



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

% **Judgment reserved on : 05 December 2023**
Judgment pronounced on: 10 January 2024

+ **CO.PET. 34/2014 & CO.APPL. 102/2014, CO.APPL. 103/2014**

M/S BERNINA INTERNATIONAL PVT.LTD Petitioner
Through: Mr. Kanishk Agarwal and Mr.
Deepak Bashta, Advs.
versus

M/S PICCADILY HOTELS PVT.LTD Respondent
Through: Mrs. Vikas Jain, Adv.

+ **CO.PET. 36/2014 & CO.APPL. 107/2014, CO.APPL. 108/2014**

J.S FURNISHINGS PVT.LTD. Petitioner
Through: Mr. Kanishk Agarwal and Mr.
Deepak Bashta, Advs.

versus

M/S PICCADIALY HOTELS PVT.LTD. Respondent
Through: Mrs. Vikas Jain, Adv.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This judgement shall decide the above-noted petitions, which have been preferred under Sections 433(e) read with 439 of the Companies Act, 1956, seeking winding up of the respondent company – **M/s Piccadily Hotels Pvt. Ltd.**, on the ground of non-payment of dues amounting to Rs. 22,21,899.50/- in CO.PET. 34/2014 as well as



Rs. 26,65,298/- in CO.PET. 36/2014, as owed to the petitioners respectively.

FACTUAL BACKGROUND:

2. The respondent company is engaged in the hotel business, and runs a 5-star hotel in Janak Puri Delhi, which was earlier operating in the name of 'The Piccadily Hotel' and is presently functioning under the brand name 'Hyatt Centric Janakpuri', at the same location.
3. The facts of the present company petitions are largely identical in so far as certain purchase orders were made by the respondent company for which payments were to be made to the petitioner and such amounts were not duly paid.
4. In **CO.PET. 34/2014**, the petitioner company is a wholesale distributor and supplier of Bombay Dyeing products including bed linens, towels etc. Briefly stated, a purchase order was issued by Hilton Janakpuri (a Unit of Piccadily Hotels Pvt. Ltd.) bearing No. PH534 on 09.06.2010, for which an amount totaling Rs. 28,20,870/- was payable to the petitioner company for supply of certain Bombay Dyeing products to the respondent company/hotel. It is stated that an advance of Rs. 7,05,242,50/- was paid to the petitioner company on 15.06.2012, and thereafter the goods were supplied and delivered per the purchase order, for which delivery challans and retail invoices were raised.
5. However, apart from the initial payment of the advance amount, the respondent company neglected to and failed to pay the due amount of Rs. 22,21,899.50/-. Several emails were sent by the petitioner



company requesting the respondent to liquidate the liability on 24.11.2011, 04.01.2012 and thereafter on 13.03.2012 whereby the entire statement of accounts and ledgers were sent as well. However, as no response was received, the petitioner company was constrained to serve a legal notice upon the respondent on 07.01.2013, which was not responded to either, and the dues remain unpaid. Subsequent to this, a statutory legal notice under Sections 433 and 434 was sent to the respondent on 13.03.2013, however, the sum due to the petitioner amounting to Rs. 22,21,899.50/- remained unpaid.

6. Similarly, in **CO.PET. 36/2014**, two purchase orders bearing No. PH0015 dated 10.10.2007 for an amount of Rs.66,52,800 as well as No.PH241 dated 15.07.2008 for Rs. 3,01,282/-, were issued by the respondent company for supply of wooden flooring, wallpapers, furnishing fabrics and curtains. These goods were duly delivered by the petitioner company who also undertook the work of stitching curtains, fixing of wooden floors and affixing the wall papers. It is also stated that the petitioner company made a payment of Rs. 7,95,903.10/- to M/s Ivana International Pvt. Ltd. on behalf of the respondent, for the import of certain wooden flooring, on the basis of a promise of repayment of the same to the petitioner. Although part-payments were made on 21.11.2009, 16.01.2010, 23.03.2010, 11.04.2010, 24.04.2010 and 29.06.2010, presently, as per the statement of account and ledgers provided by the petitioner, a sum of Rs. 26,65,298/- remains to be paid by the respondent company. Several reminders were sent by the petitioner company to the respondent, including letters dated 04.10.2010 and 13.10.2010.



Further, a statutory legal notice dated 09.08.2011 was served upon the respondent company as provided for under Sections 433 and 434 of the Companies Act, 1956. However, the respondent company is yet to repay the amount due and liquidate its liability towards the petitioner.

SUBMISSIONS

7. Given that the respondent company has failed to repay its debt even after repeated reminders and also after being served statutory legal notice, it is submitted by the petitioners that on the basis of the fact that the company is unable to make good the liability, they have moved the present winding up petitions against the respondent company.

8. It has been submitted on behalf of the respondent company that the instant petitions stand to be dismissed as the debts which have been purported as due and payable to the petitioners are barred by limitation. It is stated that the debts alleged are from the period of 2007 to 2009 and admittedly became payable in 2009, however, the present petition was only filed in the year 2013, which is after the lapse of the statutory period provided for under Section 433(e). It has further been submitted that statutory notice under Section 434(1)(a) has not been served upon the respondent at its registered address, prior to the filing of these petitions. Moreover, it is stated on behalf of the respondent that they had not acknowledged that the goods supplied were in accordance to the specifications as agreed upon by the parties and therefore, the alleged transactions stand disputed by the respondent. It has also been urged that these petitions are not



maintainable and even otherwise stand to be transferred to the National Company Law Tribunal. In furtherance of the aforesaid contentions, the respondent has relied on the judgments in **Pradeshia Industrial and Investment Corporation of U.P. v. North India Petrochemicals Ltd. & Anr.**¹ and **M/s Kaledonia Jute and Fibres Ltd. v. Axis Nirman and Industries Ltd. and Ors.**² Reliance has also been placed on a Notification dated 07.12.2016, bearing F.No/ 1/5/2016-CL-V issued by the Ministry of Corporate Affairs.

ANALYSIS AND DECISION:

9. It is apposite to point out that the present winding up petitions are a complete non-starter. A perusal of the record shows that the proceedings are at a very nascent stage, so much so that neither a Provisional Liquidator nor an Official Liquidator has been appointed to the respondent company. As such, no substantive orders have been passed in these company petitions.

10. In view of the enactment of the Insolvency and Bankruptcy Code, 2016 as well as the Companies Act, 2013, the present petitions do not deserve to continue before this Court, and it would be appropriate for the same to be transferred to the National Company Law Tribunal³. 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:

¹ (2008) 1 SCC 1

² (2021) 2 SCC 403

³ NCLT



“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 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.”



11. It is also expedient to consider the decision of the Supreme Court in the case titled **Action Ispat and Power Limited v. Shyam Metals and Energy Limited**⁴, whereby it was held that those winding up proceedings pending before High Courts, which have not progressed to an advanced stage, ought to be transferred to the NCLT. The relevant extract of the said decision is as follows:

“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.”

⁴ (2021) 2 SCC 641



12. This Court has also considered the legal position of winding up petitions which are yet to reach an advanced stage, in its judgement dated 25.07.2023, titled **Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited**⁵ and has held the same view as stated above.

13. In view of the foregoing discussion, it is the opinion of this Court, that since no substantive proceedings have been undertaken towards winding up of the company, the present petitions do not deserve to be continued before this Court. These company petitions are at a very nascent stage and no effective orders as such have been passed towards the winding up of the company.

14. In view of the above, the present company petitions as well as pending applications, if any, are accordingly disposed of.

15. Hence, the instant petitions are transferred to the NCLT. Parties to appear before the NCLT on 01.03.2024. The interim orders passed by this Court in these petitions, if any, shall continue till the said date.

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

17. 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 01.03.2024.

DHARMESH SHARMA, J.

JANUARY 10, 2024

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⁵ 2023:DHC:5206