

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WINDING UP

Co. Pet. No. 70/1968

Date of decision: 25th September, 2008.

M/s Acme Finance Pvt. Ltd.
through: None

Petitioner

VERSUS

The Registrar of Companies
through: Mr. Manisha Tyagi, Adv. for the Official
Liquidator with Mr. A.K. Chaturvedi, Official
Liquidator in person

Respondent

GITA MITTAL, J(Oral)

1. M/s ACME Finance Private Limited was incorporated under the provisions of the Companies Act, 1956 on 2nd November, 1959 as private Limited company with its shareholders having its registered office at Annexe No.4, Park Area, New Delhi. The company was incorporated inter alia for the business of carrying out higher purchase of immovable properties, general finances, investment trust etc. on account of the inability of various capital of the company in liquidation from the petitioner.

2. It appears that the balance sheet of the company for the period ending 31st January, 1966 reflected losses to the tune of Rs.2,98,723.63 excluding the value of of untenable assets in the shape of outstanding higher purchase instalment of Rs.40,363/- and loss and advance of Rs.5,04,091/- The financial condition of the company as disclosed in the balance sheet reflected that the company was unable to pay debts. Since incorporation, other than for the years 1961-62, when profit of Rs.1,013.94 and Rs.2,597/- was reflected, which is for the years, 1963-1966 were losses which ranged from Rs.15,136.27 to Rs.1,45,103.38. In this background, the accumulated

losses of the company as on 31st January, 1966 were to the tune of Rs.2,98,726.63. The companies entire paid up capital of Rs.2,01,80/- have been wiped out. Such losses of the company was appeared to be treated and creditors equity and undistributed debt equity ratio. It also appears that balance were received. Several compliance were received by the Registrar of Companies with regard to the non-payment of deposits by the company to its depositors. The company had not filed its balance sheet as on 31st January, 1967 and the same became overdue. In addition, the directors as has been prosecuted by the Registrar of Companies, have non-filing the balance sheet as on 31st January, 1965 by way of appropriate proceedings under Section 220 of the Companies Act, 1956. The auditors of the companies also raised objection with regard to the balance sheet for the period ending 31st January, 1966 which reflected that proper books of accounts has not been maintained. In this background, 26th August, 1968, the Registrar of Companies had filed a petition seeking winding up of the company on the ground that the same was just and equitable under Sections 433 seeking winding up under Section 433 of the Companies Act, 1956. It is also stated that the above facts were duly notified by the Regional Director (Northern Region) in compliance with the proviso to Section 439 of the Statute. Notice also stood served on the two directors of the company of the company namely Shri Krishan Sabharwal and Shri Jagdish Chander Nangia.

3. On the consideration of the petition, by an order passed on 7th February, 1969, this court had directed that the company be wound up and had appointed the official liquidator attached to this court as the liquidator of the company.

4. A report dated 11th September, 2008 has been filed by Mr. A.K. Chaturvedi, Official Liquidator on 11th September, 2008 placing before this court that there is no record of the company in liquidation available in the office of the liquidator.

5. It has further been submitted that the efforts have been made to effect inspection of the record of the company from the office of the Registrar of Companies, Delhi. On 1st May, 2008, the office of the Official Liquidator has reported that the Registrar of Companies, Delhi has informed that the concerned file was not in the movement records maintained by the said office. A written request made to the Registrar of Companies on 31st July, 2008 to trace out relevant records of the company and make the same available to the office of the Official Liquidator has not resulted in any

positive results. Again on 12th August, 2008, the office of the Official Liquidator deputed an official to inspect the record with the Registrar of Companies, who has submitted that the same could not be traced out. It has further been stated that a search was effected on the computerised record maintained by the office of the Official Liquidator by its official Shri Brij Lal. However, no record of the company could be traced out. A reply dated 25th August, 2008 sent by the Registrar of Companies has been placed along with the report. It has been informed by the Registrar of Companies that as per the computerised record, there is no company by the name of M/s ACME Finance Private Limited. An attachment of the print out of the scrutiny of the records by the office of the Registrar of Companies enclosed with this letter.

6. I find that one Shri Krishan Sabharwal, an ex director of the company had filed an application under Section 633 (1) of the Companies Act, 1956 which was registered as Criminal Miscellaneous No.262/1971. It was stated therein that the records of the company stood ceased in a criminal proceedings and that the applicant had not received any notices from the office of the Official Liquidator. It has been stated in the application that the company had effected no business whatsoever after the filing of the return in January, 1966. The applicant had prayed for being relieved from the liability, if any, for non-compliance of the same under Section 454 of the Companies Act, 1956. This application was disposed of by a judgment passed on 7th June, 1974.

7. From the above, it would appear that so far as the functions of the company was concerned, even according to the Registrar of Companies, in the main petition, that the accumulated losses of the company as on 31st January, 1966 was to the tune of Rs.2,28,726/- which were set off against the paid up capital of the company which also could not be wiped out by a paid up capital of Rs.2,01,800/-. The company was reflecting losses from 1964 to 1966. The Registrar of Companies had effected a detailed examination of the matter. No assets of company were pointed out even from the balance sheet.

8. As per the report of the Official Liquidator, the matter has reached a stage of impasse that the Registrar of Companies as given that no records relating to the company are available.

9. As per the report dated 11th September, 2008, filed by the Official Liquidator, details of expenses incurred by the office of the Official

Liquidator in effecting scrutinies in the present proceedings have been placed. The Official Liquidator has claimed to have incurred expenses which are quantified as expenditure to the tune of Rs.1,61,566.30.

10. Today an additional affidavit dated 24th September, 2008 has been filed by Mr. A.K. Chaturvedi, Official Liquidator which is taken on record. On an examination of the records of the accounts section of the company, it is stated in this affidavit that realisation from assets to the tune of Rs.68,197/- was effectuated. In addition, an amount of Rs.93,359.10 accrued as interest to the account of the company. Therefore a total of Rs.1,61,556.30 was realised from the assets of the company. Against this, the Official Liquidator has submitted that an amount of Rs.1,41,747.69 inclusive of the amount of Rs.98,317/- disbursed as dividend stand utilised. As per the affidavit of the Official Liquidator, as on date, an amount of Rs.19808.61 is lying in the account of the company which is required to be paid towards government commission up to 30th June, 2008. This report is based on a careful scrutiny of the accounts of the company.

11. Having regard to the submissions placed on record by the Registrar of Companies as back as in the year 1968 and the disclosures made in the office of the Official Liquidator to inspect the record of the said office. In my view, it would appear that the liquidator cannot proceed with in the matter further for want of funds and assets as well as for non-availability of the records. A period of almost 40 years has elapsed since the filing of the original position and 35 years since the winding up order.

12. In this view of the matter, it would appear to be just and reasonable in the circumstances of the case that an order for dissolution of the company be made.

13. Accordingly, it is directed that the company be dissolved from the date of passing of this order. Copy of this order be forwarded by the official liquidator to the registrar of companies within 30 days from today be forwarded by the liquidator to the Registrar of Companies as minutes for dismissed of the company. The legal consequences of non-compliance shall follow.

Sd/-
GITA MITTAL, J

