

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

**SUBJECT : WINDING UP**

COMPANY PETITION NO.163/1990

Date of decision: 24th September, 2008.

In the matter of  
M/s.Graphic World .. Petitioner  
Through : Nemo.

Versus

M/s.Usha Micro Process Controls Ltd. . ...Respondent  
Through : Nemo.

GITA MITTAL, J (Oral)

1. This petition has been filed under Sections 423,434 and 439 of the Companies Act, 1956. On 27th July, 1992, in no.CA 550/1990 filed by the respondent submitting that vide orders dated 7th May, 1990, the Board under Sick Industrial Companies (Special Provisions) Act, 1985 (for brevity the BIFR) had decided to make an enquiry under section 16 of the Sick Industrial Companies (Special Provisions) Act, 1985 against the affairs of the company. In view thereof, the application was allowed and it was directed that the petition would stand sine die with liberty to the parties to apply seeking revival of the present proceedings. The respondent-company was obliged to intimate the court as and when its company ceases to be sick industry.

2. No intimation has been given by the respondent ever since. The petitioner has also not taken any steps in the matter.

3. In these circumstances, the Registry placed the matter for appropriate directions before this court on 4th March, 2008. On that date, notice was directed to be issued to the parties through counsel to report with regard to the status of the proceedings before the BIFR. The notices issued to respondent's counsel were returned by the counsel with the report that the brief has been returned to the respondent-company. Certainly, it was not open for the counsel to return the notice to this court. The procedure prescribed by law mandates that counsel appear or take appropriate steps for discharge from appearance in accordance therewith.

4. In any case, on 14th July, 2008, which is the the next date of hearing, notices, without process fee, were directed to be issued to both the parties. The notice issued to the petitioner were served upon it whereas the notices issued to the respondent have returned with the remarks `left the address'.

5. None appears on behalf of the petitioner today despite service. No steps have since been taken since 1990. It is clearly evident that the petitioner is not interested in prosecuting this matter. It was open for the petitioner to ascertain the position with regard to the proceedings before the BIFR and to file an appropriate application before this court. The petition is therefore dismissed for non-prosecution.

Sd/-  
GITA MITTAL, J