$~C21

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

Date of decision: 21st September, 2023

\+ **CO.PET. 94/2008 & CO.APPL. 688/2023**

RE-REGISTRAR OF COMPANIES ..... Petitioner

Through: None.

versus

.... Respondent

Through: Ms. Ruchi Sindhwani, Sr. Standing Counsel with Ms. Megha Bharara, Adv. for OL.

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

2. A petition was filed by the Applicant/ Petitioner- Salem Steels, a Partnership Firm which was claiming to be a creditor of M/s Shree Bahubali Castings Pvt. Ltd. The company had already resolved for voluntary winding up vide a Special Resolution of the Board of Directors dated 5th July, 2001, prior to the said filing of the present petition. However, the Voluntary Liquidator had passed away on 19th September, 2007 and, thereafter, vide order dated 9th April, 2008, the Official Liquidator (OL) attached to the Court was appointed as the Provisional Liquidator (PL). Vide order dated 6th February, 2014 it was clarified that the said PL ought to be actually treated as the OL and not merely as a PL as the company was already in liquidation proceedings.

3. The OL's office thereafter took possession of the property of the Company located at A-15N, SIPCOT Industrial Complex, Gummidipoondi, Chennai, Tamil Nadu-601201 on 27th September, 2008 and the same was

auctioned for Rs.76,00,000/-. The possession was handed over to the auction purchaser as well.

4. The Official Liquidator obtained the Company's details from the records of the Registrar of Companies (ROC). As per records as maintained by the ROC, Delhi, Mr. Sushil Kumar Jain, Mr. R. K. Mishra, Ms. Nirmal Kumar Jain, Mr. Atul Jain & Mr. Sukhbir Kumar Jain were shown as the Ex-Directors of the Company.

5. It is stated that Mr. Sushil Kumar Jain and Mr. R. K. Mishra had filed the Statement of Affairs on 20th June, 2008 and recorded their statement under Rule 130 of the Companies Rules, 1959 on 3rd July, 2008, 16th July, 2008 and 24th July, 2008. The other directors i.e. Ms. Nirmal Kumar Jain, Mr. Atul Jain & Mr. Sukhbir Kumar Jain had resigned w.e.f. 26th February, 1998.

6. The claims from the creditors of the Company *(In Liqn.)* were invited by the Official Liquidator in compliance of order dated 4th August, 2022 in the newspapers 'The Hindu' (Delhi & Chennai edition) and in 'Dina Thanthi' (Tamil) on 23rd September, 2022 and last date for submission of claim was 30th October, 2022. Pursuant to the said notice, no claims were received by this office.

7. It is stated in the application that one claim of Commercial Taxes Department had been received by the Official Liquidator on 23rd December, 2016, i.e. before the invitation of claims. The said claim was examined by the Official Liquidator and admitted for Rs. 2,48,66,694/-. In compliance of order dated 25th January, 2023, the Official Liquidator disbursed a sum of Rs. 32,88,394/- to the Commercial Tax Department out of the funds

available with the Official Liquidator, after deducting the liquidation expenses, on 16th March, 2023.

8. OL had then moved ***CO. APPL. 589/2023*** seeking exemption from publication of citation for winding up of company. The same was considered on 17th August, 2023 and the following order was passed:

> *"5. As per the present application, there is no other asset with the OL and the OL is in the process of filing an application for dissolution of the company under Section 481 of the Companies Act, 1956. In this background, the application has been moved by the OL seeking exemption from publication.*
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> *6. The Court has heard the ld. Counsel for the OL and perused the record. The background of this case would show that the circumstances leading up to appointment of the OL were unique i.e., the company was earlier in voluntary liquidation and thereafter, the Court had appointed the PL who was converted into the OL. Since the company has already been in liquidation prior to PL/OL's appointment, the Court had not directed at that stage for publication of the citations for winding up.*
>
> *7. Accordingly, considering the long gap of time which has elapsed and the unique facts and circumstances of this case, where the company has been in voluntary winding up since 5th July, 2001 and sale notices and claims have already been published, the publication of the winding up citation is exempted. Application is allowed and is accordingly, disposed of.*
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> *8. Let the OL file the application for dissolution of the company in accordance with law."*

9. Pursuant to the above order, the present application for dissolution under Section 481 of the Companies Act, 1956 has been filed. As per the said application, there are no assets of the said company with the OL. The only asset, which was available, has already been valued and auctioned. The

possession of the said property was also handed over to the auction purchaser.

10. The fund position of the Company *(In Liqn.)* is now NIL. There are no other creditors of the Company *(In Liqn.)* and the Official Liquidator has no further asset either moveable or immovable from which any money may be realized for the company *(In Liqn.)* and according to the OL, therefore, no useful purpose would be served by keeping this matter pending.

11. In the case of ***Meghal Homes (P) Ltd Vs Shree Niwas Girni K.K. Samiti and Ors., (2007) 7 SCC 753***, the Hon'ble Supreme Court, *inter alia* in Paragraph 31 thereof, has held as under:

> *"When the affairs of the Company had been completely wound up or the court finds that the Official Liquidator cannot proceed with the winding up of the Company for want of funds or for any other reason, the court can make an order dissolving the Company from the date of that order. This puts an end to the winding up process"*

12. In view of the above decision of the Supreme Court and the facts and circumstances of this case, the liquidation proceedings deserve to be brought to an end.

13. Consequently, Shree Bahubali Castings (P) Ltd is dissolved. The Official Liquidator is permitted to close the books of account of the Company.

14. A copy of this order be communicated to the Registrar of Companies within thirty days by the Official Liquidator.

15. Accordingly, the petition is disposed of.

16. The next date hearing shall stand cancelled.

PRATHIBA M. SINGH, J

SEPTEMBER 21, 2023

Rahul/kt