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

% **Date of decision: 2nd May, 2024**

+ **CO.PET. 16/2012**

SUJATA KULSHRESHTRA Petitioner

Through: **Ms. Neha Gupta & Mr. Rishabh Pant, Advs.**

versus

TRIVENI MEDIA LTD Respondent

Through: **Mr. Nitesh Jain, Mr. Vatsal Chandra & Mr. Manish Shyam Sharma, Advs.**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. The present company petition seeking winding up of the respondent company – Triveni Media Ltd., has been instituted under Sections 433, 434 and 439 of the Companies Act, 1956 and is predicated on the non-payment of an outstanding principal amount of Rs. 46,93,310/- along with due interest by the respondent company.

2. Briefly stated, the respondent company engaged the petitioner for rendering certain services related to the graphics and packaging of their Television Channels under the banner 'Voice of India'. It is stated that such services, for various channels, were rendered duly by the petitioner against which they raised certain invoices dated 04.04.2008, 21.04.2008, 01.07.2008, 01.09.2008 and 14.09.2008.

3. However, despite repeated reminders, the respondent company failed/neglected to discharge its liabilities, and therefore, the petitioner



was constrained to serve a statutory legal notice dated 20.06.2011 under Section 434 of the Companies Act, 1956, calling upon the respondent company to pay the amount due within three weeks, failing which the petitioner would institute appropriate proceedings against the respondent company, in accordance with law.

4. It appears that the respondent company has failed to pay its outstanding dues in the ordinary course of its business. However, at the outset, it is relevant to point out that the present winding up petition is a complete non-starter. A perusal of the record shows that the proceedings are at a nascent stage so much so that neither a Provisional Liquidator nor an Official Liquidator has been appointed to take charge of the assets/properties of the respondent company. As such, no substantive orders have been passed in this company petition.

5. 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 the same, it is the opinion of this Court that it would be appropriate for the present company petition 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

¹ NCLT



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;

(c) 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 Court 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 sub-section (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.]

Provided further that any party or parties to any proceedings relating to the winding up of companies pending before the any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an



application for transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.]

6. The aforesaid provision has been interpreted by the Supreme Court in the case titled **Action Ispat and Power Private Limited v. Shyam Metals and Energy Limited**², 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

² (2021) 2 SCC 641



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.”

(underlined portion emphasized)

7. In view of the foregoing discussion, since no substantive proceedings have been undertaken towards the winding up of the respondent company, the present petition does not deserve to continue before this Court. Accordingly, the instant petition is transferred to the NCLT. The parties herein are directed to appear before the NCLT and it is left to the NCLT to consider the matter on merits and pass appropriate orders in accordance with law.

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

9. List before the NCLT on 08.07.2024. The interim orders passed by this Court in this petition, if any, shall continue till the said date.

10. In view of the aforesaid, the present company petition as well as pending applications, if any, are accordingly disposed of.

DHARMESH SHARMA, J.

May 02, 2024

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