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

% **Judgment reserved on : 07 December 2023**
Judgment pronounced on : 05 January 2024

\+ CO.PET. 430/2009

M/S KOTAK MAHINDRA BANK LTD. ..... Petitioner
Through: None.
versus
MANISHA PARIVAHAN (P) LTD ..... Respondent
Through: Ms. Isha Khanna, Standing Counsel for OL with Mr. Nikhil, Adv.
Mr. Ankit Shah and Mr. Kumar Aditya Counsels for Ex-Directors.

\+ CRL.O.(CO.) 3/2014 and CO.APPL.644/2023
MANISHA PARIVAHAN (P) LTD. ..... Petitioner
Through: Ms. Isha Khanna, Standing Counsel for OL with Mr. Nikhil, Adv.
versus
DILIP KOCHAR & ANR. ..... Respondents
Through: Mr. Ankit Shah and Mr. Kumar Aditya Counsels for Ex-Directors.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

CO. APPL. 641/2023 (UNDER SECTION 481 OF THE COMPANIES ACT, 1956)

1. This is an application filed by the Official Liquidator under Section 481 of the Companies Act, 1956[1] read with Rule 9 of the

[1] The Act

Companies (Court) Rules, 1959[2], praying that the respondent company (in liquidation) be dissolved and the Official Liquidator be discharged as its Liquidator.

2. This application for dissolution of the company (in liquidation) has been moved in the present Company Petition preferred under Section 433(1)(e) read with Sections 434 and 439 of the Companies Act, 1956 by the petitioners, who sought winding up of the respondent company on the ground that the respondent company was unable to pay its debts amounting to Rs. 28,61,469/- despite serving of statutory notice dated 22.06.2009.

3. This Court in exercise of its jurisdiction vide order dated 05.08.2011, directed the respondent company to be wound up provisionally and an Official Liquidator attached to this court was appointed as the Provisional Liquidator of the company. Furthermore, the respondent company, its Directors, officers, employees, authorised representatives were restrained from selling, alienating, encumbering and parting with the possession of any movable and immovable assets and funds of the company.

4. It is apposite to note that on the basis of an undertaking by the respondent company to pay the petitioner bank a sum of Rs. 33 lacs towards full and final settlement of its dues, the earlier order dated 05.08.2011 was vacated by this court vide order dated 23.12.2011, and the Official Liquidator was discharged. However, the respondent company failed to make payments as per the settlement/undertaken given by it, whereafter an application bearing No. CO.APPL.

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[2] Rules

1504/2012 was moved seeking revival of the winding-up proceedings. The same was allowed vide order dated 08.08.2013 and a Provisional Liquidator was appointed to initiate appropriate winding up proceedings against the company. Further, the Ex-directors were directed to hand over the assets, records and books of accounts of the company to the Official Liquidator, as also file a statement of affairs by issue of notices under Sections 456 and 454 of the Companies Act, 1956.

5. It is brought out that as per the record of the Registrar of Companies, Delhi and Haryana, the Registered Office of the company is situated at S-98, Sunder Block, Sharapur, Delhi-92, and the following persons have been shown to be the Ex-Directors of the company (in liquidation):

i. **Mr. Dilip Kochar**,
S/o Late Vijay Singh Kochar, residing at E-202, Sukhan Residency, L.P. Sarvani Road, Adajan, Surat, Gujarat; and

ii. **Mr. Babu Lal Kochar**,
Residing at #743, Deshpandele House, Tri Murti Nagar, Nagpur, Maharashtra.

6. The record of the Registrar of Companies also shows that besides the registered office of the company (in liquidation) which is located at S-98, Sunder Block, Shakarpur, Delhi, the following properties are also shown as belonging to the respondent company:

i. D-503, 5^{th} Floor, Sahnip Vicco, Surat, Gujarat;
ii. New City 299, Ashirvad Villa, Surat, Gujarat;
iii. 804/A, Centre Point, Ring Road, Suraj, Gujarat; and
iv. 1/9, Kusum Chandra Park, Char Rasta Hazira Road, Icchapur, Surat, Gujarat;

7. It has been submitted that the possession of the abovementioned premises could not be taken as on visit by the officials of the Official Liquidator's office, it was found that the same were residential flats. With respect to the premises at serial No. (iv), it has been stated that the premises was locked, and a board of M/s Radhe Roadways was affixed at the shop, which was given on rent to the company (in liquidation) which apparently vacated in favour of the landlord.

8. With regards to other movable assets and funds of the company (in liquidation), it has been submitted that vide letter dated 08.11.2014, ICICI Bank, Surat Branch had informed that there are no funds available for remittance in the account of the company (in liquidation). A perusal of the record also shows that the Ex-directors had filed an affidavit, in compliance with the order dated 23.03.2016, providing details of 11 trucks, out of which 6 had been sold and the proceeds have been used to settle the payments owed to the trade creditors of the company (in liquidation).

9. This Court vide order dated 05.01.2023 directed Ex-directors to assist the Official Liquidator to identify and take possession of the remaining 5 trucks. In this regard, the Ex-directors appeared before the office of the Official Liquidator on 26.04.2023, and agreed to deposit a sum of Rs. 3,75,000/- (Rs. 75,000/- per truck), as it was brought forth that the trucks were stated to be situated at different places and were only worth scrap value. They were directed to deposit the amount of Rs. 3,75,000/- vide order of this court dated 01.06.2023,

and the same was done vide Demand Draft No. 521010 dated 16.06.2023 drawn on Bank of Baroda, Surat.

10. Further, vide the same order dated 05.01.2023, this Court had directed HDFC Bank, Prime Market Branch, Surat to remit the amount remaining in the account of the company (in liquidation) to the Official Liquidator by means of a demand draft. In this regard, the office of the Official Liquidator also wrote a letter to the manager of HDFC Prime Market Branch, dated 12.04.2023. However, no reply or response has been received till date.

11. It is submitted by the learned counsel for the Official Liquidator that thereafter, vide orders dated 05.08.2011 and 08.08.2013, the Official Liquidator was directed to publish citations in newspapers. In compliance of the same, citations were published in the newspapers, namely 'The Statesmen' (English) and 'Veer Arjun' (Hindi Edition) on 20.10.2011 as well as in 'Delhi Gazette' on 20.10.2011.

12. As per the report of the Official Liquidator, it has been submitted that the funds position of the company is Rs. (-) 18,68,419/- as on 18.07.2023 and that the Official Liquidator is not seized of any assets either movable or immovable, from which any money might be recovered, and there are no more assets to be realised from the company (in liquidation). Thus, the Official Liquidator has opined that no useful purpose would be served by keeping this matter pending.

13. At this stage, 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."

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14. The aforesaid provision came to be discussed in the case of **Meghal Homes (P) Ltd. v. Shree Niwas Girni K.K. Samiti & Ors,**[3] wherein 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."

15. In view of the above-mentioned dictum 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. The Official Liquidator has sought to be exempted from carrying out the publication of the citation of the final winding up, and without further ado the same is allowed and such exemption from publication is granted. Further, the Official Liquidator is permitted to close the books of accounts of the company after adjusting expenses and losses from the CPL.

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16. The respondent company M/s. Manisha Parivahan (P) Ltd. is thereby dissolved and the Official Liquidator is discharged.

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

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

CRL.O. (CO.) 3/2014

19. This petition has been preferred by the Official Liquidator under Section 454(5) and 5(A) of the Companies Act, 1956 against the Ex-directors of the respondent company, for their failure to file Statement of Affairs of the respondent company. Further, the Ex-directors have failed to comply with the orders of this court dated 08.08.2013 and 07.11.2013, in so far as they did not care to file affidavits providing details of the immovable and movable assets as well as the profit and loss account, balance sheet and relevant bank statement of the respondent company.

20. However, the Official Liquidator has moved CO.APPL. 641/2023 under Section 481 of the Companies Act, 1956 seeking dissolution of the company (in liquidation) wherein it has been stated that the Official Liquidator has no knowledge of any other recoverable asset, either moveable or immoveable from which any money may be realized for the company (In liquidation). The same has been allowed and disposed of, and the company (in liquidation) stands dissolved

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[3] (2007) 7 SCC 753

accordingly. Therefore, no useful purpose will be served in continuing with the present petition.

21. Accordingly, this petition stands disposed of. The pending application also stands disposed of.

DHARMESH SHARMA, J.

JANUARY 05, 2024

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