



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

% **Judgment reserved on : 21 December 2023**
Judgment pronounced on : 05 January 2024

+ **CO.PET. 761/2015 & CO.APPL. 815/2019**

TIMES INNOVATIVE MEDIA LTD. Petitioner

Through: Mr. Manish Kumar Srivastava,
Mr. Moksh Arora, Mr. Santosh
Ramdurg, Mr. Yash Srivastava,
Mr. Sudhanshuy Kumar
Chouby and Mr. Parveen
Kumar, Advs.

versus

SPACE TURTLE PVT. LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This Company Petition has been preferred under Sections 433(e), 434 and 439 of the Companies Act, 1956 seeking winding up of the respondent company – **M/s Space Turtle Private Limited**, on the ground of non-payment of outstanding dues to the petitioner company amounting to Rs. 1,46,97,609/- arising out of purchase orders for the period 01.09.2014 to 31.03.2015, along with due interest.



BRIEF FACTS

2. Briefly stated, the petitioner company is engaged in the business of outdoor advertising and has the license for display and management of advertisements at several places in Delhi including the DND Flyover. On the other hand, the respondent company is in the business of Real Estate and allied activities, including the development, marketing and sale of residential/commercial properties in the Delhi-NCR region.

3. It is the case of the petitioner that the respondent company engaged the petitioner company to place and display certain corporate advertisements of its company at various desired places in Delhi, pursuant to which 7 purchase orders were placed by the respondent company, for the period 1.09.2014 to 31.03.2015.

4. Thereafter, respective invoices against the purchase orders for the relevant period were raised by the petitioner company, and it is stated that the same were duly received by the respondent company. Further, per the agreed upon terms and conditions, the outstanding amounts were to be paid by the respondent company within 60 days from the date of receipt of invoices and in case of delay the respondent company was liable to pay interest at 18% as well.

5. As stated by the petitioner, the respondent company defaulted in making payments on various occasions and the cheques provided were also dishonored for several reasons. Vide email dated 15.06.2015, the petitioner company brought to the notice of the respondent company that an amount of Rs. 1,46,97,609/- (excluding interest) was



outstanding. In response to the same, the respondent company acknowledged and admitted their debt and liability towards the petitioner company to the tune of Rs. 97,45,032/- and further stated that the balance amount of Rs. 41,14,763/- will be booked in the books of accounts of the respondent company upon the receipt of respective invoices. Such invoices were sent to the respondent company soon after, and the same were duly received.

6. The petitioner company served a legal notice dated 17.07.2015 to the respondent through its counsel, calling upon them to pay a sum of Rs. 1,46,97,609/- along with 18% interest p.a. thereby totaling to the amount of Rs. 1,65,74,026/-. It is stated that the respondent company has neither repaid the sum nor responded to the legal notice, hence the petitioner chose to move the present winding up petition, on the basis that the respondent company is unable to pay its legally recoverable debt/liability and has malafide intention to misappropriate the amount, and is therefore liable to be wound up.

ANALYSIS & DECISION

7. Evidently, the Respondent Company is unable to pay its debt in the normal and ordinary course of its business, hence, the present petition has been filed. However, from a perusal of the record, it appears that neither a Provisional Liquidator nor an Official Liquidator has been appointed in the present petition and as such, this winding up petition has been a non-starter.





8. Given that the Insolvency and Bankruptcy Code, 2016¹ has since been enacted, along with the introduction of Companies Act, 2013² and in particular Section 434 of the said Act, the present petition does not deserve to continue before this Court as it is still at an initial stage and no Provisional/Official Liquidator has been appointed in this matter. Section 434 of the Companies Act, 2013 provides for the transfer of proceedings relating to winding up, pending before High Courts, to the National Company Law Tribunal³, 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

(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

¹ IBC

² The Act

³ 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.”

9. It has also been held by the Supreme Court in **Action Ispat and Power Limited v. Shyam Metalics and Energy Limited**⁴, that winding up proceedings pending before High Courts, which are at a nascent stage and have not progressed to an advanced stage, ought to be transferred to the NCLT. The relevant extract of the said decision is extracted as under:

“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

⁴ (2021) 2 SCC 641



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.”

10. 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. 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 petition does not deserve to be continued before this Court. The petition is itself at a very nascent stage and no effective orders as such have been passed towards the winding up of the company.

11. The above noted company petition is accordingly disposed of. Accordingly, the instant petition is transferred to the NCLT. The parties are directed to appear before the NCLT on 01.03.2024. The interim order passed by this Court in the petition, if any, shall continue

⁵ 2023:DHC:5206



till the said date. It is left in the domain of the NCLT to consider the matter and pass appropriate orders in accordance with law.

12. 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 05, 2024

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