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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 24th July, 2017

Pronounced on: 22th August, 2017

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CO.PET. 295/2005 & CA Nos.1214/2017, 317/2016,
OLRNo.112/2015

SHRI SACHIN DUGGAL & ANR

..... Petitioners

Through : Mr.Gaurav Mahajan, Adv.

versus

M/S SMX TECHNOLOGIES INDIA LTD.

..... Respondent

Through : Mr.Mayank Goel, Adv. for OL

CORAM:

HON'BLE MR.JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. The petitioners are the shareholders and directors of the respondent company and have filed this winding up petition. Mr.Amit Mittal is authorized by Special Power of Attorney to institute the petition on behalf of the petitioners.

2. The respondent company, incorporated under the Companies Act, 1956, is a joint venture of M/s SMX Technologies Ltd. UK and M/s Interactive Solutions Pvt. Ltd. having its registered office at 101, South Delhi House, 12, Jamadpur Community Center, New Delhi with an authorized share capital of Rs.5 lakh divided into 50,000 equity shares of Rs.10/- each. The aims and objects of the respondent company are given in the Memorandum and Articles of Association. The certificate of

incorporation, memorandum and article of association are annexed to the petition. The share capital is fully subscribed by Ms.Indira Sehgal, Ms.Harinder Kaur and Mr.Kartik Sehgal. Pursuant to the incorporation these three person along with one Mr.Vijay Kumar Chandra were appointed as directors.

3. The petitioners are the founder director of one M/s SMX Technologies Ltd. UK engaged in business of developing software and providing Information Technology (IT) solutions. Its registered office was at Suite 38-40 London Fruit Exchange, Brushfield Street, London, E1 6EU, UK. Since the petitioner's company was desirous of establishing a multinational IT solution company with a worldwide presence, they decided to incorporate a subsidiary company in India. The idea was to combine European innovation, management and access to western markets with Indian IT expertise in a cost effective manner. Thus, a Memorandum of Understanding between M/s SMX Technologies Limited, UK and M/s Interactive Solutions Pvt. Ltd was executed on 31.03.2002 at Delhi. SMX India was to be created by changing the name of M/s Interactive Solutions Pvt. Ltd and reissuing shares as per agreed shareholding structure after obtaining requisite approval from the Registrar of Companies, RBI and / or any other concerned authority.

4. In pursuance of joint venture, M/s Interactive Solution Pvt. Ltd. passed requisite resolutions for increasing authorized share capital and changing its name to M/s SMX Technologies India Limited.

5. Resolution dated 09.02.2002 was passed increasing share capital of the company from Rs. 2,00,000/- to Rs. 5,00,000/- into 50,000 shares of Rs. 10/- each.

6. A resolution was also passed in terms of Section 21 of the Companies Act, 1956, dated 18.04.2002 changing the name of the company from M/s Interactive Solutions Private Limited to SMX Technologies (India) Private Limited. Thereafter a fresh certificate of incorporation was issued on 02.05.2002 under Section 23 (1) of the Companies Act, 1986. The Memorandum and Articles of Association was filed with the Registrar of Companies subsequent to change in name. Subsequent to execution of Memorandum of Understanding, the share holding of the Respondent Company was also restructured and Petitioners were allotted 1500 shares each on 27.05.2002.

7. Apart from participation by way of purchase of equity and contribution of funds so as to enable the Respondent Company to commence business operation, the agreement arrived at and entered into does not spell out a larger role for the Petitioners. As far as control and management of the day-to-day affairs of the Respondent Company is concerned, the same were to vest with Mr. Kartik Sehgal, Managing Director.

8. Mr. Kartik Sehgal was acting in a fiduciary capacity and it was incumbent upon him to not only protect the interest of the Respondent Company but also the interest of its joint venture partners i.e. the Petitioners and M/s SMX Technologies Ltd. Mr Seghal has however

violated the trust so reposed and has by a series of deliberate acts succeeding in defrauding the Petitioners.

9. Due to the loss of faith and confidence, no business has been done since financial year commencing 2002-2003 onwards. Business activity stands suspended. Irreconcilable dead lock in the administration and management further rule out any possibility of the Company continuing and doing business.

10. The acts and incidents of fraud are detailed below.

11. Prior to incorporation of Respondent Company, Mr Kartik Sehgal was Director of M/s Interactive Solutions Pvt. Ltd. having its registered office at B-47, Tarang Apartments, Partparganj, Delhi - 110 092 (herein after referred to as ISPL). The other directors of ISPL were Mr Vijay Chandra and Smt. Indira Sehgal, the father and mother of Mr. Kartik Sehgal. Further Ms. Harinder Kaur also a director, is now the wife of Mr. Kartik Sehgal.

12. At the time of execution of the MOU, Mr Kartik Sehgal represented to the Petitioner that ISPL which is a family held company is very keen on doing business with the Petitioners as they shared the same vision. Believing the representation to be true the Petitioners invested a considerable amount both in terms of time, money and business connections. It is only now that the Petitioners have discovered that Mr Sehgal had no genuine desire to do any business and had only caused for the incorporation of the Respondent Company in order to give effect to illegal designs and defraud the Petitioners.

13. Mr Sehgal in July 2002, introduced the Petitioners to Mr. Ajay Singh, Chief Organizing Officer of a company in the name of Electrocure Solutions Pvt. Ltd having its registered office at 197, Park Street, Calcutta.

14. SMX Technologies Limited, UK wanted to purchase Hard Disk Drives. On the insistence of Mr Sehgal, order for purchase of the same was placed on Mr. Ajay Singh and the Petitioners remitted an amount, 20% of the transaction amount, 100,000 USD equivalent to approximately Rs. 48,00,000/-, vide telegraphic transfer from London through its bankers. The full quantity of the purchase order, which was supposed to be delivered as per delivery schedule, was never done and the entire amount paid as advance was appropriated by Mr. Ajay Singh in collusion and connivance with Mr Kartik Sehgal.

15. The matter was extensively investigated by the Police and it has now been revealed that representations made to the Petitioners were false. No company by the name of M/s Electrocure Solutions Pvt. Ltd having its registered office at 197, Park Street, Calcutta is registered with the Registrar of Companies. In fact M/s Electrocure Solutions is a proprietorship concern and its mailing address is B-57, Tarang Apartments, 19 Partparganj, IP Extension, Delhi which is actually the residential address of Mr Kartik Sehgal. The account in which the payments were received though telegraphic transfer on 10.12.2002 and 13.01.03 respectively was opened on 30.11.2002, which is few days prior to the receipt of payment. From out of the amount remitted, Rs. 50,000/- was thereafter transferred from out of the account of M/s Electrocure

Solutions to the account of Mr Kartik Sehgal, account no.052151594 - 006 maintained at the Hongkong and Shanghai Bank.

16. On the basis of investigation conducted, charge-sheet under Section 406, 420, 468, 471 and 120B of the Indian Penal Code has been filed on 25.08.2003.

17. Apart from cheating, the Petitioner have also uncovered other irregularities in the conduct of affairs of the Respondent Company.

18. The Petitioners have now discovered much to their surprise that they have been shown as Additional Directors in the Respondent Company which is contrary to the agreement arrived at between parties and according to which they were to be Directors in view of their shareholding in the Respondent Company.

19. Mr Kartik Sehgal has also not filed any annual returns and / or balance sheet for the period ending 31.03.2002 or 31.03.2003 with the Registrar of the Companies.

20. In the circumstances, the Petitioners now have no faith and confidence in Mr Kartik Sehgal and other Directors related to him. More over the Company has not conducted any business since the last three / four years and there is no intention to resume or carry on business. Irreconcilable animosity and differences have arisen on account of criminal proceedings pending between parties which further rule out any chances of resumption of business in future.

21. On 19.11.2010 an Official Liquidator attached to this Court was appointed as the liquidator of the company in liquidation and vide order dated 03.02.2016 this Court permitted the Official Liquidator to publish notice of dissolution inviting no objections from secured as well as unsecured creditors. The dissolution notices were issued. No objections have been received against the dissolution of the company and liquidation till the filing of the OLR No.271/2016. The Official Liquidator was directed to file a report under Section 481 of the Companies Act for dissolution of company within two weeks. Hence the Official Liquidator had filed an application No.1206/2017 and stated that Mr. Sachin Duggal, ex-director of the company in liquidation visited the office on 03.02.2014 and his statement was recorded under Section 130 of Company (Court) Rules. The other directors namely Mr.Sachin Duggal, Mr.Kartik Sehgal and Mrs.Indira Sehgal also visited the office on 11.08.2014 when Mrs.Indira Sehgal and Mr.Kartik Sehgal submitted an affidavit dated 13.08.2014 mentioning that the company is having no liability, creditors or assets. Similar affidavit dated 02.09.2014 by Mr.Sachin Duggal, the ex-director was submitted. The default notice was issued to Mr.Jonathan Edward Chales Grange, ex-director on 01.10.2014 but it could not be served since his address was not found. The fund position of the company in liquidation is Rs.-4,664/- as on 17.04.2017 and hence due to its abysmal fund position, no claims were invited. No claims even otherwise were received by the Official Liquidator. The Division Bench in company application No.34/2014 vide its order dated 07.12.2015 allowed moving of application under Section 481 of the Companies Act, 1956 in the present case.

22. There are no assets in the hands of the Official Liquidator and as per the principles laid down by the Supreme Court in *Meghal Homes (P) Ltd. Vs. Shree Niwas Ginni K.K. Samiti & Ors.* (2007) 7 SCC 753 “*When the affairs of the Company had been completely wound up or the court finds that the Official Liquidator cannot proceed with the winding up of the Company for want of funds or for any other reason, the court can make an order dissolving the Company from the date of that order*”; keeping the present proceedings pending would only result in unnecessary keeping a defunct company on the register of companies as well as incurring establishment and legal expenses on the liquidation proceedings.

23. This Court vide its order dated 03.02.2016 permitted the Official Liquidator to publish notice of dissolution for inviting no objection(s) for dissolution of Company in ‘Jansatta’ (Hindi) and ‘Hindustan Times’ (English). In terms of order dated 03.02.2016 of this Court dissolution notice has been published in ‘Jansatta’ (Hindi) and ‘Hindustan Times’ (English) on 11.06.2016. Till date no objection has been received against the dissolution of above said company.

24. No fruitful purpose will be served to continue the Liquidation proceedings. Thus, this is a fit case for the dissolution of the company.

25. In the circumstances M/s SMX Technologies (India) Ltd. (in liquidation) is directed to be dissolved under Section 481 of the Companies Act, 1956 and the Official Liquidator is discharged from the liquidation proceedings of the company. The Official Liquidator is permitted to close the books of accounts of the company in liquidation

after appropriating the negative funds in the company fund from the company pool fund.

26. The petition is disposed of along with pending applications and report.

YOGESH KHANNA, J

AUGUST 22, 2017

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