Comp.A.No.206 of 2024
&
Comp.A.No.610 of 2005
in
C.P.No.30 of 1997

Krishnan Ramasamy, J.,

i) Prayer in Comp.A.No.206 of 2024:

This application is filed seeking the following prayers:

"i) To take this report on record

ii) To permit the Official Liquidator to withdraw the misfeasance application filed by the Official Liquidator in C.A.No. 610/2005 under section 542 & 543 of the Companies Act, 1956 for the reasons stated in paragraph 14 while disposing the present application.

iii) To permit the Official Liquidator to file the Final Accounts of the subject company in Liquidation along with auditor's Certificate issued by M/s. Sarathy & Vasu, Chartered Accountant appointed by this Court for maintenance of Accounts of the office of the Official Liquidator, and to take on record.

iv) To form an opinion that the proceedings in the matter of M/s.Shine Plastics Private Ltd., (in Liquidation) has come to a logical end and it is appropriate to dissolve the company under Section 481 of the Companies Act, 1956.

v) Te permit the Official Liquidator to transfer the available amount lying in the credit of the company in liquidation to undistributed assets account as envisaged under section 555 of the Companies Act, 1956, after meeting all the expenses in connection with dissolution, including the cost of the present application.

vi) To permit the Official Liquidator to dispose off books and papers of M/s.Shine Plastics Private Limited (in liquidation) immediately after the expiry of 5 years from the date of dissolution of the Company, as per section 550 of the Companies Act, 1956.

vii) The Official Liquidator may be permitted to transfer any refund from Income Tax Department if received on a future date to the account maintained with RBI under section 555 towards undistributed assets."

ii) Prayer in Comp.A.No.610 of 2005

This application is filed seeking the following prayers:

"i) To permit the Official Liquidator to implead the legal representatives of the 2nd respondent as proper parties to this application and make them liable so far as the assets inherited from the deceased 2nd respondent.

ii) To examine the conduct of the respondents known as the Ex-directors of the company in liquidation in terms of Section 542 and 543(1) of the Companies Act, 1956 and order that they are jointly and severally liable to contribute to the assets for the loss caused by them to the company in liquidation by way of the compensation for the loss caused by them to the company in liquidation to the extent of

Rs.1,19,65,867.04 (One Crore Ninteen Lakhs Sixty Five Thousand Eight Hundred and Sixty Seven Rupees and Zero Four) and the future claims from the creditors with interest at the rate of 12% per annum thereon from the date of winding up i.e., from 11.02.2000 to till date of recovery of the entire amount.

iii) To declare that the respondents herein are personally liable/responsible without any limitation of liability for all the debts and other liabilities of the company in liquidation.

iv) To declare the liabilities of the respondents 1, 3 and 4 and the proposed legal representatives of 2nd respondent for the said sum of Rs.1,19,65,867.04 (Rupees One Crore Ninteen Lakhs Sixty Five Thousand Eight Hundred and Sixty Seven Rupees and Zero Four) and the future claims of the creditors together with interest thereon shall constitute the first charge on the property and effects in their possession.

v) To direct the respondents to pay the applicant the cost and incidental expenses of these proceedings.

vi) To permit the Official Liquidator to engage the services of a Senior Counsel of the Madras Bar to conduct this case on behalf of the Official Liquidator.

vii) To allow the Official Liquidator to place/accept further facts at the time of hearing this case.

viii) To permit the Official Liquidator to meet the cost of this application and the cost of engaging a Senior Counsel and other costs from the funds of the company and if it is insufficient, the said costs may be borne from the Common Establishment Charges Account."

2. Ms.Ambili, Deputy Official Liquidator would submit that, this Court by order dated 11.02.2000 made in C.P.No.30 of 1997, wound up the subject company viz., M/s.Shine plastics (P) Ltd and appointed the Official Liquidator attached to this Court as the liquidator of the said company with directions to take charge of the assets and effects of the company.

3. The Deputy Official Liquidator would further submit that, pursuant to the winding up order passed by this Court, the Official Liquidator deputed the officials to take possession of the assets and effects of the company situated at the registered office on 17.04.2000 under intimation to the Petitioning Creditor, Ex-Directors and Secured Creditors. The deputed officials have reported that the assets of the company lying at the registered office, were handed over to Tamilnadu Industrial and Investment Corporation Limited (hereinafter called as TIIC) on 04.01.2000 by the Ex-Managing Director of the Company in liquidation. However, on the subsequent day, the authorities of TIIC have handed over the said assets of the company in liquidation to the officials of the Official Liquidator in the presence of the representatives of the petitioning creditor and secured creditors.

4. She would further submit that, pursuant to the taking possession of the available assets of the company in Liquidation from the TIIC, the Official Liquidator valued the movables and immovable by a reputed valuer at the instance of the secured creditor and brought the same for sale.

5. Thereafter, the valued movables were sold for Rs.6,10,000/- and the

sale was confirmed by this Court vide order dated 03.01.2003 made in C.A.No. 537 of 2002 in favour of M/s Chennai Trading Company Limited, Chennai. The immovable property i.e., Land and Building was valued and sold for Rs.11,00,000/- and the sale was confirmed by this Court vide order dated 11.04.2003 made in C.A.No.537 of 2002 in favour of the company namely, M/s.Sakthi Murugan Enterprises Private Limited, Annur.

6. As permitted by this Court vide order dated 02.04.2009 in C.A.No.419 of 2009, the Official Liquidator invited claims from creditors. In response to the advertisement made by the Official Liquidator, the following claims had been received:

SI.Nos.	*Name of the claimants*	*Category*	*Amount Claimed (in Rs.)*
1.	Tamilnadu Industrial and Investment Corporation Limited (TICC)	Secured Creditor	18,23,780.02 (Fully admitted)
2.	The Tamilnadu Electricity Board, Coimbatore	Government Claim	1,22,354.00 (partly admitted)
3.	Commercial Tax Department, Coimbatore	Ordinary Claim	1,71,11,682.00 (partly admitted)
4.	Tamilnadu Water Supply and Drainage Board, Chennai	Ordinary Claim	1,64,16,081.24 (Fully admitted)

7. In this connection, it is submitted that the Company had two secured creditors viz., Tamilnadu Industrial and Investment Corporation Limited (TICC) and Lord Krishna Bank (now merged with HDFC). The TIIC is having charge on land (1 acre only), plant and machineries building/structures and floating charge on all the movable assets including book debts. As per the Statement of Affairs, Lord Krishna Bank is having 2nd charge on all the assets of the Company and all collateral security of the land belonging to Ex-Directors including the land to the extent of 2.27 acres where the company constructed the buildings financed by TIIC and charged to TIIC. The said land was sold by the Official Liquidator along with the other assets. However, till date, Lord Krishna Bank has not filed claim with the Official Liquidator.

8. This Court, vide order dated 07.02.2011 made in C.A.No.94/2011, directed the Official Liquidator to pay a sum of Rs. 14,40,000/- to Tamil Nadu Industrial Investment Corporation, Chennai and also directed to keep a sum of Rs.5,43,853/- towards dues, payable to M/s.Lord Krishna Bank Limited, which is a Secured Creditor. Pursuant to the said orders, the Official Liquidator has apportioned a sum of Rs.5,43,853/- for making payment to M/s.Lord Krishna Bank (now merged with HDFC Bank Ltd) from 2011. Even though, the Official

Liquidator has issued several communications to the said bank, but there was no response from the said bank.

9. The Official Liquidator submits that an application has been filed before this Court in C.A.No.400 of 2022 for disbursement of dividend and to dissolve the subject Company under section 481 of the Companies Act, 1956, after making such disbursement. While considering the said application, this Court, vide order dated 14.10.2022 has permitted the Official Liquidator to declare and disburse the proposed dividend amount of Rs.7,43,321/- to Tamilnadu Industrial & Investment Corporation, The Tamilnadu Electricity Board, Coimbatore and Commercial Tax Department, Coimbatore. This Court also directed to issue a fresh notice to the HDFC Bank Ltd., in respect of the amounts set apart as regards Lord Krishna Bank and observed that in view of the amount set apart to erstwhile Lord Krishna Bank dissolution cannot be ordered at this juncture.

10. The Official Liquidator would further submit that, this Court vide its order dated 09.12.2022 made in C.A.No. 400 of 2022 directed, to issue notice to M/s. HDFC Bank Limited in respect of the amount set apart for Lord Krishna Bank. The Official Liquidator may issue a fresh notice to M/s. HDFC Bank

Limited and determine their liability on or before 06.01.2023. Pursuant to the above said order, the Official Liquidator has filed a report before this Court and informed that Official Liquidator had already issued letter on 29.11.2012 to HDFC Bank to file Form No.66 and also to submit documentary evidence to substantiate their claim. While considering the said application, this Court vide order dated 19.01.2023, permitted the Official Liquidator to disburse dividend to TIIC, TNEB and CTO for an amount of Rs.7,43,321/-. Recording the submissions of the Official Liquidator, the said CA was closed vide order dated 23.06.2023.

11. In pursuance of the above order, disbursement of Rs.7,43,321/- has been made by Official Liquidator as per the details furnished below:

SI.No.	*Claimants*	*Amount admitted (in Rs.)*	*Amount paid (in Rs.)*	*Remarks*
1.	Tamilnadu Industrial and Investment Corporation Limited (TICC)	18,23,780	3,83,780	Balance amount on the admitted amount u/s.529 A of the Companies Act, 1956 (Already paid Rs.14,40,000/-)
2.	The Tamilnadu Electricity Board, Coimbatore	1,09,242	1,09,242	100 paise on the admitted amount u/s.530 of the Companies Act,

SI.No.	*Claimants*	*Amount admitted (in Rs.)*	*Amount paid (in Rs.)*	*Remarks*
				1956
3.	Commercial Tax Department, Coimbatore	83,43,308	2,50,299	@ 3% on the admitted amount as ordinary creditor
	Total		**7,43,321**	

12. The fund position of the company as on 29.02.2024 is as follows:

Cash	-	Nil
Bank	-	1,31,685.35
Investment	-	Nil

		1,31,685.35
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13. The Official Liquidator submitted that, she has filed misfeasance application before this Court in C.A.No.610 of 2005 against four Directors of the Company under Section 542 & 543 of the Companies Act, 1956, which is still pending. In this connection, the Official Liquidator would submit that, the 1st respondent is 73 years old, 2nd respondent is already deceased, 3rd and 4th respondents were exonerated by this Court from non-filing of Statement of Affairs as per orders dated 18.02.2003 on the ground that they had resigned from Directorship much prior to the winding up i.e., with effect from 01.06.1997, the date of winding up order being 11.02.2000. The said Company

Application is pending for 12 years, that in view of the above circumstances, there is no scope for effective, successful prosecution of the case as the same is based on Statement of Affairs filed by Ex-directors of the company. Hence, she prayed that the Official Liquidator may be permitted to withdraw the application, which was filed by the Official Liquidator in C.A.No.610/2005.

14. As there are no further assets to be realized by the Official Liquidator, it is opined that the proceedings of the company in Liquidation has come to a saturation point and there may not be any progress hereinafter. As there is no point in continuing the company under liquidation in the list of companies in liquidation maintained by the Official Liquidator, subject to approval of this Court, it is proposed that the company may be dissolved under section 481 of the Companies Act, 1956.

15. Therefore, she would submit that, the Official Liquidator may be permitted to file the final accounts along with auditor's certificate issued by M/s. Sarathy & Vasu, Chartered Accountant appointed by this Court for maintenance of Accounts of the office of the Official Liquidator. That upon approval of the Court in dissolving the company in liquidation, the Official Liquidator may be permitted to transfer the available funds lying to the credit of the company in

liquidation after deducting Audit fee and Government commission if any to the undistributed assets account maintained by Reserve Bank of India under section 555 of the Companies Act, 1956, after adjusting all the expenses in connection with the dissolution, including the cost of this application.

16. At this juncture, the Deputy Official Liquidator would submit that, the Official Liquidator may be permitted to dispose off the books and papers of the company namely, M/s. Shine Plastics Private Limited (in Liquidation) immediately after the expiry of 5 years from the date of dissolution of the company in liquidation as laid down under section 550 (1) & (2) of the Companies Act, 1956.

17. Considering the submissions made by the Deputy Official Liquidator and on perusal of the report filed by the Official Liquidator, this Court is satisfied with the reasons averred in the affidavit filed in support of this application, this Court is inclined to allow the Comp.A.No.206 of 2024, and accordingly the same is allowed.

18. In view of the above order passed by this Court, the

Comp.A.No.610 of 2005 is dismissed.

28.06.2024

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Krishnan Ramasamy, J.,

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