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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CO.PET. 8/2015 & CO.APPL. 544/2018(for recalling of order dated 28.02.2018), CO.APPL. 545/2018 (stay)

MS. KUBER ALLOYS Petitioner
Through: Mr. Abhishek Sharma, Adv.
appeared through VC

versus

M/S B.A. ALLOYS PVT. LTD. & ORS. Respondents
Through: Ms. Kirti Mewar, Adv. for
Respondents.
Ms. Sangeeta Chandra,
Standing Counsel for OL

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

% **ORDER**
15.01.2024

1. Learned counsel for the petitioner appearing through Video Conferencing requests time to file reply to CO. APPL. 544/2018.
2. Request for adjournment is opposed by the learned Standing Counsel for the Official Liquidator as also learned counsel for the respondent company.
3. Learned Standing Counsel for the Official Liquidator has alluded to previous order dated 01.05.2018, on which date CO. APPL. 544/2018 was taken up for consideration.
4. The long and short of the arguments advanced by the learned Counsels for the parties is that the aforesaid application has been moved in the present winding up proceedings filed at the behest of the petitioner under Section 433 (e), 434(1)(a) and 439 of the Companies



Act, 1956, and this Court subject to the respondent depositing a sum of Rs. 5 Lacs with the Registrar General of the High Court of Delhi, has kept the proceedings before the Official Liquidator kept in abeyance.

5. Perusal of the record shows that since 24.10.2019, repeated adjournments have been taken on behalf of the petitioner to file reply to the said application. There is no gainsaying that in the instant application, the applicant/respondent company has disputed its liability towards the petitioner.

6. Be that as it may, as on today except for the fact that the Official Liquidator was appointed, who made certain inquiries regarding the assets of the respondent company, no further proceedings have been initiated. No claims have been invited from the secured creditors of the company.

7. What turns the table against the petitioner is that he has already instituted a suit for recovery bearing No. 1953/2016 titled as ‘M/s. Kuber Alloys v. M/s. B A Alloys P Ptd. & Ors.’ pending before the Court of learned ADJ-04, Shahadara District, Karkadooma Courts, Delhi [“**Trial Court**”] on the same cause of action i.e. with regard to recovery of outstanding dues so much so that the issues have been framed and the petitioner/plaintiff has already led its evidence and now the matter is listed for defendant’s evidence before the learned trial Court on 17.02.2024.

8. It is urged by the learned counsel for the petitioner that the present company petition is an independent remedy. While that may be so, considering that the present winding up petition has been a complete non-starter, no legal purpose would be served by proceeding with the hearing of the present winding up petition.



9. The present winding up petition is disposed of with liberty to the petitioner to pursue legal remedy before the learned trial Court. However, the Official Liquidator shall be at liberty to move an application for reimbursement of expenses incurred, if any.

10. Further till such time the suit is not decided, considering delay attributable to the respondent company, the amount of Rs. 5 Lacs deposited by the respondent company with the Registrar General, shall not be released to either of parties, which shall be subject to the directions that may be passed by this Court.

11. The present petition stands disposed of accordingly.

12. Pending applications also stand disposed of.

DHARMESH SHARMA, J.

JANUARY 15, 2024/sm