before this Court to file any Scheme to run the company and the details of secured and unsecured creditors also not available and only a third party, who is claiming to be a share holder of the company, said to have settled the applicant's dues and now the petitioning creditor approached this Court seeking leave of this Court to withdraw the company petition.

6. Subsequent to the winding up order passed against the company in liquidation, some of the third parties, who claims to be one of the share holders of the company appears to be settled the dues of the petitioner and some of the secured creditors. Therefore, now the petitioning creditor had filed this petition to re-call the winding up order passed by this Court on 16.04.1999.



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7. Once the winding up order is passed based on the creditor's petition, from the said date, he will be at par with the other creditors.

The filing of winding up petition is a representative action. If the petition is filed by one of the creditors and the Court found that the company is not in a position to pay the debts or otherwise, thereafter the claims are required to be called for by the learned Official Liquidator and out of the realisation of the amount, the claims have to be settled based on the priority list as provided in the Companies Act, 1956. In the present case, the petitioner is an unsecured creditor. He will have the priority after the workmen claims, secured creditors and other statutory claims. When such being the case, after 21 years of passing of winding up order, filing the present application with a prayer to re-call the winding up order dated 16.04.1999, is clearly against the scheme of the Companies Act, 1956. Receiving the amount after winding up order is against the priority claims as stated in the Companies Act, 1956 and the preference is otherwise considered as a fraudulent preference. Hence the request of the petitioner cannot be considered, unless and otherwise the



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entire claims of the company in liquidation is called for and settled.

Thereafter, if any application is filed by the appropriate person, the same would be considered.

8. With these observations, this Application is dismissed.

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Note: Issue order copy on 20.02.2023



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