$~C31

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

% **Date of decision: 14th March, 2024**

\+ CO.PET. 319/2005, CO.APPL. 322/2024

RE-M/S LUMAX AUTO PVT LTD ..... Petitioner
Through: None.

versus

... . Respondent
Through: Mr. Kunal Sharma and Mr. Shubendu Bhattacharya, Advs. for OL.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The present application bearing CO.APPL. 322/2024 has been moved on behalf of the Official Liquidator under Section 481 of the Companies Act, 1956, seeking dissolution of the company (in liquidation) and praying that the Official Liquidator be discharged as its Liquidator.

2. Briefly stated, this company petition was instituted under Section 433 (e) read with Section 434 of the Companies Act, 1956 seeking winding up of the respondent/company (in liquidation) – M/s. Lumax Auto Pvt. Ltd., and is predicated on the non-payment of outstanding dues amounting to Rs. 6,70,487/- along with interest at the rate of 18% per annum, as confirmed by the books of accounts of the respondent/company (in liquidation).

3. The instant company petition was admitted vide order of this Court dated 29.03.2006 and the company (in liquidation) was ordered to be wound up provisionally vide order dated 03.05.2006 whereby the Official Liquidator attached to this Court was appointed as the Provisional Liquidator of the respondent company with the direction to take possession of the assets, books of accounts and records of the company. Thereafter, the company was directed to be finally wound up vide order dated 27.04.2012 and accordingly, the Official Liquidator was appointed as its Liquidator.

4. It is stated that as per the record of the Registrar of Companies, the following persons were shown to be the Ex-directors of the company (in liquidation):

(i) Sh. Mahesh Kumar Jain; and

(ii) Ms. Pushpa Jain.

5. It is further stated that per the record of the Registrar of Companies, the registered office of the company (in liquidation) was situated at 26-C, Baba Faridpuri, West Patel Nagar, New Delhi and possession of the same was taken by the office of the Official Liquidator on 30.05.2006.

6. It has been brought to the attention of this court that a charge of Rs. 120 lacs, subsequently enhanced to Rs. 170 lacs had been created in favour of Syndicate Bank, as against the stocks, movables, current assets, book debts, supply bills, money receivables and all plant and machinery of the company. In this regard, the office of the Official Liquidator received a letter from Syndicate Bank dated 29.05.2006, in response to letter dated 25.05.2006, wherein the Bank stated that the

account of the company (in liquidation) has been closed and that there is no liability of the company (in liquidation) and that the Bank has no charge on any property of the company.

7. As regards the corporate office of the company (in liquidation) shown to be at 210, Ground Floor, Housing Board, Sector 40, Gurgaon, it is stated that possession of the same could not be taken by the office of the Official Liquidator as the same was rented by the company (in liquidation) and was duly vacated in February 2006.

8. It is stated that the Ex-director, Sh. Mahesh Kumar Jain, filed the Statement of Affairs under Section 454 of the Companies Act, 1956 on 07.08.2006, which provided for the following:

(i) A list of the unsecured creditors along with their addresses and amount due to them.

(ii) Cash in Hand amounting to Rs, 2547/- which is stated to have already been deposited with the Official Liquidator

(iii) Bank Balance amounting to Rs. 22,641.67/-in the current account of the company with Punjab National Bank. The said account has been closed and the amount was deposited with the official Liquidator vide Pay order No. 090106/2316/2006 dated 15.09.2006.

(iv) Debtors of the company were stated to be nil.

(v) 'Loans and advances' amounting to Rs.5,16,304/- which was given by the company to one M/s. Optical & Photomatric Technology (P) Ltd. having registered office at 25, Richaros Road Hopper Crossing, Melbourne, Victoria -3029, Australia.

9. As regards the amount of Rs. 5,16,034/- paid to the debtor

under the head of 'Loans and advances', it is stated on behalf of the Official Liquidator that several efforts were made to serve a notice regarding the same upon the company M/s. Optical & Photomatric Technology (P) Ltd. at its registered office however, service could not be effected as the company was not found at the registered address and has since been deregistered. Therefore, the Official Liquidator moved CO.APPL. 925/2019 before this Court under Section 535 of the Companies Act, 1956, seeking permission to disclaim the debt and the same came to be allowed vide order of this Court dated 06.09.2019.

10. At present, it is submitted that the Official Liquidator is not seized of any movable or immovable assets for realization and that the funds position of the company is Rs. (-) 76,066.35/- as on 20.02.2024. Therefore, no fruitful purpose will be served in continuing the present winding up proceedings.

11. At this juncture, it is expedient to consider the decision in **Meghal Homes (P) Ltd. v. Shree Niwas Girni K.K. Samiti & Ors.**[1] whereby the Supreme Court *inter alia* held as under:-

> "When the affairs of the Company have 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. It would also be relevant to reproduce Section 481 of the Act, which provides for dissolution of a company under such circumstances as are prevailing in the present matter, and the relevant

[1] (2007) 7 SCC 753

portion of the same reads as under:

> "**Section 481. Dissolution of company.**
> (1) When the affairs of a company have been completely wound up or when the Court is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any of the reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly."
> ....

13. In view of the above-mentioned decision of the Supreme Court in **Meghal Homes (supra),** as well as keeping in mind the import of Section 481 (1) of the Act and the facts and circumstances of the present case, these liquidation proceedings warrant to be brought to an end and therefore, the company (in liquidation) – M/s. Lumax Auto Pvt. Ltd., stands dissolved and the Official Liquidator is hereby discharged as its Liquidator.

14. The Official Liquidator is permitted to close the books of accounts of the company.

15. A copy of this Judgment be communicated to the Registrar of Companies within 30 days by the Official Liquidator.

16. Accordingly, the present company petition and pending applications, if any, stand disposed of.

DHARMESH SHARMA, J.

MARCH 14, 2024
ck