Comp.A.Nos.638 to 646/2017, 415/2019,
& 575/2022, 459/2023 to 464/2023
545/2023 and 33/2024
in C.P.No.78 of 2008

RESERVED ON	15.03.2024
PRONOUNCED ON	10.04.2024

C.SARAVANAN, J.

By this common order, all these 18 applications are being disposed.

2. These applications pertain to the company under liquidation namely M/s.Sree Vishalakshi Mills Ltd.

3. C.A.Nos.459 to 464 of 2023 have been filed Mr.N.Palaniappan. He is the former director and contributory/shareholders of the company under liquidation.

4. C.A.Nos.638 to 646 of 2017 have been filed by some of the contributory/shareholders of the company under liquidation and their legal heirs/legal representatives.

5. C.A.Nos.459 to 464 of 2023 have been filed for the following

reliefs:-

Table – I

Sl.No.	C.A Nos.	Applicant	Prayer
1	460/2023	N.Palaniappan	To stay all further proceeding in respect of the winding up order dated 24.06.2008 in C.P.No.78 of 2008.
2.	461/2023	-do-	To permit the applicant to revive the operation of the company in liquidation under Section 466 of the Companies Act, 1956.
3	462/2023	-do-	To direct the Respondent/Official Liquidator not to disburse the shareholders contribution till the disposal of the present company application.
4	463/2023	-do-	To direct the respondent/official liquidator to hand over all the assets of the company in liquidation along with balance amount lying with official liquidator to the applicant.
4	464/2023	-do-	To direct the respondent/Official Liquidator to deduct the liquidation expenses as per the bills and invoices in and out of the company liquidation in C.P.No.78 of 2008.

6. Mr.N.Palaniappan, the applicant in these applications, is an Ex-Director of the company under liquidation. The applicant holds about 33,282 shares in the company under liquidation. The other Director namely Mr.Narayanan Thiyagarajan(since deceased)held about 33,282

shares. The other share holders jointly held about 313,223 shares which includes share held by the applicants in C.A.Nos.638 to 646 of 2017.

7. Mr.N.Palaniappan, the applicant in C.A.Nos.460 to 464 of 2023 has also filed C.A.No.459 of 2023, and C.A.No.545 of 2023. They have been filed for the following relief. On similar lines, C.A.No.33 of 2024 has been filed by Madurai District Iyekkiya PanchalaiMatturm Amaippu Sara Thozhilalar Sangam, rep.by its Vice President K.S.Mani.

<u>Table – II</u>

C.A.	Name of the applicant	Relief
459/2023	N.Palaniappan	To direct the Respondent/Official Liquidator to adjudicate and disburse the pending claims of the unsecured/ordinary creditors against the company in C.P.No.78 of 2008.
545/2023	N.Palaniappan	To pass an order of restraining the respondent from payment of subsequent interest to the creditors of M/s.Sree Visalakshi Mills Limited (in liquidation) by dispensation of Rule 179 of the Companies (Court) Rules, 1959 in the above company petition.
33/2024	Madurai District Iyekkiya PanchalaiMatturm Amaippu Sara Thozhilalar Sangam, rep.by its Vice President K.S.Mani.	To direct the 1st respondent Official Liquidator to pay the interest at the rate of 4 percent per annum from the date of winding up order on the admitted amount as per the rule 179 of Companies (Court) Rules, 1959 to the applicant union members as per the schedule.

8. As mentioned above, C.A.Nos.638 to 646 of 2017 were filed earlier by some of the contributories/ shareholders/their legal heirs/legal representative etc. of the company under liquidation. The prayer in the above mentioned applications are identical have been filed for the following reliefs:-

Table – III:

Sl.No.	*Comp.Applications*	*Name of the applicant*	*Prayer*
1	638/2017	N.Alagammai	To direct the Official Liquidator to make payment of the surplus amounts lying to the credit of the Company (in liquidation), to the contributories, after setting apart from the sum required for settling the claims of all creditors as per the procedure laid down under the Companies Act, 1956.
2	639/2017	N.Lakshmanan	
3	640/2017	L.Narayanan	
4	641/2017	S.Narayanan	
5	642/2017	N.Visalakshi	
6	643/2017	S.Unnamalai	
7	644/2017	L.Vairavan	
8	645/2017	N.Shanmugasundaram	
9	646/2017	Gold Hills Estates Pvt.Ltd, having its Registered Office at Erinkadu Estate through its Director N.Lakshmanan	

9. The prayers in applications in Table- I and III militate against each other. While, C.A.No.459 to 464 of 2023 have been filed to revive the company under liquidation, C.A.Nos.638 to 646 of 2017 are to

liquidate the assets of the company under liquidation and to disburse excess /surplus amounts to all the contributories i.e. respective applicants/ contributories, shareholders and their legal heirs/legal representative etc. from the sale of the assets of the company under liquidation.

10. Similarly, the prayers in C.A.No.545 of 2023 and C.A.No.33 of 2024 militate with each other. I shall deal with C.A.No.459 of 2023, and C.A.No.459 of 545 of 2023 along with C.A.No.33 of 2024 filed by Madurai District Iyekkiya Panchalai Matturm Amaippu Sara Thozhilalar Sangam, rep.by its Vice President K.S.Mani.

11. C.A.Nos.415 of 2019 and 575 of 2022 have been filed for the following relief by two unions who claim to espouse the cause of the workers of the company under liquidation : -

Table – IV

	C.A.No.415/2019	C.A.No.575/2022
Applicant	Muthumani Muthuraja General Secretary, Madurai MavattaPanchalai Adai MatrumPodhuThozhilalar Sangam	Madurai District Iyekkiya PanchalaiMatturm Amaippu Sara Thozhilalar Sangam, rep.by its Vice President K.S.Mani
Relief	To implead Mr.Muthumani MuthurajaSecretary, Madurai MavattaPanchalai Adai MatrumPodhuThozhilalar	To direct the respondents to consider the request of our union members (240 ex-employees) of the respondent

	Sangam as the proposed respondent in the above Company Petition No.78 of 2008 which is under liquidation	company to purchase the vacant land to an extent of 3 cents 91308 sq.ft.) at the rate of Rs.275 per sq.ft.the land which was earmarked to construct the 266 quarters for the ex-employees of the respondent company and allot the same to the ex-employees.

12. The company under liquidation was incorporated in the year 1958 and was classified as private entity on 18.07.1972. The company under liquidation was engaged in manufacturing of paper and paper products, publishing, printing and reproduction of recorded, media business etc located in Madurai.

13. C.P.No.78 of 2008 was filed by one Mr.K.R.Palaniyappan, proprietor of KSA Karuppan Chettiar & Co., as the company under liquidation failed to pay the amounts due to Mr.K.R.Palaniyappan, proprietor of KSA Karuppan Chettiar & Co.

14. In this background, the company under liquidation was ordered to be wound up by this Court vide its order dated 24.06.2008.

15. Pursuant to order dated 24.06.2008, the assets of the company came to vest with the office of the Official Liquidator and thus the Official

Liquidator took charge of all the assets and effects of the company under liquidation.

16. The Directors of the company which includes under liquidation, Mr.N.Palaniappan (Applicant in C.A.Nos.459 to 464 and C.A.No.545 of 2023) the applicant however failed to file Statement of Affairs after the Company was ordered to be wound up.

17. Therefore, the Official Liquidator filed a report on 13.04.2009 in C.A.No.729/2009 to take cognizance of the offence against the Directors of the Company under liquidation under Section 454(5A) of the Companies Act, 1956 for non filing of the Statement of Affairs with the Official Liquidator and to direct accused to file with the file Statement of Affairs with the Official Liquidator.

18. C.A.No.729 of 2009 was ordered on 12.03.2012 to initiate action against the Ex-Directors of the Company under liquidation before the Magistrate Court.

19. Pursuant to order, dated 12.03.2012, Mr.N.Thiyagarajan, the other Director of the Company under liquidation Mr.N.Theyagarajan,

who is the brother of the applicant in C.A.No.459 to 464 of 2023 filed a Statement of Affairs on 24.03.201.

20. However, the Statement of Affairs was incomplete. This disabled the Office of the Official Liquidator from selling all the assets of the company under liquidation based on the aforesaid Statement of Affairs filed by Mr.N.Thiyagarajan, Ex-Director of the company. Therefore, only a symbolic possession of the assets of the company was reflected in the Statement of Affairs by the Ex-Director of the company pursuant to order passed in O.S.A.No.155 of 2011 dated 19.10.2011 and 23.12.2011.

21. The following assets were handed over to the Indian Bank (Secured creditor) :-

a. Land Buildings of the cited company in “A” Mill situated at Vilangudi Village measuring 37.75 acres.

b. Land and Buildings of the cited Company in “B” Mill situated at Vilangudi Village, measuring 7.26 acres.

c. Plant and Machineries in “A” Mill as per the Inventory list signed by all the parties.

d. Plant and Machineries in “B” Mill as per the

Inventory list signed by all the parties.

22. These assets were sold and a sum of Rs.112,42,05,000/- realized by Indian Bank from the sale of above mentioned assets. After apportioning an amount of Rs.38,13,33,453.27/-, the balance amount of Rs.,74,28,71,546.73/- was deposited with the Official Liquidator.

23. Pursuant to the order passed by this Court claims were invited from creditors. About 1007 claims were received from various categories of creditors for a sum of Rs.92,87,62,801/-. About 849 claims were allowed. About 138 claims were rejected for non-submission of documentary evidence.

24. Out of the aforesaid claim for Rs.92,87,62,801/-, 849 claims were allowed and sum of Rs.46,68,09,554/- was disbursed on various dates pursuant to order passed in C.A.No.170 of 2013 on 25.06.2013. The details of payment made to various creditors are as under:-

25. The Official Liquidator has adjudicated the claims of various

secured creditors and the workers and other Statutory Authorities and has paid a sum of Rs.41,17,72,067/-.

26. In these reports, the office of the Official Liquidator has indicated the manner in which the amounts of Rs.41,17,72,067/- has been paid to various claimants viz., amounting workers and statutory authorities such as employees provident fund and other secured creditors.

27. Paragraph 5 of the Report of the Official Liquidator dated 8th September 2023 reads as under:-

> "*That by an order dated 31.07.2008 in C.A.No.2107 of 2008 this Hon'ble Court directed the Official Liquidator to invite the claims from the creditors including workmen creditors by causing advertisement in "The New Indian Express and "Dina Malar on 03.08.2008. Last date of submission of claims fixed on 24.08.2008. Based on the same the Official Liquidator has received 1007 no of claims from various creditors till date.*
>
> *The details of claims received, adjudicated and paid are given below for understanding".*

Particulars	*Total No.of Claims*	*Nature of Claim*	*No. of claims*	*Claimed Amount*	*Admitted Amount (in Rs.)*
Rejected	125	Worker	108	Rs.2,33,65,835/-	-
		Ordinary	16	Rs.20,74,761/-	-
		Govt.(I.T)	1	Rs.53,09,01,147/-	-
		Total	**125**	**Rs.55,63,41,743/-**	
Duplicate	13	Worker	13	Rs.35,03,192/-	-

Yet to be adjudicated	20	Worker	17	Rs.24,56,190/-	-
		Ordinary (3) PCR & Sons	1	Rs.5,13,76,828/-	-
		Rander Enterprises	1	Rs.2,79,50,170/-	-
		Sri Ramesh Gopal	1	Rs.50,86,123/-	-
		Total	**20**	**Rs.8,68,69,311/-**	
Paid	849	EPF	1	Rs.8,43,48,558/-	Rs.2,93,11,071/-
		Secured (2) Indian Bank	1	Rs.13,18,88,000/-	Rs.1,47,43,358/-
		Dena Bank	1	Rs.24,77,93,104/-	Rs.15,79,72,870/-
		Worker	827	Rs.21,85,57,519/-	Rs.15,68,40,675/-
		Govt.	3	Rs.4,78,45,805/-	
		Ordinary	16	Rs.2,94,26,479/-	Rs.3,60,88,319/-
					Rs.1,68,15,774/-
Grand Total	**1007**	**Total**	**849**	**Rs.75,98,59,555/-**	**Rs.41,17,72,067/-**

28. The report further records that about 336 workmen creditor had approached this Court for re-adjudication of their claims against the adjudication order passed by the Official Liquidator and same was considered and directed to be re-adjudicated. In compliance of the same the claims of the 336 workmen creditor was admitted and a sum of Rs.2,16,92,994/- has been admitted. The amount is yet to be paid.

29. The learned Deputy Official Liquidator submits that payments will be made subject to further orders of this Court. In paragraph 7 of the

Report of the Official Liquidator dated 8th September 2023 further states that the Official Liquidator has to be considered payment of interest at 4% on the admitted amount of the claims of 849 creditors of the Company and 336 workmen creditors. Paragraph 7 of the Report of the Official Liquidator dated 8th September 2023 reads as under:-

> "*7. That apart from this, the Official Liquidator has to consider the interest @ 4% on the admitted of the claims of 849 Creditors of the Company and 336 workmen creditors as stated in Para No.6 supra were also re-adjudicated, as per the tabular statement mentioned below:*

No.of claims	***Description of the Claimants***	***Amount Admitted(in Rs.)***	***Interest amount to be paid @ 4% on the admitted amount for 11 years (From 24.06.2008 to 30.06.2023)***
749	*Workmen/Preferential/Ordinary*	*27,77,83,248*	*16,66,69,949*
98	*Workmen/Preferential/Ordinary*	*1,72,07,091*	*1,03,24,255*
1	*Secured Creditor (Dena Bank)*	*1,47,43,358*	*88,46,015*
1	*Secured Creditor(Dena Bak)*	*15,79,72,870*	*9,47,83,722*
336	*Workmen (Re-adjudication)*	*2,16,92,994*	*1,30,15,796*
	Total	***48,93,99,561***	***29,36,39,737***

30. Over and above, a sum of **Rs.15,68,40,675/-,** claim for a sum of **Rs.2,16,92,992/-** was adjudicated for 336 workers. Thus, in all, sum of Rs.17,85,33,669/- has been paid to 11,633 workmen(827+336). About 20 more claims are said to be still under process of adjudication.

31. The report of the Official Liquidator also indicates that out of the 20 claims, 17 claims pertain to the workers are likely to be considered as fit and for admission and remaining 3 claims of the workers are likely to be rejected for want of supporting documents. The details of these 20 claims are as under:-

S.No.	*Nature of claim*	*No. of claims*	*Claimed amount*
1	Workers	17	24,56,190
2	Ordinary 1.PCR & SONS	1	5,13,76,828
	2.RANDER ENTERPRICES	1	2,79,50,170
	3.SRI RAMESH GOPAL	1	50,86,123
	Total	20	8,68,69,311

32. Since a surplus of Rs.45,62,63,738/- is available for being distributed to the contributories. The Official Liquidator has so far filed three reports dated 12th April 2023, 8th September 2023 and 2nd November 2023.

33. This Court by order dated 03.11.2023 in C.A.No.547 of 2023 had earlier directed to the Office of the Official Liquidator to accept the revised claim of Rs.7,98,09,469/- dated 05.03.2018 and adjudicate the same and disburse the amount if any amount are available for disbursal strictly in accordance with law.

34. The report of the Official Liquidator states that these claims are under process of adjudication. The report also stated that after adjudicating of the above 20 claims and EPF claims, the Official Liquidator to disburse dividend based on the adjudication and thereafter subsequent interest to the creditors of 4%.

35. Apart from the above, on account of sale of the assets of the company under liquidation there is a demand on account of capital against from the sale of assets of the company under liquidation and issue

was also pending before the Assessing Officer. Pursuant to the order of the Income Tax Appellate Tribunal dated 03.07.2023 in ITA.No.1630/CHNY/2018 and the said appeal was partly allowed.

36. It is the case of Mr.N.Palaniappan, the applicant in C.A.Nos.459 to 464 and C.A.No.545 of 2023, that at the time of winding up of the company, he was not concerned with the management of the company under liquidation and that his brothers namely Mr.Narayan Thiyagrajan was taking care of the day to day affairs of the company and that the Statement of Affairs of the company under liquidation was later filed by Mr.Narayan Thiyagarajan.

37. In these applications, Mr.N.Palaniappan, the Applicant in C.A.Nos.459 to 464 and C.A.No.545 of 2023 has now given an undertaking that he will not alienate the property situated at Vilangudi Village, Madurai District admeasuring to an extent of 20.07 acres of land and will provide sufficient security.

38. Mr.N.Palaniappan, the Applicant in C.A.Nos.459 to 464 and C.A.No.545 of 2023 has also filed another additional affidavit dated

15.02.2024.

39. Earlier, an attempt was made by the same Mr.N.Palaniappan (the applicant in C.A.Nos.459 to 464 of 2023 and C.A.No.545 of 2023) to revive the company. He filed C.A.Nos.496 to 509 of 2015 under Sections 391 & 392 read with 466 of the Companies Act, 1956 to revive the company under liquidation.

40. C.A.No.459 to 464 & 545 of 2023 is a second attempt to revive the company after previous attempt in C.A.Nos.496 to 509 of 2015 failed.

41. There, Notice was ordered and a meeting of the creditors and shareholders was held on 15.02.2018 in the presence of the Advocate Commissioner appointed by this Court.

42. The scheme proposed by Mr. N.Palaniappan (the applicant in C.A.No.459 to 464 &C.A.No.545 of 2023) was not approved by the creditors and shareholders. Thus, the attempt to revive the company under liquidation failed.

43. Mr.N.Palaniappan, The applicant in C.A.Nos.459 to 464 & 545 of 2023 has sent a letter dated 04.10.2023 to some of the applicants in C.A.Nos.638 to 646 of 2017 and made an attempt to persuade them to co-operate with him.

44. Mr.N.Palaniappan, the applicant in C.A.Nos.459 to 464 & 545 of 2023 in the above letter dated 04.10.2023 called upon these applicants in C.A.Nos.638 to 646 of 2017 to co-operate with him to revive the company under liquidation so as to collect the surplus funds from the Official Liquidator and to disburse the share amount outside winding up proceeding and to fix the quantum or ratio as is possible subject to availability of funds in respect of company under liquidation.

45 Copy of the above letter was also marked to the Office of the Official Liquidator. The Original of the aforesaid letter received by the applicant in C.A.Nos.645 of 2017 has been filed today at the time of hearing in court.

46. Extract of the aforesaid letter dated 04.10.2023 addressed to

the applicant in C.A.Nos.638 to 646 which was filed before the Court today i.e.15.03.2024 is reproduced below :-

> "*With the above subject cited, I had filed company applications Nos.459 to 464 of 2023 in C.P.No.78 of 2008 for seeking revival of the company* ***to distribute among the shareholders the surplus funds available with Official Liquidator****. I request that all shareholders to co-operate with me to revive the company to collect surplus funds from the Official Liquidator High Court Madras* ***and disburse share amount according to outside winding up to fix the quantum or ratio as is possible subject to availability of funds in respect of company in liquidation.***
>
> *Kindly note the above subject and intimate on or before 23.10.2023 your objection if any to proceed further, or you may proceed with your applications Nos.638 to 646 of 2017".*

47. It is noticed that Mr.N. Palaniappan, the applicant in C.A.Nos.459 to 464 of 2023 and C.A No.545 of 2023) entered the picture only in the year 2015, by floating a scheme of Arrangement under Section 391 of the Companies Act, 1956 in the aforesaid C.A. as mentioned above.

48. It is stated that In case, the company in liquidation is revived, it would allow the applicant Mr.N.Palaniappan, the applicant in

C.A.Nos.459 to 464 of 2023 and C.A No.545 of 2023) to commence the operations of the company.

49. It is further stated that disputes raised by the ex-employees in W.P.No.12896 of 2021would be also resolved once the company starts its operations, as there is scope for generating employment opportunities for the workers.

50. In paragraph No.5 of the affidavit dated 15.02.2024, the Applicant in C.A.Nos.459 to 464 and 545 of 2023 has been stated as follows:-

> "*It is important to note that nearly all Creditors have been settled and* ***there exists valuable property in possession of the Company which can be monetized to revive its business****. A brief outline of the plan is set out below:-*
>
> > *A. The Company had several assets including labour colony land and building measuring at 20.07 acres Visalakshi Nagar, Villangudi, Madurai. These assets includingLabour colony land and Madurai. These assets will be used to continue renew the operations of the Company. This land will be used to develop an administrative office, warehouse, workers training campus, marketing office, etc.*

B. The revival of the Company and the labour colony will be used to further the interests of the labourers by giving them continued employment opportunities. This also help put to rest the pending disputes with the employees. It is important to note that I am presently the Secretary to two schools in this labour colony, which will continue to operate. I also intend to open an arts and science college with the continued development of the Company.

C. 1t is imperative to note that the Company had a wide customer base Pre-liquidation. The quality of our products was famed all over the world. l intend to use the goodwill the Company's name carries; and also, get in touch and establish business relations with its erstwhile customer base.

D. My son and I jointly are the owners of Navanna Textiles, a partnership firm having factory at Kothankulam Village, Rajapalayam, Srivilliputhur Road, Rajapalayam, Virudhunagar, Tamil Nadu, 626117. Navanna Textiles provide premium quality polyester yarn products to its customer using the latest in textile technology. To achieve this the company continuously invests in upgraded technology. Navanna Textiles employees around 115 workers. It also has no liability to any financial institutions and is successfully running its operations.

E. I plan to re-brand Navanna Textiles and absorb its operations into the Company (if permanent stay is granted). I intend to leverage the cutting-edge operations of Navanna Textiles and the *old and successful brand name and customer base of the Company, which as submitted earlier, possess goodwill from several years of successful operations.*

F. The revival of the Company is not only essential for its wide brand name. The revival is essential to continue my father's legacy. I state that my father built the Company with great difficulty and established a wide reputation for the quality its products. I state that the legacy and goodwill as of toc nearly settled. There is no down- permanent stay is disputes with the Company will likely today all creditors are get settled: employees will have ***ity its products****. I state that the legacy will necessarily help its revival. And nt player in the textile space".*

51. It was however pointed out by the learned counsel for Mr.N.Palaniappan, the Applicant in C.A.Nos.459 to 464 and C.A.No.545 of 2023 that the intention was not to alienate the remaining assets namely 20.07 acres of land and the intention was only to revive the business of the company.

52. A third additional affidavit was also filed on 12.03.2024 by Mr.N.Palaniappan, the Applicant in C.A.Nos.459 to 464 and C.A.No.545 of 2023 in the open Court. Relevant portion of the said additional affidavit of Mr.N.Palaniappan reads as follows:-

." 2. I am filing the present affidavit to unconditionally undertake to not alienate the property located astVilangudi Village, Madurai District, in S.Nos.221.1,222.4, 222.7, 222.8, 223.1, 223.2, 226.1, 226.2, 226.3, 226.4, 226.5, 226.6, 226.7, 226.8, 226.9, 226.10, 226.12, 226.12, 226.13, 226.14, 226.15, 226.16, 227.2, 227.3, 228.4, 228.5, 229.3, 229.5, 229.5 Madurai District, admeasuring to an extent of 20.07 acres (property) if a permanent stay is granted (and I am permitted to run the Company) pending adjudication of the Income tax claim. I shall therefore ensure that sufficient security is available.

I also state that by the word 'Monatize' in 5 of the Second additional affidavit dated 16.02.2024, I only meant to state that I intend to generate money out of the business in the manner set out in 5A of the affidavit. I never intended to sell the property and I do not intend to do so even now as set out in my unconditional undertaking above."

53. The learned counsel for the applicant in C.A.No.638 to 646 of 2017 has placed reliance on the decision of the following cases:-

"i) **Sree Shanmugar Mills Ltd., by Managing Agents Sri Alagai Ltd., vs. S.K.Dharmaraja Nadar and another**, 1968 SCC Online Mad 68;

ii)**Pradip Bandyopadhyay vs. Official Liquidator**, 2010 SCC Online Cal 348;

iii)**Mahabir Prasad Agarwalla vs. Ashkaran Chattar Singh Lnind**, 1980 Cal 136;

iv)**Shankar lalbansal and Another, *In re*,** *2003 SCC Online Raj 205;*

*v)***A.M.O.Gurunarayana Rao vs. The Official Liquidator, Madras High Court as Liquidator and 4 Others**, Comp.A.Nos.198 to 200 of 2019".

54. The learned counsel for the applicant in C.A.Nos.459 to 464 and C.A No. 545 of 2023 further submitted that the applicant has entered the picture in the proceedings in relation to the Company liquidation only in the year 2015, by preparing a Scheme of Arrangement under Section 391 of the Companies Act, 1956.

55. He further submits that in case the company in liquidation is revived, the same would allow the applicant to commence the operations of the Company.

56. It is submitted that claim of other ex-Shareholders contributories of the company under liquidations can be settled in accordance with law. The learned counsel for the applicant in C.A.Nos.459 to 464 and C.A No.545 of 2023 further submits that the applicant Mr.N.Palaniappan, tenders " No objection" for settlement of such claims of the Shareholders so long as the disbursement is as per applicable law. Other proceedings initiated against the company in

liquidation such Income Tax proceedings and Workmen issues, can be handled by the Company pursuant to its revival. The earlier Scheme floated by the applicant, had failed only because Workmen and the Creditors did not have trust on realization of the claims

57. It is submitted that as of today, almost all the Workmen and the Creditors have been settled. The applicant prays that the unadjudicated claims be taken up for consideration and settled at the earliest. Surplus funds are available with the Official Liquidator. Further, there are assets belonging to the company in liquidation, which can be utilized by the Company after its revival by this court.

58. For instance, the factory land measuring 20.07 acres belonging to the company (In liquidation) situated at Vilangudi Village, Madurai – Dindugal Highway Road will be used by the Applicant to revive the operation of the Company (In Liquidation).

59. It is submitted that in the light of the various pending proceedings including Income Tax issue, workmen quarters, it would be a waste of the Official Liquidator time and resources to handle all the

litigations when the company can be revived without any of the stakeholders being affected.

60. It is submitted that as such, the issue in respect of the workers quarters will be resolved. It is further submitted that there is substantial goodwill associated with the Company for over 50+ years, which was run as a family business by the applicant's father. Such goodwill will also be preserved. Since all the claims (barring 20 claims as stated above) in respect of the company in liquidation has been settled, there exist no stakeholder, who would be aggrieved by the revival of the company.

61. It is submitted that dues of other ex-shareholders being the contributories to the Company in liquidations will be settled in accordance with law. The applicant tenders its “No objection for settlement of such claims of the shareholders so long as the disbursement is as per applicable law”.

62. The learned Counsel for applicant in C.A.Nos.459 to 464 of 2023 and C.A.No.545 of 2023 would further submit that other proceedings initiated against the company in liquidation such Income Tax

proceedings and Workmen issues, can be handled by the Company pursuant to its revival.

63. It is however noticed that the Scheme prepared by the Applicant C.A.Nos.459 to 464 & 545 of 2023, had failed only because workmen and the creditors did not have trust on realization of the claims. It is submitted that now almost all the workmen and the creditors have been settled.

64. Mr.R.Venkatavaradan, learned counsel representing the interest of the other contributories (applicant in C.A.Nos.639 to 646 of 2017) would submit that the applications filed to stay the winding up proceedings to revive the company is nothing to a ploy to profit from the of the assets of Company by the applicant, N.Palaniappan (applicant in C.A.Nos.459 to 464 and 545 of 2023) and to deny the contributories their right to receive surplus from the available surplus.

65. Opposing the prayer in C.A.Nos.459 to 464 & 545 of 2023, the applicant in C.A.Nos.638 to 646 of 2017 submits that there is no question of reviving the company which has already been ordered to be wound up.

66. It is submitted that the company which has been already ordered to be wound up can be revived only if orders passed under Section 391 of the Companies Act, 1956.

67. It is submitted that attempt of Mr.N.Palaniappan, is merely to sell the property which comes out clearly in letter dated 04.10.2023, content of which has been extracted above.

68. The learned counsel for the applicant in C.A.Nos.638 to 646 of 2017 has placed reliance on the decision of the following cases:-

> "i) **Sree Shanmugar Mills Ltd., by Managing Agents Sri Alagai Ltd., vs. S.K.Dharmaraja Nadar and another**, 1968 SCC Online Mad 68 ;
>
> ii)**Pradip Bandyopadhyay vs. Official Liquidator**, 2010 SCC Online Cal 348;
>
> iii)**Mahabir Prasad Agarwalla vs. Ashkaran Chattar Singh Lnind**, 1980 Cal 136 ;
>
> iv)**Shankar lalbansal and Another, *In re*,** *2003 SCC Online Raj 205;*
>
> *v)***A.M.O.Gurunarayana Rao vs. The Official Liquidator, Madras High Court as Liquidator and 4 Others**, Comp.A.Nos.198 to 200 of 2019".

69. I shall now take up the C.A.No.415 of 2019 and C.A.No.575 of 2022 and thereafter disposed of the rest of the applications.

70. I have considered the arguments advanced by the learned counsel for the applicant in C.A.Nos.638, 646 of 2023 and the learned counsel for the applicant in C.A.Nos.459 to 464 and C.A.No.545 of 2023.

71. The relief sought for in C.A.No.33 of 2024 and C.No.545 of 2023 are in conflict with each other. C.A.No.459 of 2023 has been filed to direct the Respondent/Official Liquidator to adjudicate and disburse the pending claims of the unsecured/ordinary creditors against the company in C.P.No.78 of 2008.

72. Since excess amounts are available in the hands of the Office of the Official Liquidator from the sale of assets made so far, the Office of the Official Liquidator is therefore directed to adjudicate the pending claims of the secured ordinary creditors of the company under liquidation. Consequently, C.A.No.459 of 2023 is to be allowed.

73. Therefore, there cannot be any impediment in directing the office of the Official Liquidator to settle the dues to the creditors.

74. Hence, I see no impediment allowing the C.A.No.459 of 2023 as creditors are entitled to be compensated. Consequently, C.A.No.459 of 2023 is allowed. The office of the Official Liquidator can be directed to assess the claims and sanction the same if they are otherwise in order.

75. Therefore, the Official Liquidator is directed to consider the prayer for interest to the employees filed by the Madurai Mavata Panchalai Adai Matrum Podhu Thozhilalar Sangam of the company under liquidation namely M/s.Sree Vishalakshi Mills Limited strictly in accordance with the provisions of the Companies (Court) Rules.

76. As a sequitur, C.A.No.33 of 2024 also can be allowed. Therefore, C.A.No.545 of 2023 is liable to be dismissed. Accordingly, C.A.No.33 of 2024 and C.A.No.459 of 2023 are allowed and C.A.No.545 of 2023 is dismissed.

77. Mr.N.Palaniappan (the applicant in C.A.Nos.459 to 464 of 2023 and C.A.No.545 of 2023), who is the former Director of the Company under liquidation can revive the company only under a scheme to be sanctioned under Section 391 and Section 392 of the Companies Act,1956.

78. Although, Section 466 of the Companies Act, 1956 confers wide powers on the Court to stay all the proceedings pursuant to winding up the company, there has to be a proper reasons. What is being admitted by Mr.N.Palaniappan in C.A.Nos.460 to 464 of 2023 is to legitimate the usurp of the powers vested with the Office of the Official Liquidator to distribute the surplus of the proceeds to the contributories and to indirectly take over the land from the workers which was not disbursed in the Statement of Affairs.

79. This is evident from the letters addressed by Mr.Palaniappan to the Contributors (C.A.Nos.638 to 646 of 2023). The affidavit filed before this Court also bring out the same. Therefore, the third additional affidavit has been filed to give an impression that the applicant Mr.N.Palaniappan has serious intentions to revive the fortune of the

company when indeed the applicant Mr.Palaniappan was in slumber all along since the company was ordered to be wound up on 24.06.2008.

80. Since the earlier attempt was unsuccessful, the present attempt to revive the company under liquidation cannot be countenanced, particularly, in the light of dismissal of C.A.Nos.496 to 501 of 2017 on 18.04.2018.

81. Therefore, rest of the applications filed by Mr.N.Palaniappan in C.A.Nos.460 to 464 of 2023, seeking to revive the company under liquidation cannot be therefore allowed.

82. Further, as far as distribution of the surplus amount in the hands of the Office of the Official Liquidator and liquidation of the assets of the Company under liquidation is concerned, it is the statutory duty of the office of the Official Liquidator under the provisions of the Companies Act, 1956 and the Rules made there under. This power cannot be given to 1956 and the Rules made there under. This power cannot be given to Mr.N.Palaniappan, the applicant in C.A.Nos.459 to 464 and C.A.No.545 of 2023.

83. Therefore, question of distributing the surplus and liquidating the assets of the company that is available as on date cannot be allowed to be delegated to Mr.N.Palaniappan, the applicant in C.A.Nos.459 to 464 and C.A.No.545 of 2023 as it is the statutory function of the Official Liquidator under the provisions of the Companies Act, 1956 and the Rules made there under.

84. If Mr.N.Palaniappan, the applicant C.A.Nos.459 to 464 and C.A.No.545 of 2023, the former Director of the Company under liquidation wants to revive the company, the only method that is available to him to revive the company is under Sections 391 and Section 392 of the Companies Act, 1956 as ordered on 18.04.2018 in C.A.Nos.496 to 501 of 2017. Therefore, orders cannot be passed under Section 466 of the Companies Act, 1956 prevaricating the order passed on 18.04.2018.

85. That apart, the Company under liquidation cannot be revived if the shareholders/contributories present here oppose the proposal of the applicant Mr.N.Palaniappan (the applicant C.A.Nos.459 to 464 and C.A.No.545 of 2023) who has lost his creditability for not taking any

steps earlier to stave off winding up proceedings when C.P.No.78 of 2008 was filed in 2008 or thereafter.

86. The attempts of Mr.N.Palaniappan appears to corner 20.07 acres of land, which is subject matter of W.P.No.13896 of 2021 after attempt was made by rest of the contributories to retrieve the land from the ex-employees and defend the company in the Income Tax Proceeding on account of tax on capital gains from the sale of the assets of the Company under liquidation. Therefore, I do not find any merits in the C.A.Nos.460 to 464 of 2023 filed by Mr.Palaniappan.

87. Today, by separate order in W.P.No.13896/2021 filed by the Madurai Mavata Panchalai Panchalai Adai Matrum Podhu Thozhilalar Sangam, the applicant in C.A.No.415 of 2019 was dismissed.

88. The petitioner in W.P.No.13896/2021 viz., Madurai Mavata Panchalai Panchalai Adai Matrum Podhu Thozhilalar Sangam had prayed for a writ of Certiorarified Mandamus to call for the records from the first respondent therein relating to proceedings dated 31.01.2017 bearing ref.Letter No.26549/SC2(1)/2016-3 and quash the same as

illegal, arbitrary, without jurisdiction and to consequently direct the respondents 1 to 5 to register the quarters in the Visalakshi Mill Labour Colony to the occupants of the respective quarters who are members of the petitioner Sangam and details of whom are given in the typed set of papers if necessary by resuming the property in terms of the condition mentioned in Agreement dated 26.12.1956 and 19.03.1957 published in the Government Gazette on 10.04.1957.

89. In the result,

i) C.A.Nos.459 of 2023 & 33 of 2024 are allowed. The Office of the Official Liquidator is directed to adjudicate the pending claims. The Official Liquidator is also directed to take possession of the housing colony in the possession of the former employees of the company under liquidation including school and dispose the same by bringing them to Court auction and disburse the excess to settle the claim of the workers contributories.

ii) The Office of the Official Liquidator is directed to disburse interest strictly in accordance with the provisions of the Rules after getting suitable direction of the Court. Consequently, C.A.Nos.638 & 646 of 2017 are allowed.

iii)C.A.Nos.460 to 464 of 2017, C.A.Nos.415 of 2019 & C.A.No.575 of 2022 and C.A.No.545 of 2023 are dismissed.

10.04.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
kkd

C.SARAVANAN, J.

kkd

Pre-deliver Common Order in
Comp.A.Nos.638 of 2017 & etc., batch

10.04.2024