



\$~CO. 8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CO.PET. 36/2013**

RE- M/S CATMOSS RETAIL PVT. LTD.Petitioner

Through:

versus

.....Respondent

Through: Mr. Anuj Chaturvedi, ASC for OL.
Mr. Manik Dogra, Sr. Adv. with Mr.
Sandeep Devashish Das, Mr. Soham
Goswami and Mr. Imon
Bhattacharya, Advs. for Applicants in
CO. Appls. 487/2025, 488/2025.
Mr. Ruchir Mishra, Mr. Mukesh
Kumar Tiwari, Ms. Reba Jena Mishra
and Ms. Poonam Shukla, Advs. for
SFIO.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **25.08.2025**

CO. Appl. 487/2025/Stay/

CO. Appl. 488/2025/Stay/

1. The present Applications have been filed under Section 446 and 447 of the Companies Act, 1956 [hereinafter referred to as "Companies Act"] seeking directions to stay the proceedings.
2. This Court by its order dated 04.08.2025 passed the following directions:

"1. These are the Applications directing stay of the proceedings instituted by the Complainants who are the Directors of the Petitioner/Company in liquidation against the Petitioner/Company.

2. Learned Senior Counsel for the Applicants submits that the Applicants



are two Non-Executive Directors who were nominee Directors of a private equity fund. Learned Senior Counsel further submits that the Applicants resigned from their position on the Board prior to the appointment of the Provisional Liquidator by this Court. Learned Senior Counsel further submits that the Applicants were not involved with the day to day management or operational decisions of the Petitioner/Company. However, pursuant to multiple cases being initiated against the Petitioner/Company, summons and coercive steps are being taken against the Applicants as well.

3. Learned Senior Counsel for the Respondent further submits that the Applicants have already filed proceedings before the High Court of Punjab and Haryana at Chandigarh, against the various proceedings initiated under Section 138 of the Negotiation Instruments Act, 1881 [hereinafter referred to as the “NI Act”] against themselves as directors of the company. It is submitted that the steps taken against the Petitioner/Company and more specifically, against the Applicants, continue to be taken in contravention of Section 446 of the Companies Act, 1956.

4. Learned Senior Counsel for the Respondent submits that the Official Liquidator had previously filed an Application being CA No. 1391/2017, wherein it had similarly sought prayers for stay of proceedings under Section 138 of the Negotiable Instruments Act, 1881 in the matter and by an order dated 23.08.2017 passed by a predecessor Bench of this Court, the proceedings against the Official Liquidator were kept in abeyance.”

3. Learned Senior Counsel for the Applicants seeks to rely upon the judgment passed by this Court in this Petition in CO. Appl. 58/2024.

4. Admittedly, by an order dated 28.02.2013, this Court had passed a direction for winding up of the company and appointed the Official Liquidator as Provisional Liquidator for the company in liquidation.

4.1 It is not disputed by the parties that various complaints have been filed against the company in liquidation and its directors which include the Applicants in various jurisdictions including Delhi, Punjab and Mumbai. The details of these complaints have been reproduced in paragraph 6 of the Application.

5. Learned Senior Counsel for the Applicants submits that from a perusal of the tabulation set out in the Applications, it can be seen that each



complaint has been filed after the date of passing of the winding up order.

5.1 Learned Senior Counsel for the Applicants also draws attention of the Court to order dated 23.08.2017 passed by this Court in CO. Appl.1391/2017 filed by the Official Liquidator seeking stay of the proceedings under Section 138 and 141 of the Negotiable Instruments Act, 1881 [hereinafter referred to as NI Act], wherein the directions were passed by the Court for the proceedings to remain in abeyance.

6. Section 446 of the Companies Act provides that once an order for winding up has been passed and the Official Liquidator has been appointed, no stay or legal proceedings shall be commenced or if pending at the date of the winding up order, the same shall be proceeded with except with the leave of the Court/NCLT. It is apposite to extract the provision below:

“446. SUITS STAYED ON WINDING UP ORDER

(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the [Tribunal] and subject to such terms as the [Tribunal] may impose. (2) The [Tribunal] shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of –

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under section 391 by or in respect of the company;

d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.”

[Emphasis Supplied]



7. Learned Senior Counsel for the Applicants submits that no Application as envisaged under Section 446 of the Companies Act has been filed by the complainants/non-applicants prior to instituting proceedings against the Applicants. This position is not disputed by the learned Counsel for the Official Liquidator.
8. Issue Notice. Learned Counsel for the Official Liquidator accepts Notice and seeks time to file a Reply.
9. Concededly, the order directing winding up has been passed by the Court on 28.02.2013 prior to the proceedings initiated against the company and its directors including the Applicants herein.
10. Accordingly, and until the next date of hearing, the complaint proceedings, which are pending before the Judicial Magistrate First Class, Bhatinda, Punjab; Judicial Magistrate First Class, Jalandhar, Punjab; and Judicial Magistrate First Class, Amritsar, Punjab, under Section 138 and 141 of the NI Act, details which are set out in paragraph 6 of these Applications, shall be kept in abeyance.
11. The office of the Official Liquidator shall depute the responsible officer to take the record of the Company in liquidation before the Court[s] examining the matters when required by the said Court[s].
12. The Applications are disposed of in the foregoing terms.
13. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 25, 2025/r/ha