

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

**SUBJECT : WINDING UP**

CA No. 947/2006 in Co. Pet. No.390/2002

Date of decision: 23rd September, 2008

G.K.W. Ltd. ... Petitioner  
through: Mr. Rajeev Mehra and Ms. Priyadarshini,  
Adv. for the applicant

**VERSUS**

M/s Sharma Engine Valves Ltd. ...Respondent  
through: Mr. Baldev Malik, Adv. for the ROC  
Mr. S.K. Luthra, Adv. for the Official Liquidator

GITA MITTAL, J(Oral)

1. M/s G.K.W. Limited has filed the present application under section 433 and 434 of the Companies Act, 1956 praying for an order of compulsory winding up by M/s Shama Engine Valves Ltd. on the ground of its inability to repay its debt despite service of a legal notice. By an order passed on 28th October, 2003, the company was ordered to be provisionally wound up and the Official Liquidator of this court was appointed as the provisional liquidator with the direction to take charge of all assets and books of accounts of the company. The company was ordered to be finally wound up by an order passed on 30th November, 2004 and the Official Liquidator was appointed as the liquidator of the companies. Notice of the order was issued to the Registrar of Companies. Steps in terms of the order dated 30th November, 2004 have been taken.

2. Pursuant to the orders passed, the Official Liquidator took steps for invitation of claims after due publication. A status report dated 3rd September, 2008 has been filed by the Official Liquidator informing this court that 10 claims were received by the Official Liquidator which were

filed by the propounder. While the matter was pending before the Official Liquidator an application being CA No. 638/2006 was filed by Sh. Manjiv Singh and Mr. Rajeev Sarin. The ex-management of the company praying inter alia of the stay of winding up in accordance with the provisions of Section 456 of the Companies Act, 1956. The applicant in this application stated that the applicant had settled the disputes with the petitioner in creditor which settlement was detailed in CA No. 881/2006 and recorded by this court on 25th July, 2006. The petitioner creditor was paid a total sum of Rs.14 lakhs. The application states that notice thereof stood given. Advance notice of the filing of the petition had been given to the petitioner creditor. The applicants had also submitted that the dues of the secured creditor namely the Punjab National Bank, United Bank of India, Oriental Bank of Commerce, Dena Bank, ENBEE Finlease Ltd, State Bank of Patiala stood settled. It is pointed out that details of the payments and the acknowledgments from the secured creditors were placed as annexures 3-14 with CA No. 881/2006 filed by the applicants.

3. As per the application, the dues of the workmen stand settled and proof of payment was submitted alongwith CA No. 881/2006 by a supplementary affidavit. Additional amounts are claimed to have been paid to the workmen. The workmen are stated to have filed CA No. 858/2006 wherein the workmen are stated to have supported the prayers made in the present application.

4. So far as the claim of settlement of dues of the creditors are concerned, I find that the same is corroborated in the status report dated 3rd September, 2008 filed by the Official Liquidator. The Official Liquidator has enclosed as annexure A to the status report the full details of the amounts claimed settled and paid to the creditors. I find reference to earlier status report whereby satisfaction of the claims has been reported and recorded which includes CA No. 1429/2006; affidavit of compliance and status report dated 3rd August, 2007; affidavit dated 27th November, 2007.

5. It has been pointed out that out of 10 claims which were received by the Official Liquidator, all except two stand settled. These include a claim of M/s Laxmi Industrial Corpn. to the tune of Rs.2,94,728/- and the second by Mrs. Soamma Antony for an amount of Rs.3,91,188/- The Official Liquidator has scrutinised the claim made by Laxmi Industrial Corpn. and has found the same admissible for a sum of Rs.1,36,725/- So far as the dues of M/s Laxmi Indl. Corpn. are concerned, the amount quantified by the

Official Liquidator was handed over by means of a cheque in the sum of Rs.1,36,765/- to Mr. Deepak B. Oza the sole proprietor of Laxmi Indl. Corpn. who had appeared in court on 5th September, 2008. Mr. Deepak B. Oza has received the cheque in full and final settlement of his entire claims and has filed an affidavit to this effect in this court. In view of the report of the Official Liquidator, therefore only one claim would remain pending. It is pointed out that the claim made by the said Smt. Antony was not in the prescribed format and a letter dated 2nd September, 2008 stand sent by the Official Liquidator to her. In addition to the claim of Rs.3,91,188/- made by Ms. Soamma Antony it is pointed out that the claim of the security agency of over Rs.12 lakhs till date is payable. It is submitted by Mr. S.K. Luthra, learned standing counsel for the Official Liquidator that an amount of Rs.6 lakhs has been deposited on behalf of the ex-management with the Official Liquidator towards settlement of the account of the security agency up to 1st November, 2006. On a consideration of the matter and the material placed on record, it is directed that an amount of Rs.3 lakhs shall be released by the Official Liquidator within a period of two weeks from today to the security agency against receipt. It is directed that subject to the security agency providing the required documents thereafter, the Official Liquidator shall take steps to release the balance amount.

6. So far as the amount payable to the security agency after 1st November, 2006 is concerned, it is stated by Mr. K.C. Nanda, learned counsel of the management as well as Mr. Rajiv Mehra who appears for the propounders of a proposed scheme of management that it shall be their responsibility to clear the dues of the security agency. Learned counsel appearing for the propounder submits that a settlement has been arrived at and the security agency has agreed to receive an amount of Rs.5 lakhs in full and final settlement of the claim of the security agency for the period after 1st November, 2006 till date. He submits that the settlement in this behalf shall be placed in writing on record.

7. Apart from the above claims against the company under liquidation, it has been pointed out that the amount on account of interest and penalty towards commercial tax imposed by the Government of Madhya Pradesh are payable by the company under liquidation. The authorities had raised a demand of Rs.1,83,48,647/- for the period 1998, 1999, 2000, 2001-2002. The demand raised by the authority was assailed by the company before the High Court of Madhya Pradesh at the Jabalpur Bench for the period 1996-1997. These demands were stayed by an order passed on 26th May, 2008 in W.P.(C) No.

6091, 6092 and 6093/2008. So far as the demand for the other years was concerned, the company under liquidation had sought reopening of the assessment. The competent authority has remanded the matter for rehearing and reassessment to the concerned authorities. It is however admitted before this court by learned counsel representing the commercial tax authorities that the company has so far deposited an amount of Rs.60,19,076/- towards the commercial tax dues. Before this court an affidavit dated 8th September, 2008 has been filed pointing out the above position. For the reason that a final view is yet to be taken by the assessing authorities with regard to the demands for the periods after 1997 and that the writ petitions have yet to be heard, the company cannot be called upon to make payment of any dues towards this head. Mr. Rajeev Sarin, a contributory in the scheme of management placed before this court by way of this application has filed an undertaking to pay all taxes, interest and penalty towards commercial tax Government of Madhya Pradesh as per the final order passed by the High Court upon reassessment in accordance with law.(page 142).

8. It is submitted by Mr. Rajeev Mehra that in terms of the order dated 19th October, 2006, the amount of Rs.50 lakhs was deposited by a fixed deposit receipt created by M/s V.P.L. Electronics and Engineers Pvt. Ltd. of which Mr. Rajeev Sarin was one of the directors. It is submitted that this fixed deposit receipt is lying deposited in this court in the name of the Registrar. A further submission is made that in order to secure the claim of Smt. Soamma Antony and payment found due to her if any the propounders, contributories are willing to keep an amount of Rs.5 lakhs deposited in this court in the form of a fixed deposit receipt which may be discharged and the amount which may be found payable to Smt. Antony if any be disbursed therefrom on consideration of her claim made in accordance with law and considered by the Official Liquidator. The undertakings given by Mr. Rajeev Sarin are accepted.

9. In support of the prayer for stay of the winding up order, my attention is drawn to the following pronouncements :- (2002) 109 Com.Cas.706 Vinay Kumar Jain and Ors. vs. Official Liquidator and Ors. ; (1984) 56 Comp. Cas.360 (Kar) V.B. Purohit vs. Gadag and Jambukeshwara and Ors.; (1978) 48 Comp.Cas. 98(Del) Voluntary Liquidator, Dimples Pvt. Ltd. vs. Registrar of Companies; ILR 1977 Delhi 474 S.P. Sood vs. The Registrar of Companies, Delhi

10. In any case in this view of the matter, the present application is disposed of with the following directions :- (i) The Official Liquidator shall send an intimation to Smt. Soamma Antony within a period of 10 days from today informing her of the prescribed format of the claim calling her to make a claim within six weeks of the receipt of the communication from the Official Liquidator. The claim as and when received shall be considered and adjudicated upon by the Official Liquidator within a period of two weeks thereafter. In case of any query or objection, Smt. Antony shall be communicated of the same in writing against recorded delivery and she shall be given an opportunity to submit/make clarifications if any within the same period. In such eventuality, the final adjudication upon receipt of clarification shall be effected within six weeks of the receipt thereof from the claimant. (ii) Discharge shall be sought of the fixed deposit receipt of Rs.50 lakhs which is lying deposited in this court in the present case as recorded in the orders dated 19th October, 2006. An amount of Rs.5 lakhs shall be retained by the Registry by way of a fixed deposit receipt to be created in the name of the Registrar General initially for a period of six months which may be kept renewed till further orders of this court. The balance amount of the fixed deposit receipt including all accruals thereon shall be paid to M/s V.P.L. Electronics Pvt. Ltd. which have deposited the fixed deposit receipt. (iii) The undertaking given in the affidavit dated 8th September, 2008 is accepted and shall bind Mr. Rajeev Sarin with regard to the commercial tax dues. (iv) The undertakings in similar terms as those referred in serial no. (iii) shall be filed by the contributories/propounders on affidavits within a period of two weeks from today. (v) All the contributories/propounders shall also file undertakings that in case of any liability surfacing in the future against the company, the company shall be liable for the same.

11. In view of the above the further winding up proceedings shall remain stayed absolutely.

12. It shall be open for the shareholders to proceed in the matter in accordance with the propounded scheme of management. The Official Liquidator shall hand over possession of all assets and records of the company under liquidation to the ex-management against inventory and receipt.

13. It is pointed out that pursuant to the orders passed, the Official Liquidator is in possession of all moveable and immoveable assets of the

company located at , Raisen Road, Anand Nagar, Bhopal and its registered office at Flat No. 503, Kushal Bazar, Nehru Place, New Delhi and it is prayed that appropriate directions be issued to the Official Liquidator to hand over possession of the same to the ex-management of the company or his authorised agent in accordance with law within a period of three weeks from today. The Official Liquidator shall intimate the expenses to the propounder/creditors which shall be paid within two weeks. Costs of Rs.50,000/- shall be paid by the applicant to the Delhi High Court Mediation Centre CA No.390/2002, 1008/2007 and 663/2008 In view of the orders passed on CA No. 329/2 these applications do not survive for adjudication, the same are dismissed as infructuous. Dasti

Sd/-  
GITA MITTAL, J