$~C14 & C15

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

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\+ CO.PET. 348/2014

MR. VIJAY KUMAR BIDHURI ..... Petitioner
Through: Mr. Raghu Vasishth, Adv.

versus

M/S LEXUS INDIA LTD. ..... Respondent
Through: None.

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\+ CO.PET. 349/2014

M/S PAYAL PROTECTION (P) LTD. ..... Petitioner
Through: Mr. Raghu Vasishth, Adv.

versus

M/S LEXUS INDIA LTD. ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **05.03.2024**

1. The present petitions have been instituted under Sections 433 (e) & (f), 434 and 439 of the Companies Act, 1956, read with Rule 9 of the Companies (Court) Rules, 1959, seeking winding up of the respondent company – M/s. Lexus India Ltd., and are predicated on the non-payment of outstanding dues amounting to Rs. 7,00,553/- in CO.PET. 348/2014 as also Rs. 7,77,919/- in CO.PET. 349/2014, along with due interest @ 18% from the date the amounts became due till the date of realization.

2. It would be expedient to note that the petitioner in CO.PET. 348/2014 - Mr. Vijay Kumar Bidhuri is the sole proprietor of M/s. VK Garments, which is engaged in the business of providing uniforms, coats and caps used by security personnel, and the said person is also a Director of the M/s. Payal Protection (P) Ltd., which is the petitioner company in CO.PET. 349/2014.

3. Briefly stated, the respondent company sought manpower for security and house-keeping purposes at its premises in Dehradun, Uttarakhand, and approached the petitioner in CO.PET. 349/2014 – M/s. Payal Protection (P) Ltd., for the fulfillment of the said requirements vide letter dated 26.12.2006. Thereafter, the petitioner company – M/s. Payal Protection (P) Ltd. gave its quotations to the respondent company vide letter dated 01.01.2007 and subsequently commenced providing the requisite manpower services to the respondent company and raised bills in respect of the same from time to time. In furtherance of this, the respondent company engaged the petitioner in CO.PET.348/2014 for providing dresses/uniforms for the security personnel engaged by it at its premises.

4. It is stated on behalf of the petitioners in these petitions that the respondent company only made part payments towards the bills raised and that the ledgers show outstanding debts of Rs. 7,00,553/- in CO.PET. 348/2014 and Rs. 7,77,919/- in CO.PET. 349/2014 respectively. Further, it is stated that the Managing Director of the respondent company – Mr. Pramod Saraf, made an assurance to pay the petitioners a minimum of Rs. 1 lakh per month each, in furtherance of the full and final settlement of its dues. However, the said arrangement was not honoured by the respondent company. Despite repeated reminders, the respondent company failed/neglected

to clear its dues, and resultantly, the petitioners in each of these petitions were constrained to serve statutory legal notices dated 28.01.2014 under Section 434(1)(a), upon the respondent company calling upon them to clear the respective outstanding debts. Since the respondent company failed to discharge its dues despite said legal notices, the petitioners have preferred the present company petitions.

5. It is but apparent that the respondent company is unable to pay its debt in the normal and ordinary course of its business, hence, these petitions have been filed. However, from a perusal of the record, it appears that neither a Provisional Liquidator nor an Official Liquidator has been appointed in the instant petitions and as such, these winding up petitions are a complete non-starter and no effective orders have been passed in these petitions yet.

6. It is expedient to consider that during the pendency of these proceedings, the Insolvency and Bankruptcy Code, 2016 as well as the Companies Act, 2013, have been enacted. In view of this, it is the opinion of the court that the present petition does not deserve to continue before the court, and it would be appropriate for the same to be transferred to the National Company Law Tribunal[1]. In this regard, it is relevant to consider Section 434 of the Companies Act, 2013 which provides for the transfer of proceedings relating to winding up, pending before High Courts, to the NCLT, and 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

[1] NCLT

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

(b)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."

7. It is also expedient to consider the decision of the Supreme Court in the case titled **Action Ispat and Power Private Limited v. Shyam Metalics and Energy Limited**[2] the relevant extract of which is reproduced hereunder:

[2] (2021) 2 SCC 641

"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."

8. The above noted decision of the Supreme Court has been relied upon by this court in **Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited**[3] wherein it was held that winding up proceedings pending before High Courts, which are at a nascent stage and have not progressed to an advanced stage, ought to be transferred to the NCLT.

9. These winding up proceedings are evidently at a nascent stage and as of yet, no substantive orders have been passed. In view of the above, the present company petitions as well as pending applications, if any, are disposed of.

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[3] CO.PET. 446/2013

10. Hence, the instant petitions are transferred to the NCLT. Parties to appear before the NCLT on 22.04.2024. The interim orders passed by this Court in these petitions, if any, shall continue till the said date.

11. It is left to the NCLT to consider the matter and pass appropriate orders in accordance with law.

12. The electronic record of the instant petitions be transmitted to the NCLT within a period of one week by the Registry. List before the NCLT on 22.04.2024.

DHARMESH SHARMA, J.

MARCH 5, 2024/ck