



\$~C-7 & C-8

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

% **Date of decision: 16th May, 2024**

+ CO.PET. 36/2003 and CO.APPL. 517/2024, OLR 38/2024
ADVANCE STEEL TUBES LTD. Petitioner

Through:

versus

SPACK TURNKEY PROJECTS P. LTD. Respondent

Through: Mr. Ashok Kumar and Ms.
Chhavi Arora, Advs. for Ex.
Director/Mr. Rajiv Chadha
Mr. Anuj Chaturvedi, ASC for
OL

C-8

+ CRL.O.(CO.) 5/2006 and CO.APPL. 515/2024
SPACK TRUNKEY PROJECTS P.LTD. Petitioner

Through: Mr. Ashok Kumar and Ms.
Chhavi Arora, Advs. for Ex.
Director/Mr. Rajiv Chadha
Mr. Anuj Chaturvedi, ASC for
OL

versus

MR.BM KHULLAR & ORS. Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CO.APPL. 517/2024

1. This application, moved under Section 481 of the Companies Act, 1956¹, has been preferred on behalf of the Official Liquidator praying that the company (in liquidation) – M/s. Spack Turnkey

¹ The Act



Projects (P) Ltd., be dissolved and the Official Liquidator be discharged as its Liquidator.

2. The above-mentioned application has been moved in the instant company petition, which has been instituted under Section 433, 434 and 439 of the Act, seeking winding up of the respondent/company (in liquidation) on the ground of non-payment of outstanding dues amounting to Rs. 6,53,087.74/- along with due interest.

3. It is borne out from the record that the Official Liquidator attached with this Court was appointed as the Provisional Liquidator to the company (in liquidation) vide order dated 15.01.2005, with directions to take charge of the assets, records and books of accounts of the company. Thereafter, vide order dated 19.04.2005, the respondent/company (in liquidation) was directed to be provisionally wound up. Pursuant to the same, relevant citations were published in the newspapers namely, 'Statesman' (English) on 27.04.2014 and 'Jansatta' (Hindi) on 01.05.2014.

4. As per the records maintained with the Registrar of Companies, NCT of Delhi and Haryana, the registered office of the company (in liquidation), was situated at 2nd Floor, Abhishek Tower, D-2, Alaknanda Commercial Complex, New Delhi and was subsequently changed to 1102/1109, Padma Towers, Rajendra Place, New Delhi, with effect from 02.05.2004. Further, the following persons were shown to be the Ex-Directors of the company (in liquidation):

- (i) Sh. Balvinder Mohan Khullar;
- (ii) Sh. Rajeev Chadha; and
- (iii) Mrs. Prem Chadha, W/o Sh. Rajeev Chadha



5. As regards the Ex-Directors, it is stated that their statements under Section 130 of the Companies (Court) Rules, 1959 were recorded on 06.03.2012. Further, although Statement of Affairs was filed on 03.02.2011, the same was not done within the statutory period as stipulated under the Act, and therefore, the Official Liquidator was constrained to file a Criminal Complaint bearing CRL.O. No. 5.2006 against them, under Section 454 of the Act.

6. As regards the properties and assets of the company (in liquidation), it is stated that through the course of these liquidation proceedings, possession of the same were taken and the status of such properties has been detailed in paragraph (7) of the present application, which is reproduced hereinbelow:

S.NO.	ADDRESS	POSSESSION & STATUS
1.	Regd. Office 2 nd Floor, Abhishek Tower, D-2, Alaknanda Commercial Complex, New Delhi – 110019; 1102/1109, Rajendra Place, New Delhi.	Possession could not be taken over as the said premises was rented and the same was vacated by the Company; and another company namely M/s. Sugam Products Pvt. Ltd. was running its affairs at the said premises.
2.	Residential Flat situated at property bearing No. 916, Sector 15, Faridabad, Haryana.	Possession was taken on 21.07.2007 <u>Status:</u> The same was sold by the State Bank of Indore (Secured Creditor) under Section 13(2) of SARFAESI Act, 2002 on 26.08.2009.
3.	Agriculture Land of Khasra No. 4/11 (1-2), 20 (7-13), 21 (8-0), 5/1/1 (0-16), 1/2 (7-4), 2 (8-0), 3 (5-3), 10 (8-0), 4/19 (1-6), 22 (7-3), 23 (0-12), 5/5 (8-0), 6 (8-0) Mortgage share – 2, kanal out of	Possession taken on 24.01.2006 <u>Status:</u> The same was sold by the State Bank of Indore (Secured Creditor) under Section 13 (2) of SARFAESI



JED-44-44-44



	total Khas -13 total rakba – 71 Kanal and 9 marlas situated in village Suripuri, Tehsil Ballabgarh, Distt. Faridabad, Haryana.	Act, 2002 on 28.07.2009.
4.	Agriculture out of Khasra no. 5/8/3(0- 13), 8/3/3(0-12) and 5/9(8-0) Mortgaged share 825 Sq. yds Out of total rakba 5596 Sq yds. situated in village Surirpur, Tehsil Ballabgarh, Distt. Faridabad Haryana.	Possession taken on 24.01.2006. <u>Status:</u> The same was sold by State Bank of Indore (Secured Creditor) under Section 13(2) of SARFAESI Act, 2002, on 28.07.09.

7. It is stated that although the Secured Creditor has the right to proceed with respect to the mortgaged properties, the claims of workmen, if any were made, had to be paid *pari passu*. Therefore, claims were invited by the Official Liquidator pursuant to the order dated 20.05.2019, by way of publications in the newspapers 'Statesman' (English) and 'Veer Arjun' (Hindi) on 17.09.2019. In this regard, it is stated that no claims were received from creditors and one claim was received from the EPFO for an amount of Rs. 9,32,371/- prior to invitation of claims by the Official Liquidator.

8. It is stated that vide order dated 29.11.2023, the State Bank of India (formerly State Bank of Indore), was directed to deposit Rs. 9,32,371/- with the office of the Official Liquidator which amount would thereafter be disbursed to satisfy the claim of EPFO. It has been recorded in the order dated 04.04.2024 that State Bank of India handed over a Bankers Cheque of the same amount as directed, which



was thereafter, given to the EPFO for disbursement of their claims to the employees/workers concerned.

9. At present, it is submitted that no action towards the liquidation of the respondent company remains pending on behalf of the Official Liquidator. Further, it is submitted that the Official Liquidator is not seized of any assets, either movable or immovable, from which any money may be realized for the company (in liquidation), and thus, no fruitful purpose would be served by keeping these winding up proceedings pending.

10. As regards the funds position of the company (in liquidation), it is stated that the balance remaining as on 12.05.2024 is Rs. 37,947.49/- and that no expenses towards liquidation are sought to be recovered from the funds available with the company (in liquidation).

11. In light of the prevailing facts and circumstances, this Court is of the opinion that these liquidation proceedings warrant a quietus, and the company (in liquidation) should be dissolved as the Official Liquidator cannot proceed any further with the winding up process. It would be expedient to invite reference to the decision of the Supreme Court in **Meghal Homes (P) Ltd. v. Shree Niwas Girni K.K. Samiti & Ors.**², the relevant observations of which are reproduced hereinbelow:

“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.”

² (2007) 7 SCC 753



12. It would also be apposite to consider Section 481 of the Companies Act, 1956, which provides for the dissolution of a company, the relevant portion of which 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. Thus, relying on the decision of the Supreme Court in *Meghal Homes (supra)* as also the import of Section 481 (1) of the Act, besides the facts and circumstances of the present case, these liquidation proceedings warrant to be brought to an end.

14. Therefore, the present application is allowed. The company (in liquidation) – M/s. Spack Tunrkey Projects (P) Ltd., stands dissolved and the Official Liquidator is hereby discharged as its Liquidator.

15. The Official Liquidator is permitted to transfer the available balance, if any, to the Common Pool Fund and thereafter, to close the books of accounts of the company (in liquidation).

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

CO.PET. 36/2003

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

CRL.O.(CO.) 5/2006



18. This is a Criminal Complaint preferred against the Ex-Directors of the company (in liquidation) instituted at the behest of the Official Liquidator under Section 454 of the Companies Act, 1956.

19. Since the company stand dissolved, no useful purpose would be served in keeping this complaint pending as the same has not become infructuous.

20. Accordingly, this complaint is disposed of, along with pending applications, if any.

DHARMESH SHARMA, J.

MAY 16, 2024

sp