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

\+ CO.PET. 682/2016

BRANDBARON MARKETING PVT LTD ..... Petitioner

Through Mr.Sanjeev Kumar, Adv.

versus

TIMES BUSINESS SOLUTION LTD ..... Respondent

Through Mr.K.Datta, Mr.Manish Shrivastava and Ms.Prachi Johri, Advs. for Times Internet Ltd.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>O R D E R</u>

% 13.03.2019

1. Present petition is filed under Sections 433(e), (f), 434(1) (a) & (c) and 439 of the Companies Act, 1956 seeking winding up of the respondent Company.

2. Learned counsel for the respondent at the outset states that the admitted position is that the respondent Company, namely, Times Business Solution Ltd. has ceased to exist. This company merged into Times Internet Ltd. by virtue of an order passed by this court on 26.09.2014 under Sections 391-394 of the Companies Act. He states that the petitioner was aware of the merger inasmuch as an averment to that effect is made in the winding up petition. He states that the new entity cannot also be impleaded in view of the fact that the statutory notice under Section 434(1)(a) of the Companies Act was not issued to the proposed respondent-Times Internet Ltd.

3. Leaned counsel for the petitioner however states that in response to a

legal notice sent by the petitioner to the respondent there was no denial or averment to that effect that the merger has taken place.

4. In my opinion, the plea is misconceived. In the winding up petition itself, the petitioner in para 11 has stated that the respondent Company has amalgamated with Times Internet Ltd. Despite this knowledge, the petitioner has taken no steps as provided under Section 434(e) of the Companies Act.

5. Section 434(1) of the Companies Act reads as follows:-

> 434. (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.

2[“3[Provided also that] only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal: Provided further that – (i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or (ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts; shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959”]

4["Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act. 1956 and the Companies (Court) Rules, 1959."]

6. Hence, a company is unable to pay its debt only when a demand is served at the registered office of the company to pay the sum so due and the company despite lapse of 3 weeks neglects to pay the sum or to secure the same. A petition under Section 433(e) can only be entertained after compliance of the mandatory procedure of Section 434 (1)(a) of the Companies Act. As no statutory notice has been sent against the company, namely, Times Internet Ltd, the said company cannot also be impleaded or subjected to a winding up proceeding. The present petition is accordingly

dismissed with liberty to the petitioner to take steps as per law against the actual entity.

7. All pending applications also stand disposed of.

JAYANT NATH, J

MARCH 13, 2019
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