$~CP-1 & 2

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

\+ CO.PET. 66/2006 & CO.APPL. 1094/2008

M/S PAHARPUR 3P ..... Petitioner

Through: Mr. Inderjeet Singh, Advocate.

versus

M/S DALMIA CONSUMER CARE PVT LTD ..... Respondent

Through: Ms. Isha Khanna, Advocate for OL.

\+ CO.PET. 382/2008

M/S DALMIA CONSUMER CARE PRIVATE LTD ..... Petitioner

Through: Mr. Inderjeet Singh, Advocate.
Ms. Isha Khanna, Advocate for OL.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **23.05.2023**

OLR 153/2019 in CO.PET. 66/2006

1. OLR is taken on record and stands disposed of.

CO.PET. 66/2006 & CO.PET. 382/2008

2. On 02nd July, 2008, Official Liquidator [hereinafter '***OL***'] was appointed as Liquidator. On 18th September, 2008, a resolution was passed by the Board of Directors of the Respondent-Company [hereinafter "***the Company***"] approving the Scheme of Arrangement [hereinafter "***the Scheme***"] with its unsecured creditors as there were no secured creditors in

the Company. Thereafter, the Scheme for revival was moved by the ex-Directors of the Respondent-Company along with a list of unsecured creditors in CO.APPL. (M). 162/2008 in CO.PET. 282/2006, under Section 391/394 of the Companies Act, 1956. The said application was allowed on 3rd October, 2008.

3. Thereafter, the Company filed a second motion [CO.PET. 382/2008], wherein directions were issued by this Court on 6th February, 2014 in C.A. No. 2225/2013. Said order was then assailed before the Division Bench in Company Appeal No. 11/2014 which remanded the matter on 02nd September, 2015 with the following directions:

> *"17. In view of above, we accordingly direct as follows:-*
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> *(i) It is open to the appellant company to urge before the learned Company Judge that it can reflect the unutilized share application amounts received by it as unsecured loans in the balance sheet. However, this exercise shall not preclude the Company Judge from undertaking the examination insisted upon by the official liquidator as well as respondent herein to the effect that the same is not permissible in law unless the consenting resolutions of the 101 companies which are stated to have made the deposits are filed on record.*
>
> *(ii) The Company Judge shall also consider the objection of the official liquidator that the unsecured loans cannot be in any case be so treated without the imposition of interest liability thereon by a resolution passed in accordance with the law unless the companies which have made such deposits agree to accept its share application deposit as an interest free loan without resolution."*

4. Thereafter, settlement talks were held between the parties albeit the same bore no fruit, as noted in order dated 16th December, 2019. Subsequent to the Covid-19 lockdown, it is noticed that the Company was being initially being represented through counsel, however there has been no appearance on 28th October, 2022 and 13th January, 2023, although the matter could not

be taken up on the said dates.

5. Notice of default be served on the Company as well as its counsel, by all permissible modes, upon filing of process fee, returnable on 18th September, 2023.

SANJEEV NARULA, J

MAY 23, 2023
as