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

Date of Decision: 3rd October, 2023

+ **CO.PET. 329/2013 and CO.APPL. 973/2018, 322/2019, 1104/2019**

DEUTSCHE TRUSTEE COMPANY LTD Petitioner

Through:

versus

TULIP TELECOM LTD. Respondent

Through: Mr. Kunal Sharma and Mr. Subhendu
Bhattacharya Advocates for OL (M:
9910200911).

Ms. Shankari Mishra and Ms.
Niharika Tanwar, Advocates for ex
management (M: 9983881372).

Mr. R.P. Agrawal and Ms Snigdha
Agarwal, Advocates (M:
8840552593).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CO.APPL. 973/2018 (for delay)

2. This is an application for a 20 days delay in filing a reply. The delay is condoned.

3. Application is disposed of.

CO.APPL. 1104/2019 (for direction)

4. This is an application filed on behalf of the STCI Finance Limited seeking directions to the OL to remove the goods of Tulip Telecom Ltd.



lying at **5, Paschimi Marg, Vasant Vihar, New Delhi -110057.**

5. As recorded by order dated 28th January 2020, notice in the present application was issued on 18th October 2019. Thereafter, on 6th February 2020, OL office sought three days' time to place on record the OLR in respect of this application.

6. Vide order dated 17th February 2020, it was directed as follows:

"Mr. Makkar, learned senior counsel for the applicant has drawn the attention of this Court to page No. 49 which are minutes of Meeting recorded on 11.10.2018, as per which, a small wooden hut/room containing certain routers, panels, switches, monitor, UPS etc. is blocking the drive way of property being 5, Paschim Marg, Vasant Vihar, New Delhi.

"Mr. Kunal Sharma, learned counsel for the Official Liquidator submits that the valuer has been appointed to value the goods mentioned above. The Valuation Report will be received within a period of two days from today.

The Official Liquidator is directed to take steps to sell the movable assets mentioned above, after the Valuation Report has been received, by circulating hand bills.

The Ex-director is directed to be present when the goods are sold. Copy of the hand bills will be given to the applicant as well as to the Exdirectors.

The entire exercise will be completed by the Official Liquidator, with the co-operation of the Ex-Directors within a period of 15 days from today and a Report in this regard will be filed in this Court before the next date of hearing.

List on 20.03.2020.

Dasti."

7. Thereafter, application bearing no. **Co. Appl. 349/2020** was filed, seeking the same prayer as the present application. The said application was



disposed of vide order dated 29th July 2020 in the following terms:

“10. In view thereof, this application is disposed of with the following directions: (i) The goods, located inside the aforesaid hut/porta cabin, as well as on the roof thereof, and the Mercedes car standing on the drive-way, shall be removed on 1st August, 2020, for which purpose the representatives of the Official Liquidator, the ExDirector of the company, as well as of STCIFL would congregate at the said premises at 11:00 a.m.

(ii) In case, the assistance of any external agency is necessary, to remove the goods, or the Mercedes car, the Official Liquidator would take steps to procure such assistance. The expenses to be paid to the agency, whose assistance may be taken in that regard, would be defrayed by STCIFL.

(iii) The Official Liquidator shall, thereafter, take steps to remove the aforesaid goods and the Mercedes car, to other appropriate premises, outside the Paschim Marg property, so that they are in safe custody, and remain undamaged.

(iv) A report, in the aforesaid regard, would be filed by the Official Liquidator, before this Court, on or before 10th August, 2020.”

8. Today, the OL is stated to have removed the said goods in January, 2022, pursuant to orders passed by this Court.

9. Accordingly, the said application has become infructuous and is accordingly disposed of.

CO.APPL. 322/2019 (seeking transfer)

10. This is an application by Punjab National Bank seeking transfer of the present company petition to the NCLT under Section 434 of the Companies Act, 1956. The Applicant- bank relies on the proviso to Section 434(1)(c) of the Companies Act, 1956, and the judgment in *Forech India Ltd. vs.*



Edelweiss Asset Reconstruction Co. Ltd [Civil Appeal No.818 of 2018, Judgment dated 22nd January 2019] to request for transfer of the current petition to the NCLT.

11. None appears for Punjab National Bank. Ld. Counsel Ms. Shankari Mishra on the other hand opposes the transfer of this petition.

12. A perusal of the record would show that vide order dated 12th February, 2015 a Provisional Liquidator was appointed in this matter. The relevant portion of the said order reads as follows:

*“In view of the aforesaid circumstances, it is apparent that the company is unable to pay its debts. It is also noted that several petitions including the above captioned petition were filed in 2013; and the respondent had sufficient opportunity for preparing a workable scheme indicating the manner in which its creditors could be paid. No such scheme has been placed on record. There is no proposal on behalf of the respondent company which would lend any credibility to the submission that the petitioner would be in a position to pay its debts within a reasonable period of time. In view of the aforesaid the winding up petition is admitted and the Official Liquidator is appointed as a Provisional Liquidator. However, in order to enable the respondent company to place a cogent scheme to repay its creditors, the directions to publish citations are deferred till 30.04.2015. **This is to ensure that there is no adverse effect on the company on account of publicity of this petition. The petitioner shall also not make any press or public statements regarding admission of the present petition. It is directed that the Directors of the company shall furnish the statement of affairs within 21 days from today. The Provisional Liquidator shall also examine the statements of affairs and collect all the necessary data as required. However, the Provisional Liquidator***



shall not interfere with the functioning of the company till further orders.”

13. The final winding up order was passed on 29th July, 2019. The said order appointed the Official Liquidator as the liquidator of the respondent company.

14. The present application seeks transfer of the present petition to the NCLT. However, in terms of the judgment of the Supreme Court in *Action Ispat and Power Limited v. Shyam Metalics and Energy Limited (2021) 2 SCC 641*, as long as there have been no actual sales of the assets (immovable or movable), there is no irreversible action taken that would compel the Company Court to stop a transfer application made by a creditor or any party involved. Only when the winding-up proceedings have advanced to a point where reversing the process is no longer feasible, should the Company Court proceed with the winding-up, rather than transferring the proceedings to the NCLT for resolution under the provisions of the IBC.

The relevant portion of the said decision is as follows:

“25. 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”

15. In the present petition, vide order dated 30th April 2015, it was recorded that the company was not in a position to repay its debts, as no scheme was forthcoming from the Ex-management. Therefore, the Court directed the Provisional Liquidator to take over the charge of the books of account and the assets of the company. The Official Liquidator has already been appointed vide order dated 29th July 2019.

16. Vide *OLR 30 of 2020*, it is stated that the OL has already taken possession of certain immovable assets and properties of company in liquidation, as mentioned in paragraph 2 of the OLR. Therefore, given the present stage of proceedings in the petition, this Court is of the opinion that the proceedings have reached an advanced stage and hence the present petition does not deserve to be transferred to the NCLT.

17. Therefore, the present application is dismissed, as the immovable assets are already in the control of the OL.

CO.PET.-329/2013

18. List on the date fixed.

**PRATHIBA M. SINGH
JUDGE**

OCTOBER 3, 2023

mr/dn