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

+ **CO.APPL.(C) 1/2009**

M/S JVG FINANCE LTD. Petitioner
Through None

versus

M/S GULSHAN TRADERS Respondent
Through Mr.Kunal Sharma, Adv. for the OL

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
09.11.2017

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Co.Appl.2238/2014

1. Yesterday, I had heard Ms.Aneeta Sharma, AR for the Ex-Management, Mr.Kunal Sharma, Advocate for the OL, Ms.Swati Setia, Advocate for RBI and Mr.Rishi Sood, Advocate for respondent No.2. However, while dictating the order there were lot of confusing facts on account of the voluminous records and none of the learned counsel for the parties could explain. The matter was hence fixed for today. Today, only Mr.Kunal Sharma, learned counsel for the OL is present. He has on a thorough study of the facts clarified the issues.
2. This application is filed under Section 446 of the Companies Act on behalf of the OL for recovery of a sum of Rs. 5,31,350/- with interest @ 18% annum.
3. The case of the OL is that M/s. JVG Finance Ltd. was provisionally wound up by the order of this court dated 05.06.1998 and finally wound up

by order dated 29.08.2003. As a part of the winding up process, the movable assets of the Company lying at 51 MIDC Street No.7, Morole, Andheri East, Mumbai were taken into possession and got valued. Pursuant to a sale process carried out, the bid of the highest bidder, namely, respondent No. 1 M/s. Gulshan Traders was accepted for Rs.4,51,000/-.

4. It appears that the said M/s. Gulshan Traders/respondent No. 1 while taking the movable assets had also illegally removed doors frames ventilators and windows, etc. from the premises which was assessed at a value of Rs.5,31,350/-. Hence, the present application has been filed seeking an order of the recovery of the said sum.

5. Originally the present petition was filed impleading Mr.Mehndi Hassan as the Sole Proprietor of M/s.Gulshan Traders and respondent No.2 Shri Sanjay Setia a former employee of the OL. Subsequently, the OL filed an application CA No.2289/2012 whereby it was pleaded that the original application has wrongly shown Mr.Mehndi Hassan as the Sole Proprietor of respondent No.1 M/s. Gulshan Traders. It was urged that Mr. Mehndi Hassan had misrepresented to the OL claiming himself to be the Sole Proprietor whereas he was only the Authorised Representative of respondent No.1. It was stated that it is Mr.A.K.Siddique who is actually the Sole Proprietor of M/s.Gulshan Traders. Unfortunately this application was not adjudicated upon for some time and by mistake appears to have been withdrawn on 11.7.2017.

6. However, on the same date this court had taken on record the amended Memo which bears the correct description of the parties, namely, M/s.Gulshan Traders (now described as M/s.New Gulshan Traders) through Mr.A.K.Siddiqui, Sole Proprietor respondent No.1. Mr.Mehndi Hassan

(since deceased) is now represented by his son Mr.Ayub Sheikh. A notice was issued to respondents No. 1 and 3 on the last date of hearing. As per the affidavit of service filed by the OL, notice has been delivered on respondent No.1 M/s. Gulshan Traders at the address given therein. As far as respondent No.3 is concerned, the report states that speed post has been received back with a remark 'left'. In view of the service report it is clear that respondent No.1/M/s. New Gulshan Traders is served. Respondent No.3 Shri Ayub Sheikh is unserved.

7. As far respondent No.2 is concerned he is a former employee of the OL. He has explained his position that merely because inadvertently, the keys of the premises remained with him for one month, cannot ipso facto mean that he is responsible for having taken away the assets of the respondent Company. Keeping into account that there is no direct evidence that respondent No.2 had a role in taking out the goods in question illegally, I see no reason to fasten any liability on respondent No.2.

8. As far as respondent No.3 is concerned he has been impleaded as LR of late Mr.Mehndi Hassan. The only allegation against Mr.Mehndi Hassan is that he was the Authorised Representative of M/s. New Gulshan Traders though he claimed to be the proprietor. Other than that there is no other allegation to show that respondent No.3 was in any manner responsible or liable for disappearance of the moveable goods of the respondent company. In my opinion, no liability is made out against respondent No.3.

9. As far as respondent No.1 is concerned, it is respondent No.1 who was allowed to remove the moveable goods lying in the godown, other movables, namely, doors, ventilators and windows etc. have also disappeared while the work of removal of goods was going on. None has

come on behalf of respondent No.1 to defend the case. The surrounding circumstances show that it is respondent No.1 who responsible for the removal of the goods and would be liable for the dues.

10. Accordingly, order is passed for recovery of a sum of Rs.5,31,350/- with interest @10% per annum from 12.06.2006 till realisation against respondent No.1.

11. The application stands disposed of.

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List on 15.12.2017.

JAYANT NATH, J

NOVEMBER 09, 2017

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