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

\+ CO.PET. 222/2015, CA Nos.1076, 1739 of 2015

TAWAKKAL WOOD PRODUCTS PVT LTD ..... Petitioner

Through : Mr.R. Sudhinder, Ms.Akansh Thapa, Advocates.

versus

SURYANSH ALLOYS AND STEELS PRIVATE LIMITED ..... Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

<u>O R D E R</u>

% 21.09.2017

The learned counsel for the petitioner submits on 05.07.2012 the respondent approached the petitioner for financial assistance with an assurance that it would repay the loan within a reasonable time. An amount of ₹20,00,000/- was thus transferred by the petitioner through RTGS in the bank account of the respondent. On 24.07.2012 the respondent company returned an amount of ₹10,00,000/- through RTGS transaction. On 02.08.2012 the respondent once again requested the petitioner to grant them an amount of ₹15,00,000/-. Acting on the assurance of the respondent, the petitioner transferred an amount of Rs. 15,00,000/- vide cheque no.148752 and the same amount was transferred by way of RTGS, returnable on or before 31.03.2014.

On 31.03.2014 the respondent failed to return the loan amount and further requested for three months time to return the money. Despite repeated requests, the respondent did not clear the outstanding amount, which it was liable to be return on 31.03.2014;

hence, notice under section 433 and 434 of Companies Act, 1956 was issued calling upon the respondent to repay an amount of ₹25,00,000/- within 21 days. The said notice were sent through registered A.D as well as by courier. Neither any reply was sent by the respondent nor the amount was repaid. It is alleged the respondent company is unable to pay its admitted debt, hence be wound up.

The learned counsel for the petitioner has referred to a letter, annexure P-1 in CA No.961/2016, issued by the respondent company wherein the respondent not only had admitted its debt but even had given a schedule of payments with a promise to clear its debt by June 2015. The said amount was never cleared. The learned counsel for the petitioner also refer to an order dated 19.01.2017 when the respondent company offered to settle the matter before the mediation centre but none of the representative of the respondent company appeared for the mediation.

The reply to the petition has also not been filed despite opportunities given to the respondent, hence there is no reason why this company petition be not admitted. Consequently, the petition is admitted and the Official Liquidator attached to this Court is appointed as the Provisional Liquidator. He is directed to take over all the assets, books of accounts and records of the respondent-company forthwith. The citations be published in the Delhi editions of the newspapers 'Statesman' (English) and 'Veer Arjun' (Hindi), as well as in the Delhi Gazette, at least 14 days prior to the next date of hearing. The cost of publication is to be borne by the petitioner who shall deposit a sum of ₹75,000/- with the Official Liquidator within 2 weeks, subject to any further amounts that may be called for by the liquidator for this purpose, if required. The Official Liquidator shall also endeavour to prepare a complete inventory of all the assets of the respondent-company when the same are taken over; and the premises in which they are kept shall be sealed by him. At the same time, he may also seek the assistance of a valuer to value all assets to facilitate the process of winding up. It will also be open to the Official Liquidator to seek police help in the discharge of his duties, if he considers it appropriate to do so. The Official Liquidator to take all further steps that may be necessary in this regard to protect the premises and assets of the respondent-company.

In addition, the directors of the respondent-company shall file their statement of affairs within 21 days from today before the Provisional Liquidator. It is made clear that in the event the said statement of affairs is not so filed within the specified time, the concerned Directors, including the Managing Director of the respondent-company, shall remain personally present in Court on the next date of hearing, in order to enable this Court to examine them, if required, on that date.

Respondent company is directed to file an affidavit before the Provisional Liquidator hereby appointed, within 2 weeks from today, furnishing the following details:-

(i) The names and address of the Managing Director and Directors of the respondent-company.

(ii) Latest address of the registered office and corporate office of the Respondent Company.

(iii) The location of the books of accounts of the respondent-company.

(iv) The details of the movable and immovable assets of the company and the details of the Bank account operated in the name of the respondent company and statement of account thereof.

The respondent-company, as well its directors, are restrained from alienating, encumbering, or otherwise parting with possession of the assets of the respondent-company without the leave of this Court. The Official Liquidator shall file a compliance report before the next date of hearing.

A copy of the petition along with annexures be supplied to the Official Liquidator.

List on 13.03.2018.

YOGESH KHANNA, J

SEPTEMBER 21, 2017

DV/NC/RS