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

% ***Date of Decision***: 09.08.2018

\+ CO.PET. 748/2015

SUKHDEV SINGH & ORS. ..... Petitioners

Through: Mr. Risabh Jain, Advocate.

versus

REGISTRAR OF COMPANIES ..... Respondent

Through: Mr. Rishi Manchanda Standing Counsel with Ms. Divya Singh, Advocate for OL.
Mr. P.S. Singh, Advocate for ROC.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

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

1. This company petition has filed under section 518(1)(b) of the Companies Act, 1956 (*hereinafter referred to as the 'Act'*) read with Rule 9 of the Companies (Court) Rules, 1959 for complete stay on the voluntary winding up of the respondent company.

2. The Board of Directors in their meeting date 22.02.2012 decided to institute Member's Voluntary Winding-Up proceedings and gave the Declaration of Solvency pursuant to section 488(2) of the Act. In the Extra Ordinary General Meeting a special resolution was passed for commencement of the winding up of the company under section 484(1)(b) of the Act on 21.03.2012 and Ms. Kintoo Aggarwal, Company Secretary was appointed as Voluntary Liquidator of the said company under Section

490 of the Act.

3. During the course of business with Mahanadi Coal Field Limited (MCL) a dispute has arisen about the non-payment of full dues of the respondent company. Hence, the said company had filed a suit against MCL in the court of Civil Judge (Sr.Division), Sambalpur in the year 2005. The suit was decided in favour of the respondent company vide judgment dated 02.03.2013. Further, the MCL filed an appeal before the Orissa High Court and the Ex-directors of the said company want to contest the aforesaid appeal. Hence on 27.11.2014 the Ex-Director cum Contributories of the said company passed a resolution to restart the said Company. It is pleaded that the said Company is fully solvent as the Declaration of Solvency filed on behalf of the Board of Directors and last Audited Balance Sheet of the said company shows a surplus of Rs.5,49,817/-.

4. Learned counsel appearing on behalf of petitioner has also pointed out that the Voluntary Liquidator appointed Ms. Kintoo Aggarwal has filed an affidavit to the effect that she has no objection to the present petition.

5. At this stage, learned counsel appearing on behalf of the petitioner has relied upon the judgment of this Court in ***S.P. Sood Vs. Registrar of Companies, ILR 1977 Delhi 474,*** to submit that this Court has the power to stay the present proceedings in the voluntary winding up. Relevant portion of the judgment reads as follows.

> *"3......*Thus the question for consideration is whether the power to stay the winding up exercisable under Section 466 in relation to companies being wound up by the Court can also be exercised when a company is in voluntary winding up. I find that the position taken up by the petitioner is consistent with a large number of reported case. In Punjab Co-operative Bank, Ltd. Air 1919, Lahore 305(1), it was held under the old Act that the Court could stay a voluntary winding

up. In the matter of East India Cotton Mills Ltd. Air 1949, Calcutta 69(2), S.R. Dass J. (as he then was) examined the principles on which a stay of winding up could be ordered and found that it was analogous to the jurisdiction exercised while rescinding a receiving order or annulling an adjudication in bankruptcy. There are some English cases also in which a voluntary winding up was stayed. Examples of those are: IN re: South Barrule State Quarry Slate Quarry Co. (1869) 8, Equity Cases 688 (3), re: Titian Steamship Co. (1888) W.N. 17(4), and many other cases. It has been held in such cases that mere consent of the parties is not enough but the Court should consider all the circumstances. A leading judgment on the principle on which the Court should act while ordering stay is in re: Telescriptor Synidicate, Limited, (1903) 2, Ch. Div. 174(5). In that case, the Court detailed various points for and against ordering a stay of the winding up and decided that there was no ground for staying the winding up on the facts as they were. The court, however, observed that at a later date, the official Receiver could report whether all the liabilities and creditors and contributories had been settled and the debts had been paid and whether the members were prepared to reduce their share capital by surrendering and cancelling their bonus shares, then the Court would as at present advised be prepared a stay the proceedings in the winding up'. Thus, there is no doubt that the Court does possess the power to stay a winding up even when it is a case of voluntary winding up. There must, however, be facts justifying the stay. The words used in Section 466 are: "on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed. "Thus, I have got to find from the facts whether this is a case where the winding up ought to be stayed or whether it is a case where the company should be finally wound up".

6. Hence, this court does have the power to stay voluntary winding up process.

7. In my opinion this is a fit case to exercise power under Section 518(i)(b) of the Act to permanently stay the voluntary winding up of the said company. The Company is solvent. It is likely to receive funds in the litigation against MCL.

8. The petition is accordingly allowed. The respondent company will file all the statutory reports before the ROC, as per law.

9. The powers of the Ex-directors of the aforesaid company are restored. The liquidator will hand over the charge of the said company to the Ex.Directors pursuant to which the liquidator will be discharged from further proceedings in the winding up process. After the filing of returns by the said Company, ROC will mark the said company as active in their records.

10. The Petition stands disposed of accordingly. All the pending applications, if any, also stands disposed of.

JAYANT NATH, J.

AUGUST 09, 2018
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