$~C-26

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

% **Delivered on: 31st August, 2017**

\+ **<u>CO.PET. No.314/2009 & CA No. 1441/2017</u>**

S.S. TECHNOLOGIES

..... Petitioner

Through : None

versus

N.G. TECHNOLOGIES LTD

..... Respondent

Through : Mr.Adil Khan, Adv. for Mr.Rishi Manchanda, standing counsel for OL Mr.Tanuja Sharma, Adv.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

<u>YOGESH KHANNA, J.</u>

1. This application (CA No.1441/2017) is under Section 481 of the Companies Act filed on behalf of the Official Liquidator wherein he has sought for dissolution of the company. The Official Liquidator was appointed as Provisional Liquidator vide an order dated 01.06.2010 of respondent company viz. M/s N.G. TECHNOLOGIES LTD. on a petition filed by S.S.TECHNOLOGIS with directions to take charge of all assets, books of accounts and statutory records of the Company (in Liquidation).

2. M/s N.G. TECHNOLOGIES LTD. was ordered to be finally wound up by this Court vide order dated 14.07.2011. The citation was

duly published in "Jansatta" (Hindi) and "Statesman" (English) on 25.06.2011 as well as in "Delhi Gazette" on 30.06.2011.

3. As per record maintained by the Registrar of Companies, the Registered Office of the Company (In Liqn.) was situated at 31, Basement ,Nangli, Rajapur, Nizamuddin (East), New Delhi. It was taken on rent by the company and was vacated by it in the month of July, 2007. The records of the Company alongwith other miscellaneous articles belonging to the Company (In Liqn.) were kept in the two rooms at the premises i.e. Regd. Office of the Company (In Liqn.).

4. In pursuance of the order dated 30.11.2011 the vacant possession of Regd. Office of the Company situated at 31 (basement) , Nangli Nizamuddin East, New Delhi was handed over to the landlord of the premises namely Shri Ram Pat S/o Late Shri Bhuley Ram, after de-sealing and shifting of records of the Company (In Liqn.) to the record room of Official Liquidator on 20.01.2011

5. In process of winding up orders the team of the officials of the Official Liquidator, visited the following premises to take over the possession of the assets and record of the Company (In Liqn.):

a) B-249, Okhla Industrial Area, Phase-I, New Delhi-110020 - As per minutes dated 17.06.2010 the aforesaid premises had already been sold by the Company (In liquidation) to "Mis Saf Lift Conductor Private Limited" on 06.10.2005. Currently, Mis Speed Age Engineering Private Limited has taken the said premises on rent from Mis Saf Lift Conductor Private Limited and is running its business thereon. Thus, the possession of the premises could not be taken over by the team;

b) 5, Sant Nagar, East of Kailash, New Delhi-ll0065 – As per minutes dated 01.06.2010 the aforesaid premises was vacated by the Company in the month of January 2009 vide cancellation of lease agreement dated 31.01.2009. This property was taken on rent by the Company (In Liqn.) thus, its possession could not be taken over by the team;

c) H-2/16, Ansari Road, Darya Ganj, New Delhi-ll0002 - As per minutes dated 02.06.2010 the team could not locate the Company (In Liquidation) at the address. However, the following companies were found running their business at the aforesaid address:-

i) C.S. Graphics in the Ground floor

ii) Samaya Noa Private Limited at the first floor

iii) S.G. Publications Private Limited at Second floor

6. It is submitted that as per records, maintained by the Registrar of Companies, the following are ex-directors of the Company (In Liqn.);-

a) Shri Pradeep Nanda,
S/o Late V.P. Nanda,
b) Sh. Viender Pahuja,
c) Karan Nanda S/o Pardeep Nanda,
d) Mahesh Nanda,
e) Sh. Shweta Sharma

7. The statutory notices to GPO, Delhi and New Delhi/Sales Tax/Income Tax/ROC were issued on 24.06.2010. Further, notices under Section. 454, 456, 468/477 of the Companies Act, 1956 as well as under Rule 130 of the Companies (Court) Rules, 1959 were issued to the Directors on 24.06.2010 for filing the Statement of Affairs, handing over the assets, monies/property/records and books of accounts of the Company (In Liqn.) and to appear before the Official Liquidator on

29.6.2010 and 30.6.2010 for the purpose of recording their Statement under Rule 130 of the Companies (Court) Rules, 1959.

8. The following ex-directors have got their statements recorded under Rules 130 of the Companies (Court) Rules, 1959 :-

i) Shri Pradeep Nanda recorded on 15.07.2010
ii) Shri. Mahesh Nanda recorded on 15.07.2010
iii) Shri Virender Pahuja Replied vide letter dated 30.06.2010
iv) Karan Nanda Replied vide letter dated 29.6.2010
v) Smt. Shweta Sharma recorded on 19.07.2010

9. An amount of Rs.5,603.14 was received from Oriental Bank of Commerce on 04.08.2010 towards cash in hand and Rs.5,922/05 was received from Punjab National Bank on 02.11.2010 towards balance lying in the company (In Liquidation).

10. The Ex- Directors Shri Pradeep Nanda and Shri Mahesh Nanda have filed their Statement of Affairs under Section 454(5) of the Companies Act, 1956 stating interalia that there are no criminal proceedings pending against the ex-directors of the Company (In Liquidation). It was also informed by them that the company does not own any fixed assets in its name and that they did not have any record of any moveable or immoveable assets of the Company (in Liqn.).

11. In response to letter/notices issued to 9 debtors of the Company this office had realized an amount of Rs.1,29,448/- from 3 debtors namely Preeti Electronics, Batra Electronics and Vaishno Impex, respectively. As regards the rest of the 6 debtors, some of them could not be served for want of complete and correct addresses and the rest had

replied that they did not owe any money to the Company (In Liquidation).

12. In terms of order dated 14.07.2011 passed by this Court, the office of Official Liquidator had invited claims through publication in 'Indian Express' (English) and 'Jansatta' (Hindi) newspapers on 23.11.2011. The last date for submitting such claims was 08.12.2011, however no claims were received by the Official Liquidator.

13. The Income Tax Department had imposed an amount of Rs. 2,33,07,349/- as tax to be recoverable from the Company (In Liquidation), alongwith penalty. However, upon an appeal being preferred by the Company (In Liquidation), the ITAT vide its order dated 28.01.2010 had set aside the said assessment/penalty. The Income Tax Department had filed an appeal being ITA 82 of 2012 against the order dated 28.01.2010 passed by the ITAT wherein vide order dated 01.12.2014, the Hon'ble Division Bench of the High Court of Delhi set aside the findings of the ITAT and held that the Income Tax department had correctly levied the penalty and the Income Tax Department was directed to file its claim.

14. As per record, the Income Tax Department has not submitted any claim till date. This office issued a letter dated 26.10.2015 to the said Department on available address in file (s) and requested to submit the claim alongwith a copy of order for condoning the delay in filing the Claim from the Court so that their claim can be adjudicated. The letter was returned undelivered with postal remark "Incomplete Address".

15. The aforesaid letter was again sent to Income Tax Department on 28.10.2015, through Process Server Shri Madan, but he could not deliver

the same and reported that no such company exists in ward No. 13(4) Room No. 219, Central Revenue Building, I.P. Estate, New Delhi. The Income Tax Department could not be contacted till date by this office.

16. The Official Liquidator had filed an application bearing a C.A. No.926/2015 under Section 446 read with Section 457 (1) of the Companies Act, 1956 for permission to institute SLP against order dated 01.12.2014 in ITA No.82/12. The same was allowed by the High Court vide order dated 16.04.2015 wherein the Official Liquidator is permitted to file SLP against order dated 01.12.2014 of this Court in ITA 82/12 before the Supreme Court. Accordingly, an SLP challenging the said Order dated 01.12.2014 of this Court in ITA 82/12 was filed before the Supreme Court, but it was dismissed vide its order dated 18.04.2016.

17. The fund position of the Company is Rs. 1,51,735-75 as on 30.06.2017 which is barely sufficient to meet the Liquidation Expenses as Govt. Commission, Income Tax, audit fee etc, hence, the Official Liquidator is not in a position to admit the claims as stated above. The Income Tax Department did not file its claim and the claim of other authorities namely Central Excise Department, Nehru Place, and Noida also could not be adjudicated for want of funds. There are no assets of the Company (In Liquidation) in the hands of the Official Liquidator for realization.

18. Thus no fruitful purpose shall be served to continue the present liquidation proceedings and it is a fit case for dissolution of the Company under Section 481 of the Companies Act, 1956.

19. In the circumstances the company stands dissolved after deduction from the amount of Rs.1,51,000/- (approx.) lying with the company as on

30th June, 2017. Copy of this order may be sent to the Registrar of Companies by the OL within time prescribed as per law. The OL shall close the books of accounts of the company in liquidation.

20. Petition along with the application is disposed of.

YOGESH KHANNA, J

AUGUST 31, 2017
VLD