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

% **Reserved on: 18th August, 2017**
Pronounced on: 28th August, 2017

\+ **CO.PET. No.63/2011 & CA Nos.755/2017, 1357/2017 and OLR No.113/2017**

JASKIRAN SRAN & ORS.
..... Petitioners
Through : None.

versus

M/S CARTEL ATTIRE PRIVATE LTD
..... Respondent
Through : Mr.D.Bhattacharya, Standing Counsel for Official Liquidator.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This CA No.1357/2017 has been moved by the Official Liquidator for final winding up in the matter.

2. Initially, a petition under section 439(1) (b) read with section 433(e) of the Companies Act, 1956 (hereinafter as 'the Act') was filed by the petitioner for the claim of ₹3,24,372/- with interest @ 18% till the date of realization against the M/S Cartel Attire Private Limited (hereinafter as 'respondent company') and also seeking winding up order against respondent.

3. The petitioner is engaged in the business of cloth fabrication and the respondent is also in the same field. On the demand of the respondent company, the petitioner has extended short term loan/arrangement to the respondent to the tune of ₹12.00 Lacs to be repaid within one year with interest @ 18% pa.

4. Respondent committed default in repayment of loan amount and petitioner vide letter dated 01.11.2010 intimated to respondent that as on 31.03.2010 there was debit balance of ₹12,38,889/- and as on 31.10.2010 there was outstanding balance of ₹4,10,000/-. The respondent vide reply dated 10.11.2010 admitted the liability and sought time to make the payment. However, during further correspondence between the parties the outstanding amount was agreed to be ₹3,24,372/- after giving up penal interest. The petitioner also issued legal notice dated 14.12.2010 and delivered by it hand at the registered office of respondent and also sent through courier. Despite this, neither amount was paid nor any reply was received.

5. Vide order dated 10.05.2011, a provisional liquidator was appointed by this Court and citations were directed to be published in "Indian Express" (English) and "Jansatta" (Hindi) as well as Delhi Gazette. The Citation had been published in "Indian Express" (English) and "Jansatta" (Hindi) on 25.09.2011 as well as Delhi Gazette on 23.02.2012.

6. Subsequently, vide order dated 17.09.2014, the final winding up order was passed and the Official Liquidator attached with this Court was

appointed as the Official Liquidator to wind up the Company. Necessary citations and publications were made.

7. The officials of the Official Liquidator had visited the office of the Registrar of Companies of Delhi and Haryana to inspect the records of the companies in liquidation as maintained by the office of the ROC. The two ex directors of the company as on the date of the winding up order were Mr.Manoj Kumar Sabharwal and Ms.Rozy Sabharwal, his wife. The registered office was situated at 68C, Rameshwar Nagar, Azadpur Delhi- 110033.

8. The statutory notices to the Income Tax, Sales Tax, Registrar of Companies, General Post Office and notices under Section 454, 456 of the Companies Act, 1956 along with notices under Rule 130 of the Companies (Court)Rules 1959 were issued to both the Ex-directors for handing over the assets, records and books of accounts of the company (in liquidation) and to file Statement of Affairs under section 454 of Companies Act, 1956 with the office of the Official Liquidator. The ex-directors were further called upon to visit the office for recording their statements under Rule 130 of the Companies (Court) Rules 1959.

9. This Court vide order dated 03.09.2012 appointed Mr. Rajender Prasad as valuer in the above said matter to evaluate the goods lying on Ground floor, 68-C, Rameshwar Nagar, Azad Pur, New Delhi. He had submitted his report and the goods were sold by this Court on 07.03.2013 and the possession of the said goods were handed over to the highest bidder by the official liquidator on 22.04.2013.

10. The team of the officials of Official Liquidator visited the registered office of the company situated at 63-C, Rameshwar Nagar, Azad pur, New Delhi and peaceful possession of the said office was taken over. The ex-directors of the company (in liquidation) submitted the documents viz. Registered General Power of Attorney, Receipt, Agreement of Sale with the office of the Official Liquidator which were examined. Since the property wherein registered office was situated was found to have been purchased in the year 1990 and the company (in liquidation) having been incorporated in the year 2000, the possession of registered office was released to the ex-directors. However, the records lying at IInd floor of the premises were shifted to a room at the ground floor. The room was properly sealed and the same was given in Superdari to the ex-director.

11. In response to the notices issued Under Rule 130 of the Companies (Court) Rules, 1959, the ex-directors visited on various dates and the statement Under Rule 130 of the Companies (Court) Rules 1959 of Sh. Manoj Kumar Sabharwal was recorded on 27.07.2011 while that of Smt. Rosy Sabharwal was recorded on 07.03.2013.

12. The Statement of Affairs of the company was filed by Sh. Manoj Kumar Sabharwal on 02.08.2011 and by Smt. Rosy Sabharwal on 21.08.2012. The Statements of Affairs were found to be defective and defects were duly communicated to both the ex-directors.

13. In respect of incomplete record, an application being C.A. No.2017/2012 under Section 468/477 of the Companies Act, 1956 was

filed by the Official Liquidator, which was dismissed vide order dated 24.02.2015 as infructuous.

14. Shri Manoj Kumar Sabharwal, ex-director of the company pursuant to the order dated 19.05.2014 visited the office of official Liquidator on 18.07.2014. He stated that all such records as required by the Chartered Accountant were in Computer which was sold by the Official Liquidator. In this regard, it is clarified that as per the records maintained by this office prior to 18.07.2014, the ex-directors never pointed out about the availability of records in the computer sold in open auction. Therefore, the ex-directors deliberately and with motives obvious made a frivolous attempt to avoid the obligations of submitting the requisite record.

15. The Chartered Accountant vide letter dated 06.09.2014 furnished a review/supplementary report and stated that Sh. Manoj Kumar Sabharwal, ex-director answered the queries and relied on the Audited statement of accounts. The points/issues raised in the report dated 24.02.2012 are stated to have been satisfied by the ex-directors.

16. The process of invitation of claims was deferred as there were no funds in the company's account maintained by this office. However, one of the claimants, Sh. Devender Kumar Tyagi submitted his Claim on prescribed form no.66 on 30.03.2015. He claims to be the workman of the company having an award dated 13.12.11 in his favour passed by the court of Learned Presiding officer, Labour Court, Karkardooma, Delhi.

17. That in compliance of the court order dated 18.04.2017, this office has released an amount of ₹19,556/-to Global Corporate Media, Advertising Agency.

18. In compliance of order dated 18.04.2017, Official Liquidator has shifted the records after preparation of inventory from 68-C, Rameshwar Nagar, Azad Pur to South Block of Official Liquidator on 16.06.2017.

19. As per the accounts of the Company (in liquidation) maintained by the Official, the fund position of the company as on 12.07.2017 is ₹(-) 71,485/-.

20. There are no assets of the company which could be realized. Further, as aforesaid the fund position as aforestated is not such that any claims could be invited or settled.

21. Hence, in view of the facts as stated and explained herein above the official liquidator is of the view that no fruitful purpose would be achieved by keeping the liquidation proceedings pending. Accordingly, the Official Liquidator has preferred the present application u/s 481 of the Companies Act, 1956 seeking Dissolution of the Company (in liquidation) as neither any amount/assets need to be realized nor any claim requires to be settled/disbursed.

22. In the circumstances, respondent company namely M/s Cartel Attrie Private Limited is dissolved under Section 481 of the Companies Act, 1956 and Official Liquidator is discharged as liquidator of company. The Official Liquidator is also allowed to make payment of ₹18,320/- to M/s Rai and Company, Chartered Accountant towards their professional

fees from common pool fund. The audit of the half yearly/annual accounts of the company (in liquidation) to be filed with this Court is also dispensed with as official liquidator is permitted to close the books of account after setting off/adjusting losses of amount of Rs.(-) 90,165/- from the common pool fund.

23. A copy of this order be filed by the Official Liquidator with the Registrar of Companies within the statutory period, as provided for in the Act.

24. The petition and pending applications as well as report is accordingly disposed of.

25. The date 04.09.2017 already fixed in the matter stands cancelled.

YOGESH KHANNA, J

AUGUST 28, 2017
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