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

\+ CO.PET. 294/2006 & CO.APPL. 255/2024

RE-BERRY SONS INDIA LTD. & ORS. ..... Petitioners
Through:

versus

.... Respondent
Through: Ms. Sangeeta Chandra, Standing Counsel for the OL.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

<u>O R D E R</u>
% **05.03.2024**

1. It has been submitted at the bar that the respondent/company (in liquidation) is fit for dissolution and an application bearing CO.APPL. 255/2024 has been moved under Section 481 of the Companies Act, 1956 on behalf of the Official Liquidator, praying that the respondent/company (in liquidation) be dissolved and the Official Liquidator be discharged as its Liquidator.

2. This company petition was instituted under Sections 433(e), 434 and 439 of the Companies Act, 1956 against the respondent company – M/s. Berry Sons India Ltd. & Ors. It is stated that petitioner No. 1 is a Workers Union and petitioners No. 2 to No. 6 are workmen, and winding up of the company was sought on the ground of non-payment of outstanding dues amounting to Rs. 60,00,000/-. It is stated that certain disputes had arisen between the Management of the company (in liquidation) and its workmen and consequently, the said amount became payable pursuant to a settlement arrived at between the parties by means of a compromise deed dated 19.04.2004.

3. The company (in liquidation) was ordered to be wound up provisionally vide order dated 21.10.2008 and 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. Citations were published in the 'Statesmen' (English) and 'Jansatta' (Hindi) as also in the Delhi Gazette on 20.02.2009. Thereafter, the final order for winding up was passed on 17.02.2012, whereby the Official Liquidator was appointed as the Liquidator of the company and fresh citations for final winding up were published on 17.02.2012 in 'Statesmen' (English) and 'Veer Arjun' (Hindi) as also the Delhi Gazette.

4. It is stated that as per the record of the Registrar of Companies, the registered office of the company (in liquidation) was situated at K-78, Hauz Khas, New Delhi and the following persons were shown to be the Ex-directors of the company (in liquidation):

(i) Mr. Ajay Berry; and

(ii) Mr. Ashwani Kumar Berry

5. As regards the registered office of the company (in liquidation) situated at Hauz Khas, New Delhi, the Official Liquidator visited the site on 28.02.2009 and found an open plot where the building had been demolished and the *malba* removed. The office of the Official Liquidator, accordingly, appointed two security guards of M/s. Jag Securities for watch and ward of the said plot. Thereafter, the Official Liquidator handed over possession of the registered office to Mr. Anurag Sharma and Ms. Poonam Sharma on 12.06.2009, in compliance with the judgment of this Court dated 17.02.2012, passed in C.A. No. 311/2009, moved on behalf of Mr. Anurag Sharma and

Ms. Poonam Sharma seeking release of the premises from the Official Liquidator. The said application was moved by the applicants stating that they had purchased the registered office/property vide two sale deeds dated 07.02.2008 executed by Mr. Ashwani Berry, for a consideration of Rs. 8 crores. It is also brough forth that the judgment dated 17.02.2012 was confirmed vide a Division Bench order dated 15.01.2013, passed in Co. Appeal No. 26/2012.

6. As regards the other properties of the company (in liquidation), it is stated that the company (in liquidation) had a factory situated at I-45, DLF Industrial Areas, Faridabad - possession of which could not be taken by the Official Liquidator as on arrival at the said site, the premises was found to be under the use and occupation of M/s. Imperial Auto Industries in terms of a Rent Agreement executed on 27.02.2007. Further, the Official Liquidator was provided with a copy of a Sale Deed indicating that the factory had been sold by the company (in liquidation) in the year 2004.

7. It was also brought forth from the statement of the Ex-director, Mr. Ashwani Berry made under Section 130 of the Companies (Court) Rules, 1959 that the company (in liquidation) had another factory shed/premises situated at C-80, MIDC, Waluj Industrial, Aurangabad. With respect to the said factory shed at Aurangabad, one Sh. Atul Ratnakar Deshmukh claimed to have purchased the property from Mr. Ajay Director, Ex-director of the company (in liquidation) and provided certain documents claiming title to the property, which were sought to be declared void by means of CO.APPL. 1308/2010 moved on behalf of the Official Liquidator. It also appears that the said property was given on rent to certain persons by the landlady Ms. Archana Ratnakar Deshmukh (sister of Late Mr. Atul Ratnakar

Deshmukh). However, possession of the said premises was taken over by the Official Liquidator on 08.03.2014, and M/s. Manasvi Security Services was engaged for watch and ward of the factory shed. Subsequently, CO.APPL. 1308/2010 was allowed vide order of this Court dated 15.11.2017, and the documents claiming title over the property were declared void. The movable assets lying at the premises were handed over to the respective applicants in C.A. Nos. 822-24/2014 and C.A. No. 1340/2014, in compliance of orders dated 17.04.2014, 30.04.2014 and 28.05.2014.

8. Thereafter, the factory shed at Aurangabad was put up for auction and the highest bid of Rs. 46,00,000/- was accepted vide order of this Court dated 23.08.2018, after which possession of the factory premises was handed over to the Auction Purchaser on 03.11.2018 and Deed of Execution was executed by the Official Liquidator in favour of the Auction Purchaser on 13.06.2022. With respect to the above-mentioned factory premises, an expense of Rs. 44,29,904/- was incurred by the Official Liquidator towards engaging security for the watch and ward of the premises. It is stated that an application being C.A. No. 395/2019, was moved on behalf of the petitioner challenging the action of the Official Liquidator in disbursing the entire amount realized from the sale of the factory premises at Aurangabad to the concerned Security Agency. However, said application came to be dismissed vide order of this Court dated 11.04.2023.

9. From a persual of the record it is borne out that a Criminal Complaint under Section 454 (5) and (5A) bearing CRL.O (CO) No. 01/2009 was filed by the Official Liquidator against the Ex-directors of the company (in liquidation), which came to be disposed of vide order of this Court dated 15.11.2017, and as on date of the application

seeking dissolution, Mr. Ashwani Kumar Berry has expired and Mr. Ajay Berry is not traceable.

10. It is submitted on behalf of the Official Liquidator that no claims could be invited in the course of the present winding up proceedings as there were no realizable assets to pay off any creditors. It is further stated that at present, the Official Liquidator is not seized of any movable or immovable assets for realization in the interest of the creditors and that the funds position of the company is Rs. (-) 8678.68/-. 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 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."
> ....

[1] (2007) 7 SCC 753

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. Berry Sons India Ltd., stands dissolved and the Official Liquidator is hereby discharged.

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 5, 2024