$~CP-26

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

% Date of decision: 11.10.2018

\+ CO.PET. 740/2016

ASSOCIATION OF APARTMENT OWNERS OF NEW DELHI HOUSE (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

CSI ENTERPRISES PVT. LTD., ... Respondent

Through Ms.Liza M.Baruah, Adv.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>JAYANT NATH, J. (ORAL)</u>

1. This petition is filed under section 433(e) and 434 of the Companies Act, 1956 for winding up of the respondent company.

2. The case of the petitioner is that the petitioner association is a society registered under the Societies Registration Act, 1860 and is also acting in consonance with the Delhi Apartment Ownership Act, 1986. It is also stated that the petitioner raised invoice Bill No.74 of 2016 for Rs.2,01,000/- against the respondent towards front renovation of the building New Delhi House. The respondent company failed to pay the said amount. Hence, a statutory notice was issued on the respondent on 16.4.2016. As there was no response the present winding up petition has been filed.

3. The respondent has filed its reply. In the reply, it has been pointed out that there are total 190 flat owners, who do not recognize the petitioner association. It is pleaded that the petitioner association is a sham association. It has also been pointed out that there is a dispute pending in the court between the petitioner association and the actual association, namely, New Delhi House Flat Owners Association (NDFOA). Pursuant to the dispute, this court in CRP 27/2015 decided on 25.02.2016 appointed Hon'ble Mr.Justice P.K.Bhasin (Retd.) as court observer to conduct the election of the New Delhi House Flat Owners Association (NDFOA). Hence, it is pleaded that the petitioner association have no rights to raise the present bill.

It is further pleaded that it is not clear as to how different flat owners are being rquested to pay different amounts for identical services. One company M/s J & S Travels and CSI Enterprises Pvt. Ltd. have been asked to raise a bill for a sum of Rs.2,01,000/- while other Ranutrol Industries Pvt. Ltd. has been asked to raise a bill for a sum of Rs.1,02,515/-. Further there is no proof of any work being done by the petitioner association. The invoices were also never delivered to the respondent.

4. In my opinion, there is no merit in the present petition. It is not clear as to on what basis the petitioner association has started raising an invoice on the respondent. Other than claiming that it is an association under the Societies Regitration Act and is acting in compliance with the Delhi Apartment Ownership Act and also judgment dated 28.05.2010 passed by the a Division Bench of this court in W.P.(C)1959/2007 titled O.S.Bajpai vs. Administrator Lt.Governor of Delhi & Ors., there is nothing to show what entitles the petitioner to raise the present bill.

5. Further a perusal of the present bill in question shows that it is raised on the respondent stating that "bill against augmented and upgraded electric installations of Rs.2,01,000/-". What is the nature of work done by the petitioner, who authorized the petitioner to carry out the work and how the respondent is liable for the same is not explained in the petition. In fact, the casual manner in which the matter is being persued is apparent from the fact that in the petition it has been pleaded the said bill No.74/2016 for Rs.2,01,000/- has been raised towards front renovation of the building New Delhi House. However, a perusal of the bill which is attached to the petition being bill No.74/2016 shows that it has been raised against "augmented and upgraded electric installations". Which of these two alleged works were done by the petitioner is not known.

6. In fact, I may note that there are two petitions listed in court today. One is CP 734/2016 filed by another association, namely, New Delhi House Flat Owners Association (Regd.) claiming to be looking after the affairs of New Delhi House which has filed a winding up petition against CSI Enterprises Private Limited/respondent. This is the second petition filed by another Association, namely, Assocition of Apartment Owners of New Delhi House (Regd.) which again claims to be providing service to the said New Delhi House and is again filed against the same respondent.

7. It is manifest that the bill is completely vague and ambiguous. Mere raising of a bill by the peititoner association does not *ipso facto* lead to a conclusion that any amount is due and payable to the petitioner association.

8. One cannot help concluding that there is a serious dispute between the management of the present association and ther other association, namely,

New Delhi House. Out of a rivalry to harass the occupants, these bills are being raised.

9. I may note that in the course of hearing, the learned counsel for the petitioner had made a submission that she had filed an application under section 434 of the Companies Act, 2013 whereby she has prayed that this court may transfer this petition to NCLT. The application is not on record but I have dealt with the contention of the learned counsel for the petitioner.

10. Section 434 of the Companies Act, 2013 reads as follows:

> "[434. Transfer of certain pending proceedings
>
> (1) On such date as may be notified by the Central Government in this behalf,—
>
> (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;
>
> (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:
>
> 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 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 plea of the learned cousel for the petitioner. I see no reason to transfer the petition to NCLT.

13. The facts in the present case demonstrate that there is no material on merit to substantiate filing of the present winding up petition. 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 17.11.2018