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

\+ CO.PET. 123/2002

RE-ADVANCED EDUCATIONAL TECHNOLOGY P. LTD.

.....Petitioner

Through:

versus

....Respondent

Through: Ms.Sangeeta Chandra, Standing counsel for the OL

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

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

% 19.09.2024

<u>CO.APPL. 817/2024</u>

1. The instant application under Section 481 of the Companies Act, 1956 has been filed on behalf of the Official Liquidator seeking the following reliefs:-

> *"i) Dispose of the pending Crl. o. Co. 11 of 2010 filed against the Ex-Directors;*
> *ii) Dissolve the Company (in Liqn.) under Section 481 of the Companies Act, 1956;*
> *iii) Permit the office of the Official Liquidator to adjust the negative balance in its account as per accounting treatment as per applicable law;*
> *iv) Permit the Official Liquidator to close the books of account of the Company (in Liqn.) as maintained by the Official Liquidator;*
> *v) Discharge the Official Liquidator from further proceedings;*

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and/or
vi) Pass such other order(s) as deemed fir & proper in the interest of justice.”

2. Learned counsel appearing on behalf of the Official Liquidator submitted that *vide* order dated 13th July, 2004, this Court has appointed the Official Liquidator attached to this Court as the Provisional Liquidator of *M/s Advance Educational Technology Pvt. Ltd.* (hereinafter as the “Company (in Liqn.)”), thereby directing the same to take possession of assets, books of accounts/records of the Company (in Liqn.). The said averments were accordingly published on 28th October, 2004 in the newspapers namely ‘Statesman’ and ‘Veer Arjun’, in English and Hindi editions, respectively. Subsequently, *vide* order dated 7th February, 2005, the Company (in Liqn.) has been finally wound up.

3. It is submitted that as per the records of Registrar of Companies, Delhi and Haryana (hereinafter as the “Registrar”), the registered office of the Company (in Liqn.) was situated at J-34, Part-I, South Extension, New Delhi. It is submitted that on 3rd September, 2004, a team of officials from the Official Liquidator’s office was deputed to take over the possession of the registered office of the Company (in Liqn.). It was submitted that based on the identification of Shri Anil Jain, one of the Ex-Directors of the Company (in Liqn.), the team has entered one room, which is situated on the top floor/ terrace of the registered office, wherein certain records, moveable assets and goods belonging to the Company (in Liqn.) were found, however, the same was locked and sealed. Therefore, notice under Section 456 of the Companies Act, 1956 (hereinafter as the “Act”) was accordingly affixed on the door of the registered office.

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4. It is submitted that on 2nd August, 2006, another visit was paid to the registered office by the officials of the Official Liquidator's office in order to prepare a list of inventory of moveable assets and records of the Company (in Liqn.) lying therein. It is submitted that the said list of inventories is set out in paragraph no. 7 in the instant application and was further mentioned that no statutory records such as books of accounts, annual returns, minute books etc. were found at the said premises of the registered office.

5. It is further submitted that in light of the same, notices were issued to the Income Tax Department, Sales Tax Department, Registrar of Companies and Post Office on 15th September, 2004 by the office of Official Liquidator.

6. Learned counsel for the Official Liquidator submitted that as per the available records of the Registrar, there were three Directors of the Company (in Liqn.), who are the Ex-Directors herein, namely Shri Anil Jain, Shri Sushma Jain and Shri Dinesh Nambiar. Subsequently, the office of the Official Liquidator issued notices under Sections 454 and 456 of the Act to all the Ex-Directors of the Company (in Liqn.) for filing the Statement of Affairs (hereinafter as the "SOA") and to record their Statements as per Rule 130 of the Companies (Court) Rules, 1959 (hereinafter as the "Companies Rules").

7. It is submitted that in response to the notices issued by the office of Official Liquidator, Shri Anil Jain and Shri Sushma Jain, Ex-Directors of the Company (in Liqn.), appeared before the office of the Official Liquidator on 2nd September, 2004 and recorded their statement under Rule 130 of the Company Rules. Additionally, the SOA under Section 454(5) of

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the Act was also filed by them on 12th September, 2004 which, upon examination, was found to be defective and despite repeated reminders, the Ex-Directors did not rectify the same.

8. It is submitted that the office of Official Liquidator, in terms of the order dated 11th February, 2009, invited offers for the sale of items/articles lying at the registered office of the Company (in Liqn.), by way of sale notice/handbill on '*as is where is whatever there is basis*'. It is submitted that when the inspection was sought for providing the moveable articles to the prospective buyers, it was found that the seal of the premises was broken, goods therein were stolen and the notice under Section 456 of the Act was not found affixed on part of the premises. It is submitted that in these circumstances, inspection cannot be provided to the prospective buyers.

9. Learned counsel for the Official Liquidator further submitted that a complaint was registered in this regard by the office of the Official Liquidator with the SHO of Police Station Kotla, Mubarakpur. The concerned SHO intimated the office of the Official Liquidator that despite their best efforts, they were unable to gather any clue with respect to the culprit and/or stolen moveable articles and accordingly, the case was closed as untraced.

10. It is submitted that vide this Court's order dated 19th December, 2011, a firm of Chartered Accountants was appointed to scrutinize the records/documents of the Company (in Liqn.). Upon scrutinization, it was found that only certain records of the Company (in Liqn.) were handed over on 28th November, 2011 and the entire statutory records including the books of accounts were not handed over by the Ex-Directors. Therefore, the

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available records were inspected by the Chartered Accountant in the presence of Shri Anil Jain, the Ex-Director of the Company (in Liqn.). It is submitted that accordingly, a report was submitted by the Chartered Accountant on 15th June, 2012.

11. It is submitted that the said report states that the amount to be recovered from the debtors as well as loans and advances are to the extent of Rs. 17,75,000/- and Rs. 74,600/-, respectively. However, since all the debts were outstanding for more than three years, the recovery of the same had become time-barred by limitation. It is submitted that pursuant to the same, the office of Official Liquidator filed an application bearing CA No. 1461 of 2012 under Sections 426 and 427 of the Act, stating that the Company (in Liqn.) was unable to recover the amount due from the debtors to the extent of Rs. 17,75,000/- and loans and advances to the extent of Rs.74,600/- as the requisite information for pursuing the claim had not been provided by the Ex-Directors of the Company (in Liqn.).

12. It is submitted by the learned counsel for the Official Liquidator that subsequently, the Official Liquidator filed an application bearing CA No. 518/2015 seeking permission to invite claims. Thereafter, this Court vide order dated 28th January, 2016, permitted the Official Liquidator to publish the claim notice in the newspapers namely, 'Indian Express' (English) Delhi Edition and 'Jansatta' (Hindi) Delhi Edition. Pursuant to the publication of the claim notice, no claims were received by the office of the Official Liquidator and in view of the same, CA No. 1461/2012 was withdrawn by the Official Liquidator on 25th May, 2016.

13. It is submitted that after several orders of this Court including bailable warrants being issued against the Ex-Directors and letters from the

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office of the Official Liquidator being served, Shri Anil Jain and Shri Uni Krishnan, representative of Shri Dinesh Nambiar, appeared before the office of Official Liquidator on 6th February, 2024. However, it is submitted that the Ex-Directors have not properly assisted the Official Liquidator at any stage.

14. It is submitted that it appeared from certain records that the Company (in Liqn.) was possessed with the title to the first floor of the premises of the registered office i.e. J-34, South Extn, Part- I, New Delhi. It is submitted that for this purpose, notices were issued to the Sub-Registrar-V (Kalkaji) at Mehrauli, Tehsil Building, Mehrauli, New Delhi, directing to provide information to the Official Liquidator to determine the issues that had arisen in respect of the registered office of the Company (in Liqn.). Pursuant thereto, the Official Liquidator issued several letters to the Sub-Registrar-V, Kalkaji, and the Ex-Directors to appear before the Official Liquidator with all relevant details pertaining to the property of the Company (in Liqn.) situated at J-34, 1st Floor, South Extension, Part-I, New Delhi. It is submitted that after finally verifying the records from the office of the Sub-Registrar, it was found that neither the Company (in Liqn.) nor the Ex-Directors are the owners of any of the floors of the registered office i.e., J-34, South Extension, Part-I, New Delhi. Therefore, it was observed that the office of the Company (in Liqn.) was stated to be situated on the first floor, two years prior to the appointment of the Provisional Liquidator and the same was dealt on a rent basis. Therefore, it is submitted that the Official Liquidator is not in possession of any moveable/immoveable or other assets of the Company (in Liqn.) for realization in the interest of the creditors.

16. It is submitted that the office of the Official Liquidator filed an

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application bearing Crl. O. (Co.) 11/2010 against the Ex-Directors as they failed to hand over the records of the Company (in Liqn.) to the Official Liquidator and remove the defects in the SOA. However, it is submitted that in view of the fact that the Company (in Liqn.) neither has any assets, both moveable or immoveable, nor have any receivable claims despite the publication, no purpose would be served in keeping the said criminal proceedings pending and the same may be disposed off.

17. It is submitted that in view of the abovementioned facts and circumstances, no fruitful purpose shall be served in keeping the winding up proceedings alive with respect to the Company (in Liqn.) and accordingly, filed the instant application under Section 481 of the Act as it is a fit case for the dissolution of the Company (in Liqn.). Hence, it is prayed that the Official Liquidator may also be discharged from the duties of Liquidator of the Company (in Liqn.).

18. Learned counsel for the Official Liquidator submitted that the Hon'ble Supreme Court in the case of ***Meghal Homes (P) Ltd. V. Shree Niwas Ginni K.K. Samiti & Ors.,* (2007) 7 SCC 753**, held that 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.

19. In light of the same, it is submitted that keeping the winding up proceedings pending before the Court would only result in unnecessarily keeping a defunct Company on the rolls of the Registrar of Companies and further, incurring establishment and legal expenses of liquidation proceedings.

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20. Therefore, it is prayed that the present Company (in Liqn.) may be dissolved under Section 481 of the Act with the permission of this Court.

21. Heard the learned counsel for the Official Liquidator and perused the contents of the application.

22. It is apparent from the aforementioned submissions that the Official Liquidator has no recoverable assets, either moveable or immoveable and therefore, there is no purpose in keep this instant matter pending. Therefore, this Court finds satisfaction in the submissions advanced by the Official Liquidator in the instant application.

24. In view of the aforementioned case law as well as the facts and circumstances, the liquidation proceedings of the Company (in Liqn.) i.e., *M/s Advanced Educational Technology Pvt. Ltd.,* is liable to be brought to an end and accordingly, the same is dissolved.

26. Accordingly, the instant application under Section 481 of the Act filed by the Official Liquidator is disposed of along with pending status reports, if any, as per the terms mentioned in the company petition bearing CO. PET. 123/2002.

CO.PET. 123/2002

This Court has allowed the application bearing CO. APPL. 817/2024 filed by the Official Liquidator under Section 481 of the Act as per the below mentioned terms -

1. The pending Crl. O. (Co.) 11 of 2010 filed against the Ex-Directors is disposed of in view of the facts.

2. The Official Liquidator is permitted to close the books of account of the Company (in Liqn.) and to adjust the negative balance in its account as per the accounting treatment in accordance with the applicable law.

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

4. The Official Liquidator is hereby discharged.

4. It is further clarified that the petitioner is not precluded from reviving the Company Petition or instituting any proceedings against the Ex-Directors of the Company (in Liqn.) if any such cause of action arises.

6. In view of the above directions, the instant petition stands disposed of.

7. The date already fixed i.e. 16th October, 2024 stands cancelled.

CHANDRA DHARI SINGH, J

SEPTEMBER 19, 2024
Dy/mk

Click here to check corrigendum, if any

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