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

\+ CO.PET. 993/2015

P.E.B. (INDOCHINA) LIMITED ..... Petitioner

Through: Mr. P. Nagesh, Senior Advocate with Mr. Karun Mehta, Ms. Pratiksha Mishra and Mr. Yugam Taneja, Advocates.

versus

PEB STEEL LLOYD (INDIA) LIMITED ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

O R D E R

% **06.02.2024**

1. The present company petition has been preferred under Section 433 (e) & (f) read with Sections 434 (1) (a) & (c) and 439 of the Companies Act, 1956, seeking winding up of the respondent company – **P.E.B. Steel Lloyd (India) Limited**, and is predicated on the non-payment of dues amounting to USD 731,018.93 (approximately Rs. 4,88,50,303.45 as on 16.12.2015.

2. The petitioner company (incorporated in Cyprus) is a member of the PEB group of companies, and is the parent company of PEB Steel Asia Limited (incorporated in the British Virgin Islands). The respondent company is engaged in the business of fabrication and sale of pre-engineered steel buildings in India, and is a Joint Venture between PEB Steel Asia Limited and Lloyd Insulations Limited (incorporated in India).

3. Briefly stated, on request of the respondent company, who sought financial assistance for the purpose of procuring raw materials from Samsung C & T Corporation, Korea, the petitioner company, through one of its subsidiaries namely PEB Steel Structure Sole Member Company Limited, Vietnam, applied for a Standby Letter of Credit to the United Overseas Bank, Vietnam[1] in favour of United Overseas Bank, Mumbai[2]. An irrevocable Standby Letter of Credit for an amount not exceeding USD 800,000/- was instituted in favour of UOB Mumbai on 02.12.2014, and in order to guarantee payment under the Standby Letter of Credit, UOB Vietnam blocked funds of the petitioner company to a tune of USD 800,000/-.

4. Thereafter, on 05.12.2014, UOB Mumbai issued an irrevocable Letter Of Credit for the Respondent in favour of Samsung C & T Corporation, Korea for an amount of USD 728,595/-. UOB Mumbai issued this Letter of Credit on the condition that the said amount had to be repaid by the respondent company within 180 days from the Bill of Lading i.e. 29.06.2015 and in case the respondent company failed to repay the amount, UOB Mumbai would be entitled to raise its demand under the Standing Letter of Credit issued by UOB Vietnam. The issuance of the above mentioned Letter of Credit was approved vide a Resolution dated 05.12.2014 passed by the Board of Directors of the respondent company.

5. After multiple rounds of correspondence between the parties and repeated reminders sent by the petitioner company, finally on 29.06.2015, the respondent company vide email informed the petitioner that funds cannot be arranged to discharged its financial

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[1] UOB Vietnam
[2] UOB Mumbai

obligations. In view of the fact that the respondent company failed to honour its financial obligations within the prescribed time limit, UOB Vietnam issued a debit advice to the petitioner under the Standby Letter of Credit issued by it, for an amount of USD 731,018.93/- and thereafter informed the petitioner vide email dated 30.06.2015 that it had pledged the above noted amount to make payment to UOB Mumbai from the current account of the petitioner company.

6. It is stated on behalf of the petitioner that on account of the failure to recover the admitted debts from the respondent company, the petitioner company was constrained to issue a statutory legal notice of winding up to the respondent company on 20.07.2015 calling upon them to repay the due amount of USD 731,018.93/- along with interest @ 15% per annum from 29.06.2015 to the date of receipt of said notice. The respondent company responded to the statutory notice, vide letter dated 12.08.2015, inviting the petitioner company to come to India and attempt to resolve the issues amicably and arrive at a settlement. The petitioner responded to the same vide letter dated 19.08.2015, and thereby urged the respondent to remit the admitted dues.

7. It is stated that despite service of the statutory notice, the respondent company has failed/neglected to the pay the admitted sum and is unable to discharge its liability, and is therefore liable to be wound up.

8. At the outset, it is apposite to note that these winding up proceedings are a complete non-starter. On a perusal of the record, it appears that no effective orders have been passed in this matter and not even a Provisional Liquidator has been appointed to the respondent company yet.

9. It would be expedient to note that the Insolvency and Bankruptcy Code, 2016[3] has since been enacted, along with the introduction of Companies Act, 2013[4]. Section 434 of the said Act has to be considered, which provides for the transfer of proceedings relating to winding up, pending before High Courts, to the National Company Law Tribunal[5], 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) <u>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.</u>
> 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

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[3] IBC
[4] The Act
[5] NCLT

(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."

10. Reliance must also be placed on the decision of the Supreme Court in **Action Ispat and Power Limited v. Shyam Metalics and Energy Limited**[6], the relevant extract of which is provided below:

"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. <u>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</u>."

(Underlined portion emphasized)

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[6] (2021) 2 SCC 641

11. The decision of the Supreme Court in ***Action Ispat (supra)*** has been relied upon by this court in **Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited**[7] wherein it was held 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. It is but evident that the present company petition has not yet reached an advanced stage and no substantive orders have been passed towards the winding up of the respondent company.

12. In light of the foregoing discussion the present winding up proceedings deserve to be transferred to the NCLT.

13. The present petitions are therefore transferred to the learned NCLT. The claimants herein are at liberty to pursue their claims before the learned NCLT.

14. The parties are directed to appear before the NCLT on 18.03.2024.

15. The electronic records of this Court shall be transmitted to the Registrar NCLT within one week along with a copy of today's order.

16. Hence, the present company petition, along with all pending applications are disposed of accordingly.

17. Before parting with the present matter, it is provided that this order shall be without prejudice and all contentions raised by the parties shall remain open and to be considered and adjudicated upon by the NCLT.

DHARMESH SHARMA, J

FEBRUARY 6, 2024/pkv

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[7] CO.PET. 446/2013