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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CO.PET. 113/2016

IN THE MATTER OF
TOMKINS CONSULTING SERVICES INDIA PRIVATE LIMITED(IN VOL.LIQN.) ..... Petitioner

Through: None
Mr. Ashish Makhija and Ms. Isha Jha, Advocates the official liquidator.

versus

....

..... Respondent

Through

**CORAM:**
**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**<u>O R D E R</u>**

% **12.02.2016**

1. This is a petition filed under Section 497 (6) of the Companies Act, 1956 (in short the Act). The captioned petition has been moved by the Official Liquidator (OL) attached to this court. The company in issue i.e. Tomkins Consulting Services India Pvt. Ltd. (hereafter, referred to as the company).

2. The said company had moved for voluntary liquidation. The said company was incorporated on 29.05.2008. However, on 30.01.2013, the Board of Directors (BOD) of the company in their meeting of even date, approved the declaration of solvency by majority of directors made in the prescribed Form (i.e. Form 149) as required under Rule 313 of the Companies (Court) Rules, 1959 (in short 1959 Rules). As is the practice,

the Form was accompanied by audited accounts, statement of companies of assets and liabilities. The said statement was prepared to reflect the position as it obtained as on 30.11.2012. The auditors report also accompanied the said Form.

3. Accordingly on 30.01.2013, notice was issued to the shareholders of the company for convening an Extraordinary General Meeting (EGM). The EGM was convened on 11.02.2013 when a resolution was passed to wind up the company under Section 484(1)(b) of the Act.

4. Accordingly, notification was published in the Statesman (English) and Rashtriya Sahara (Hindi) as well as the official gazette. Notifications in the two newspapers were published on 16.02.2013 whereas the notification in the official gazette was published in the week spanning 09.03.2013 and 16.03.2013.

5. Suitable intimation was given to the Registrar of Companies (ROC) on 19.02.2013 with regard to the appointment of a voluntary liquidator as required under Section 516 of the Act and Rule 315. Information was given in the prescribed Form (i.e. Form 152) of the 1959 Rules.

5.1 Furthermore, on the even date i.e. 19.02.2013, notice was also given to the concerned Registrar of Companies (ROC) qua appointment of the voluntary liquidator as required under Section 493 of the Act.

5.2 On the very same date, Form no.23 was filed with the ROC, registering the special resolution passed by the EGM of the shareholders in terms of Section 192 of the Act.

5.3 Furthermore, notice was also given to the Income Tax Authorities in consonance with the provisions of Section 178 of the Income Tax Act, 1961. This notice was issued by the company on 20.02.2013. On 23.02.2013, notice qua appointment of the voluntary liquidator was published in the Business Standard (English and Hindi) whereas similar notices qua appointment of the voluntary liquidator were published in the official gazette spanning between 16.03.2013 to 23.02.2013.

5.4 The Income Tax Authorities issued a no objection certificate on 30.12.2013. The voluntary liquidator filed a statement of assets and liabilities on 03.01.2014. Accordingly, the voluntary liquidator proceeded to close the winding up on 04.01.2014. Pursuant thereto, notices under Section 497 (2)(a) and (b) of the Act read with Rule 329 were issued to convene an official meeting of the shareholders. These notices were issued in the prescribed Form i.e. Form 155 of the Rules. The meeting as per the notice was to be convened on 28.03.2014. Accordingly, notices were issued in this behalf in two newspapers i.e. Statesman and Rashtriya Sahara. The said notices were published on 21.01.2014.

5.5 Notices qua the aforesaid shareholder's meeting were also published in the Official Gazette. The said notice was published in the week spanning between 15.02.2014 to 21.02.2014.

5.6 As indicated in the aforementioned notices, the final general meeting of the shareholders was held on 28.03.2014 wherein a special resolution was passed, closing the winding up proceedings and for disbursal of records of the company.

5.7 In pursuance of the resolution passed by the shareholders on 28.03.2014, a final return was filed with the ROC on 29.03.2014 showing that winding up has been conducted and property has been disposed of for the period 11.02.2013 to 04.01.2014 as required under Section 497 (3) of the Act.

5.8 Consequent thereto, on 03.04.2014, a return of final winding up was submitted with the O.L. office in Form 156 and157 read with Section 497(3) of the Act. This return was filed by the voluntary liquidator.

5.9 It is averred in the petition that voluntary liquidator has also furnished an indemnity bond and affidavit of even date i.e. 16.05.2014. No objection certificate has been issued by the ROC, which is dated 13.06.2014. By this certificate, the ROC has indicated that it has no objection to the dissolution of the company. It is, in this background, that the captioned petition has been moved.

6. Mr. Makhija, the learned counsel for the O.L., says that while there was delay in publishing the notices for convening the EGM, the delay is not substantial and therefore, that deficiency being minor in nature, could be overlooked.

6.1 Furthermore, Mr. Makhija has drawn my attention to the statement filed by the voluntary liquidator showing as to how winding up was conducted and the property of the company was disposed of. This statement has been filed in the prescribed Form (i.e. Form 62). The said statement filed by the voluntary liquidator spans the period between 11.02.2013 and 04.01.2014.

6.2 As indicated above, the winding up of the company commenced on 11.02.2013 while it was closed by the voluntary liquidator on 04.01.2014. A perusal of the statement shows that the assets have been realized and monies realized thereto have been disbursed against the various liabilities owed by the company including payments which had to be made towards dividend and in respect of contributories i.e. equity shareholders. The statement shows that the total sum realized by the company against its assets which includes cash at bank and cash at hand as also loans and advances is a sum of Rs.25,34,691/-. The statement shows that the said amount, as indicated above, disbursed towards payment of various liabilities which includes the voluntary liquidator's remuneration and legal charges. The legal charges to the extent of Rs.2,85,413/- have been paid. The voluntary liquidator has been paid a remuneration of Rs.45,000/-. Creditors, both preferential and unsecured have also been paid monies. The preferential shareholders have been paid a sum of Rs.73,795/- while the unsecured creditors have been paid a sum of Rs.6,97,702/-. The equity shareholders have been paid at the rate of Rs.17.91 per share amounting to Rs.14,32,781/-.

7. Having regard to the aforesaid, I am inclined to accept the prayer made in the present petition. Accordingly, prayer (ii) is allowed. The aforesaid company shall stand dissolved from the date of filing of the petition. The petition is disposed of, in the aforesaid terms.

8. The necessary intimation will issue to the ROC within thirty days from today.

**RAJIV SHAKDHER, J**

**FEBRUARY 12, 2016**

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