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

% ***Date of decision***: 11.10.2018

\+ CO.PET. 732/2016

NEW DELHI HOUSE FLAT OWNERS ASSOCIATION (REGD.) ..... Petitioner

Through Ms.Sunita Bhardwaj, Adv. for the petitioner.
Mr.Ashok Nagrath, Adv.for the petitioner
(both counsel dispute the authority of each other)

Versus

PAN INDIA CORPORATION LTD. ..... Respondent

Through Mr.Chandra Shekhar Yadav, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This petition is filed under section 433(e) and 434 of the Companies Act, 1956 for winding up of the respondent company. It is stated that the petitioner is an Association being registered under the Societies Registration Act, 1860 and is responsible for renovation of the building New Delhi House which was constructed in 1974. It is further stated that the respondent company is indebted to the petitioner for a sum of Rs.1,01,900/- The petitioner raised invoice/bills bearing No.78 of 2016 for renovation of the building New Delhi House. As the respondent company failed to pay the said amount a statutory notice was issued on 12.4.2016. Hence, present winding up petition.

2. The matter was fixed for arguments on 29.8.2018 and 26.9.2018. It was adjourned for today clearly stating that no adjournment would be granted.

3. Today, the learned counsel Ms.Sunita Bhardwaj appearing for the petitioner states that the petitioner has filed an application under section 434 of the Companies Act, 2013 seeking transfer of the present proceedings to NCLT.

4. Mr.Ashok Nagrath, Advocate has entered appearance on behalf of the petitioner. He states that pursuant to elections that took place under the supervision of an Election Observer appointed by this court, namely, Justice P.K.Bhasin (Retired) a new committee has taken over on 29.4.2018. He states that the Committee has passed a resolution seeking to engage a new advocate and also seeking to withdraw these Company Petitions including the present petition. Hence, learned counsel submits that he would like to withdraw the present petition. Ms.Sunita Bhardwaj, Advocate has opposed the plea of Mr.Ashok Nagrath, Advocate.

5. Learned counsel appearing for the respondent has vehemently opposed the present winding up petition. He has also pointed out that respondent is not responsible for any dues of the petitioner. The bill in question is neither payable nor due to the petitioner.

6. Dehors the controversy raised regarding as to which of the learned counsel is appearing for the petitioner, I have gone into the merits of the present petition. The sole basis for filing of this winding up petition is a single bill raised on the respondent which is dated 1.3.2016 which reads as follows:-

"Bill No. 78/2016/NDHFOA Date:0l/03/2016

Pan India Corporation Ltd.
1111, New Delhi House,
27, Barakhamba Road,
New Delhi-110001.

S.No.	Particulars	Amount (Rs.)
1.	Bill against external renovation	101900/-
TOTAL		10,1900/-

The Cheques/Demand Drafts be issued in favour of "New Delhi House Flat Owners Association" (Regd.)

E&OE Authorised Signatory"

7. The above bill is the sum and substance of the reason as to why the present winding up petition has been filed. The petition is completely bereft of any further details. What is the relationship of the petitioner with the respondent is not explained either in the bill or in the petition. There is no explanation as to in what capacity, the respondent is liable to pay the bill for external renovation. Presumably, the Association must have carried out some external renovation on the basis of which bills might have been raised on the occupants of various flats in the New Delhi House. No details when the renovations were carried out and in what proportion the flat owners have to share the expense are forthcoming.

8. In the reply filed by the respondent, it has been pleaded that they had entered into a lease of the said premises No. 1111, 11th Floor, New Delhi House and since then, they were functioning from the said office. It has been pointed out that the said respondent is not the owner of the premises and is not liable to make any payment towards charges for alleged renovation

which have been done by the petitioner. The expenses being in the nature of permanent expenses, the same, it is pleaded, are recoverable from the owner of the premises and not from its tenant.

9. It is clear from the facts pleaded by the petitioner that no conclusion can be made that any amount is due or payable by the respondent to the petitioner. There is no debt due to the petitioner. There is hence, in my opinion, no merit in the present petition. No grounds are made out to pass an order for winding up of the respondent Company.

10. Coming to the request of the petitioner to transfer these proceedings to the NCLT. Section 434 of the Companies Act, 2013 reads as follows:

> "[434. Transfer of certain pending proceedings
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> (1) On such date as may be notified by the Central Government in this behalf,—
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> (a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;
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> (b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:
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> Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an

appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and

(c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:

Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.

[Provided further that any party or parties to any proceedings relating to the winding up of companies pending before any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application for transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016."

11. This court has already in CP 152/2016 vide decision dated 27.9.2018 in *Rajni Anand vs. Cosmic Structures Limited* held that the power under section 434(1)(c) of the Companies Act, 2013 for transfer of a petition to NCLT is discretionary and has to be exercised in the facts and circumstances of the case so as to expeditiously deal with the proceedings/winding up.

12. The facts in the present case demonstrate that there is no material on merit to substantiate filing of the present winding up petition. It appears that the present application/request to have the matter transferred to NCLT is

only an attempt to further delay and prolong the proceedings. Having come to a conclusion that there is no merit in the petition, I see no reason to transfer the petition to NCLT.

13. I may now note few facts about the affairs of the petitioner association. There has been a dispute pending for the management of the said association. This court on 25.2.2016 in CRP 27/2015 titled *Vijay Mehta vs. Association of Apartment Owners of New Delhi House (Regd)* had directed that transparent elections be held for the flat owners Association, namely, New Delhi Building Housing Association which was to be conducted under the aegis of the Observer, namely, Justice P.K.Bhasin (Retired). The relevant portion of the said order passed by this court reads as follows:-

> "….grievances on several scores cannot be addressed in the absence of an elected body is also an admitted position. This cannot be disputed and has in fact not been disputed by the learned counsel for the respondent. That being the position, this Court has no hesitation in holding that a transparent election be permitted of this flat owners Association i.e. New Delhi Building Housing Association located at 27, Barakhamba Road, New Delhi which will be conducted under the aegis of an Observer i.e. a retired High Court Judge namely Justice P.K. Bhasin(Mobile No. 9871300032). The process of election will be initiated by the learned Observer within a period of one week from the receipt of this order and shall ensure that the elections of the Executive Body of the Association are· carried out transparently and freely. The fee of the learned Observer is fixed at Rs.l.5 lac. It shall be paid by the petitioner. The Observer shall submit its report before the Trial Court."

14. On 12.5.2016 a Review Petition No.203/2016 was filed. This court noted that the review petition had been filed to obstruct the due process of the court and dismissed the same.

15. The learned Election Observer Justice P.K.Bhasin (Retired) by report dated 28.4.2013 noted as follows:-

> "After Shri Pradeep Gandhi withdrew his nomination on 28.04.2013 the following candidates are left in the fray for different posts in the Managing Committee
>
> | Name of the Member/Candidate | Post |
> |---|---|
> | Sh. K.J, Sangar | President |
> | Sh. S.C. Khaneja | Vice President |
> | Sh. Ashok Kumar Mehta | General Secretary |
> | Sh. Vikram Mittal | Treasurer |
> | Smt. Geeta Mehta | Member Executive |
> | Sh. S.L. Gupta | Member Executive |
> | Sh. Chaman Mahajan | Member Executive |
>
> Since the number of candidates for each post is only one the abovenamed candidates are deemed to have been elected unopposed for the post mentioned against their names. There will now be no formal election on 05.05.2018 as announced earlier.
>
> 29.04.2018
>
> JUSTICE (RETD.) P.K. BHASIN
> ELECTION OBSERVER"

16. In view of the above report, in my opinion, the old management of the Association, it appears cannot continue with the present proceedings. The new Management who were elected have decided to withdraw the present winding up petition.

17. Learned counsel appearing for the old management of the association, however, states that the elections held have been challenged by filing of an appropriate suit in the District Courts and the matter is pending adjudication. On a query from the Court she confirms that there are no interim orders passed restraining the newly elected Managing committee from exercising its powers. Hence, as the new Management who were elected in the elections on 29.4.2018 under the supervision of a court appointed Observer have decided not to pursue this case, their decision has to prevail. Accordingly, the present petition is even otherwise not maintainable in view of the decision taken by the new management of the petitioner to withdraw the present petition.

18. Present petition is accordingly dismissed. All pending applications, if any, also stand disposed of accordingly.

(JAYANT NATH)
JUDGE

OCTOBER 11, 2018/n
corrected and released on 01.11.2018