



2024:DHC:130



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

% Date of decision: 8th January, 2024

+ **CO.PET. 701/2015 & CO.APPL. 2759/2015 –FOR
APPOINTMENT OF OL**

AFZAL KHAN

..... Petitioner

Through: **Mr. Shantanu M. Adkar and
Mr. Yashveer Singh, Advs.**

versus

GOLF TECHNOLOGIES PVT. LTD.

..... Respondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This is a petition under Section 433(e) and (f) read with Section 434(1) as well as Sections 439, 449 and 450 of the Companies Act, 1956 moved by the petitioner seeking winding up of the respondent company – **Golf Technologies Pvt. Ltd.** It is predicated upon the non-payment of a sum of Rs. 80,20,725/- by the respondent company as well as due interest.

2. Briefly stated, the petitioner is a proprietor of M/s Monalisa Consturctions, and was selected as the successful bidder for a tender floated by the respondnent company for the construction of a commercial project on plot No. 37, Marol Industrial Estate, MIDC,

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Andheri (East), Mumbai – 400093, vide Letter of Intent dated 01.09.2010. Thereafter, Articles of Agreement dated 14.09.2010 were executed between the parties, setting out the terms and conditions for the contract. It is stated that although a Completion Certificate dated 10.09.2012 was issued, indicating that the petitioner has satisfactorily completed the work, certain bills raised were not cleared by the respondent, which were acknowledged by the respondent. In this regard, it is submitted that an acknowledgement of the amount due was made by the respondent vide letter dated 30.10.2013.

3. Despite repeated reminders, the respondent company failed to make good its dues. A legal notice was sent by the petitioner on 07.08.2014 demanding Rs. 80,20,725/- along with due interest to the tune of Rs. 21,65,596/- totaling to an amount payable of Rs 1,01,86,321/-. Thereafter another letter was sent on 14.01.2015 following which a statutory notice dated 07.07.2015, under Section 433 and 434 of the Companies Act, 1956 was served upon the respondents. However, the respondent failed to repay the amount due, and as a result of the inability of the respondent to liquidate its liability, the present winding up petition has been moved by the petitioner.

4. It appears that the respondent company is unable to discharge its debt in the ordinary course of business. However, on a perusal of the record, it is apposite to point out that the present winding up petition is a complete non-starter. Examination of the record further shows that neither a Provisional Liquidator nor an Official Liquidator has been appointed to the respondent company. As such, the present



winding up petition is still at a nascent stage and no substantive orders have been passed in this company petition.

5. The Insolvency and Bankruptcy Code, 2016 as well as the Companies Act, 2013, have since been enacted. It is the opinion of this court that the present petition does not deserve to continue before this court, and the same stands 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 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

¹ NCLT



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.”

6. 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**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,

² (2021) 2 SCC 641



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.”

7. In view of the foregoing discussion, it is the opinion of this Court, that given the inceptive nature of the present winding up petition and furthermore, since no substantive proceedings have been undertaken towards winding up of the company, the present petition does not deserve to be continued before this Court. This petition is at a very nascent stage and no effective orders as such have been passed towards the winding up of the company.

8. In view of the above, the present company petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

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

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



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11. The electronic record of the instant petition 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 08, 2024

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