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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CO.PET. 533/2012 & CO.APPL. 392/2014, CO.APPL.
2988/2016

M/S BALAJI LIFESTYLE REALTORS PVT LTD

..... Petitioner

Through: Mr. Y.K. Kapur, Adv.

versus

M/S KARE INDIA DEVELOPMENT SERVICES LTD

..... Respondent

Through: Mr. Sanjay Gupta, Mr.
Shubhangam Thakur and Mr.
K.P.S. Chauhan, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
19.03.2024

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1. This hearing is being conducted through hybrid mode.
2. The present company petition has been instituted under Sections 433, 434 and 439 of the Companies Act, 1956 against the respondent company – M/s. Kare India Development Services Ltd., and is seeking winding up of the said company on the ground of non-payment of outstanding dues amounting to Rs. 85 lacs.
3. Briefly stated, the petitioner company is engaged in the business of Real Estate development whereas the respondent company, which is an associate company of M/s. Kare Teleservices India Pvt. Ltd. is engaged in liasoning work for the purposes of procuring contracts. The parties entered into an agreement dated 28.08.2009, whereby the



respondent company agreed to procure a contract for the petitioner company, which contract was related to the construction of two complexes of the Income Tax Department at Bandra Kurla Complex, Mumbai. The petitioner company agreed to pay the quoted professional fees sought by the respondent company and the total sum of Rs. 2 crores sought as fees was bifurcated into two payments, such that the respondent company received Rs. 85 lacs while the associate company, M/s. Kare Teleservices India Pvt. Ltd. received the remaining amount of Rs. 1.15 crores. As per the terms of the agreement, said contract was to be procured by the respondent company by 30.09.2009, failing which the respondent company would become liable to repay the fees of Rs. 85 lacs to the petitioner company. In this regard it is stated that the respondent company failed to perform its obligations under the contract, and therefore, the by operation of the terms of the agreement between the parties, the respondent company became liable to refund the amount to the petitioner company. In furtherance of the same, the respondent company issued a cheque bearing No. 789758 drawn on Oriental Bank of Commerce for an amount of Rs. 85 lacs. However, the cheque was dishonoured on being presented by the petitioner company, and was returned with the remark of “Insufficient Funds”.

4. In view of the fact that the respondent company issued the aforementioned cheque and also that the amount of Rs. 85 lacs was reflected in the balance confirmations issued to the petitioner company on 26.10.2009 and 01.04.2010, it is stated that the liability stands acknowledged at the behest of the respondent company. It is stated that the petitioner company served a statutory notice dated 02.08.2012 upon the respondent company, however the same was not responded



to nor was the liability discharged by the respondent company. Hence, the present company petition for winding up of the respondent company was preferred.

5. It appears that the respondent company has neglected/failed to repay its debt in the normal and ordinary course of business, hence, the present petition has been filed. It is also borne out that attempts have been made by the parties to settle the matter by means of mediation and arbitration, but the same have not proven successful.

6. However, it is apposite to note that on a perusal of the record, it is but evident that the present petition is a complete non-starter. No substantive orders have been passed so much so that not even a Provisional Liquidator has been appointed to the respondent company.

7. It is necessary to note that during the pendency of these proceedings, the Insolvency and Bankruptcy Code, 2016 as well as the Companies Act, 2013, have since been enacted. In view of this, it is the opinion of the court that the present petition does not deserve to continue before this Court, and it would be appropriate for the same to be transferred to the National Company Law Tribunal¹. 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 Tribunal shall dispose of such matters, proceedings or cases in

¹NCLT



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.”

8. Reliance must also be placed on the decision of the Supreme Court in the case titled **Action Ispat and Power Private Limited v. ShyamMetalics and Energy Limited**², the relevant extract of which is reproduced hereunder:

“22. Given the aforesaid scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are

² (2021) 2 SCC 641



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.”

9. 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 those winding up proceedings pending before High Courts, which are at a nascent stage, ought to be transferred to the NCLT.

10. In view of the above, and in light of the fact that the present company petition is at a nascent stage, this petition as well as pending applications, if any, are disposed of.

11. Hence, the instant petition is transferred to the NCLT. The parties are to appear before the NCLT on 26.04.2024.

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



13. The electronic record of the instant petitions be transmitted to the NCLT within a period of one week by the Registry.

14. List before the NCLT on 26.04.2024.

DHARMESH SHARMA, J.

MARCH 19, 2024

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³CO.PET. 446/2013