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

\+ CO.PET. 829/2016 & CA No.3396/2016

APPL INDUSTRIES LTD.

..... Petitioner

Through : Mr.Akash Vajpai, Advocate.

versus

LUMAX AUTOMATIVE SYSTEM LTD.

..... Respondent

Through : Mr.D.Bhattacharya, Advocate for Official Liquidator.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

O R D E R

% 16.10.2017

The petitioner company has been providing the material solutions to the Indian Automobile manufacturing units. The respondent company is into manufacture and supply wide arena of auto components for two and four wheeler segments. In the regular course of business the petitioner had supplied the goods to the respondent company against invoices and was maintaining an open running account of respondent. In pursuant to the goods received by the respondent company and to clear its part liability, the respondent company issued three cheques of Rs.15,68,266.04; Rs.12,06,838.72 and Rs.12,76,079.28 dated 29.11.2013 and 30.11.2013 respectively and assured the petitioner company that such cheques shall be encashed on presentation. The petitioner deposited the cheques No.626029 dated 29.11.2013 and Cheque No.626060 dated

29.11.2013 with its banker Standard Chartered Bank, Central Market, Punjabi Bagh, New Delhi for realization of the amount but were returned unpaid with remarks 'funds insufficient'. The intimation was sent to the respondent company and it again requested the petitioner to present the cheques. The cheques were presented again but returned unpaid with reason 'funds insufficient'. The notice under Section 138 of the NI Act was also issued and the complaint under Section 138 NI Act was filed at Gurgaon, Haryana Courts.

Later the said case was transferred to Patiala House Courts, New Delhi. The petitioner has alleged that despite numerous visits made to the office of respondent and demanding of Rs.40,51,184.04/- along with interest, the respondent has not paid the amount due to its financial constraints as it has stopped its work. Even the NBWs were issued against the managing director of the respondent company in the complaint case under Section 138 of the NI Act. The learned counsel for the petitioner refers to the statement of Mr.Nitin Jain, managing director of the respondent company made on 24.11.2015 in complaint case No.3482/1 wherein he admitted the liability and agreed to settle the matter in the sum of Rs.48.00 Lac payable in four instalments; lastly payable on 31.03.2016. The respondent made a partial payment of Rs.7.00 Lac on 20.05.2016, but the balance amount was not paid. The joint compromise application filed in the said case is also annexed with the documents.

The statutory notice dated 12.08.2016 was thus issued to which the respondent company did not reply and hence, this winding up petition.

Notice of this petition was directed to be served upon the respondent and on 07.10.2016, the learned counsel for the respondent appeared and sought time to file reply.

Again on 17.03.2017, as a last opportunity further time was granted to file the reply to the show cause notice. It was not filed on 24.08.2017 none appeared on behalf of the respondent and no reply was filed, hence the right of respondent to file reply was closed.

In the circumstances, it appears that the respondent company has neglected and is unable to make the payment of the legal dues of the petitioner company as such there is no impediment as to why this petition be not admitted.

In the circumstances, the petition is admitted and 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 Rs.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 12.03.2018.

YOGESH KHANNA, J

OCTOBER 16, 2017

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