2023:DHC:7721

$~C22, C23 & C24

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

Date of decision: 19th October, 2023

\+ **CO.PET. 429/2013 & CO.APPL. 758/2023**

AIDEM VENTURES PVT LTD ..... Petitioner
Through: Ms. Divya Swami, Advocates.
versus
B.A.G GLAMOUR PVT LTD ..... Respondent
Through: Mr. Harsh B. Buch, Advocate (M: 9819791129).

C23 WITH

\+ **CO.PET. 450/2013 & CO.APPL. 759/2023**

AIDEM VENTURES PVT LTD ..... Petitioner
Through: Ms. Divya Swami, Advocates.
versus
M/S B.A.G INFOTAINMENT PVT LTD ..... Respondent
Through: Mr. Harsh B. Buch, Advocate (M: 9819791129).

C24 AND

\+ **CO.PET. 451/2013 & CO.APPL. 760/2023**

AIDEM VENTURES PVTLTD ..... Petitioner
Through: Ms. Divya Swami, Advocates.
versus
B.A.G NRESLINE NETWORK PVT LTD ..... Respondent
Through: Mr. Harsh B. Buch, Advocate (M: 9819791129).

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

CO.APPL. 758/2023 in CO.PET.-429/2013

CO.APPL. 759/2023 in CO.PET.-450/2013

CO.APPL. 760/2023 in CO.PET.-451/2013

2. These are applications for early hearing. It is noticed that these petitions were last listed on 24th February, 2020 and were directed to be listed on 8th April, 2020. The Registry has not listed these matters after the COVID-19 period at all.

3. Since the Company Court is now functional after the COVID pandemic, the Registry ought to ensure that all the matters which were adjourned *sine die* during the COVID period are listed before the Court.

4. Let the concerned Registrar in the Registry prepare a complete list of all such matters and list the same before the Company Court after giving intimation to the ld. Counsel for the parties.

5. Early hearing is allowed. Application is disposed of.

CO.PET.-429/2013

CO.PET.-450/2013

CO.PET.-451/2013

6. The present petitions have been filed seeking winding up of the Respondent-Company-B.A.G. Glamour Limited. The case of the Petitioner is that an agreement was entered into for advertising related services with the Respondent on 22nd April, 2010. The Respondent was appointed as an exclusive representative for selling available advertising options for different channels. The Petitioner's case is that it was entitled to a commission of 12% of the net advertisement sales billing. It is the case of the Petitioner that the commissions which were due to the Petitioner are stated to have not been paid by the Respondent. The amounts claimed in the petitions are under:-

S. No.	Petition	Amount
1	CO.PET. 429/2013	Rs. 8,69,345/-
2	CO.PET. 450/2013	Rs.23,08,627/-
3	CO.PET. 451/2013	Rs. 43,71,768/-

7. Since the amounts remain unpaid, notices were served upon the Respondent and when the same were not paid, the present petitions have been moved. Notices have been issued in these matters on 23rd August, 2013. Since then, only pleadings have been completed. The case of the Respondent is that there were disputes relating to the manner in which services were rendered and there were also cash flow issues for the Respondent.

8. It is also recorded that the applications for appointment of provisional liquidator were not pressed at that stage when notice was issued on 23rd August, 2013 in ***CO.PET.-429/2013***. The said order reads as under:-

> *"This is a petition under Section 433 (e) of the Companies Act seeking winding-up of the respondent company for non-payment of Rs.66.2 lakhs for sale of goods.*
> *Issue notice through all modes including registered speed post and approved courier, returnable on 29.10.2013, dasti in addition. The affidavit of service, enclosing the tracking report of the postal authority and courier agency* be filed by *the Petitioner at least one week in advance of the next date of hearing."*

9. Clearly, the winding up petition is at a nascent stage and no proceedings have been taken after the issuance of notice in these petitions. Only pleadings have been completed. In the meantime, the Companies Act, 1956 has been amended and a provision has been enacted for transfer of winding up

proceedings pending before the High Courts. Transfer of proceedings pending before High Courts relating to winding to the NCLT has been provided in Section 434 of the Companies Act, 2013. The said provision reads as under:

> *"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 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 also 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.]

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 subsection (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."

10. The Supreme Court in ***Action Ispat and Power Limited v. Shyam Metalics and Energy Limited (2021) 2 SCC 641***, has held that winding up proceedings which have not reached an advanced stage ought to be transferred to the National Company Law Tribunal (NCLT). The relevant extract of the said decision is extracted as under:

22. Given the aforesaid scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are contemplated, with the Tribunal retaining the power to control the proceedings in a winding up petition even after it is admitted. Thus, in a winding up proceeding where the petition has not been served in terms of Rule 26 of the Companies (Court) Rules, 1959 at a preadmission stage, given the beneficial result of the application of the Code, such *winding up proceeding is compulsorily transferable to the NCLT to be resolved under the Code. Even post issue of notice and pre admission, the same result would ensue. However, post admission of a winding up petition and after the assets of the company sought to be wound up become in custodia legis and are taken over by the Company Liquidator, section 290 of the Companies Act, 2013 would indicate that the Company Liquidator may carry on the business of the company, so far as may be necessary, for the beneficial winding up of the company, and may even sell the company as a going concern. So long as no actual sales of the immovable or movable properties have taken place, nothing irreversible is done which would warrant a Company Court staying its hands on a transfer application made to it by a creditor or any party to the proceedings.* ***It is only where the winding up proceedings have reached a stage where it would be irreversible, making it impossible to set the clock back that the Company Court must proceed with the winding up, instead of transferring the proceedings to the NCLT to now be decided in accordance with the provisions of the Code.*** *Whether this stage is reached would depend upon the facts and circumstances of each case.*

11. This Court has also examined the legal position in respect of cases where the winding up petition is not at an advanced stage in judgement dated 25th July, 2023, ***Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited, 2023:DHC:5206***.

12. In the opinion of this Court, since hardly any proceedings have been taken towards winding up of the company, the petition no longer deserves to be continued before this Court. The petition is itself at the very nascent stage and no substantive orders have been passed towards winding up of the company. Accordingly, in view of this position and in view of the settled law,

the petition is liable to be transferred to the NCLT. Ordered accordingly.

13. No fresh demand would be required to be issued by the Petitioner to the Respondent, inasmuch as these are petitions which have already been filed before the Court after issuance of notices under Section 433 in accordance with law at the relevant point of time.

14. The NCLT shall now proceed in accordance with law in all three petitions. The Registry to transfer all these petitions as also the electronic record of this Court to NCLT. Parties to appear before the NCLT on 5th December, 2023.

PRATHIBA M. SINGH
JUDGE

OCTOBER 19, 2023
mr/am