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

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Date of decision: 13.11.2019

+ CO.PET. 46/1994

RE-M/S KINGSTON ELECTRONICS P. LTD. Petitioner

Through: Mr. D. Bhattacharya, Advocate for OL

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

OLR 269/2019

This OLR has been filed seeking the following prayers:

- “i) The present report of the Official Liquidator may be taken on record;
- ii) The Official Liquidator may be permitted to move an application u/s 481 of the Act, for dissolution of the Company;
- i) Pass such other order(s) as may be deemed fit and proper in the circumstances of the case.”

Learned counsel for the Official Liquidator submits that the admitted amount towards the secured creditor, Central Bank of India, was adjudged at Rs. 2,57,40,392/-. However, only an amount of Rs. 1.10 Crores was disbursed by an order dated 13.10.2017. Permission is sought to release the remaining amount of Rs. 12,29,839.62/- in favour of the secured creditor as no further claims remain to be settled.

The Official Liquidator is permitted to disburse the aforesaid amount of Rs. 12,29,839.62 in favour of Central Bank of India, one of the secured creditors.



The OLR is taken on record.

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1. The application has been moved by the Official Liquidator under Section 481, Companies Act, 1956, read with Rules 9 & 281, The Company (Court) Rules, 1959 (hereinafter referred as CCR), *primarily* praying for dissolution of the Company (in liquidation), namely, M/s. Kingston Electronics Ltd. (hereinafter referred to as the “*Company (in liquidation)*”).

2. Perusal of the application reveals that this Company came to be wound up vide order dated 01.10.2004 and notice of the Company Petition had been published in newspapers under the direction of this Court. The Official Liquidator could not get any assistance from the Ex- Directors as the main Director had expired way back in the year 1992 and the other Directors were untraceable.

3. The Official Liquidator came to know that Company (in Liquidation) had not been in business since the year 1990, and it became sick under provisions of SICA. The Official Liquidator could however find the following assets of the Company (in Liquidation):

- (i) Registered Office: 14/1, Pant Nagar, New Delhi;
- (ii) Flat Property no. F - 256, Ground floor, Block F, Okhla Industrial Area, New Delhi
- (iii) A – 19, Naraina Industrial Area Phase- I, New Delhi – 110028;
- (iv) 28/ 17, Patel Nagar, New Delhi- 110008
- (v) Factory premises: A- 21, Sector- 9, NOIDA, Gautam Budh Nagar (U.P.);
- (vi) Plant & Machinery located at the aforesaid factory in NOIDA.



4. Other than the above, no assets could be traced by the Official Liquidator. Later on, it transpired that the properties/ premises enumerated at point nos. (i), (iii) and (iv) above did not belong to the Company (in Liquidation). Hence these properties were not seized by the Official Liquidator.

5. As regards the property at point no. (ii) above (i.e. the Okhla Industrial Estate property), the property was not seized by Official Liquidator as the Company was not found to be in possession on 23.02.2005, when the same was inspected. It was found that the Okhla Industrial Area property stood mortgaged to Central Bank of India and hence was already taken over by the Central Bank of India in the year 2003 itself.

6. The assets at point nos. (v) & (vi) above, were found to be belonging to the Company (In Liquidation) and were put up for valuation and sale and by an auction on 24.09.2009, the same were sold-off to one M/s Argup International for Rs. 3.10 Crores.

7. Subsequently, claims from creditors/workmen were invited vide publication in the newspapers namely “The Statesman” (English), Delhi edition & “Amar Ujala” (Hindi) Delhi, edition on 29.01.2010. Thereafter, UPFC, Commissioner of Customs & Central Excise and Central Bank of India lodged respective claims, which were adjudged and paid-off by the Official Liquidator as under:-

S. No.	Creditor	Adjudication by OL	Status of Disbursement
i.	UPFC	Admitted as Secured Creditor by OL, for Rs.	Admitted amount disbursed in view of



		2,26,59,770/- (Admission letter issued on 07.08.2012)	Order dated 08.11.2012.
ii.	Central Bank of India	Admitted as Secured Creditor by OL, for Rs. 2,57,40,392/- (Admission letter issued on 10.03.2017)	Disbursed Rs. 1.10 Crore only in view of Order dated 13.10.2017.
iii.	Commissioner of Customs & Central Excise	Admitted for Rs. 13,88,868/-.	Disbursed in view of Order dated 08.05.2013

8. Except the above, no other claims were received by the Official Liquidator. No claims from workmen were received. The above claims were accordingly worked out and disbursements were made by the Official Liquidator as detailed in the table above.

9. Post the aforesaid disbursement processes, there now remains a fund balance of Rs. 12,29,839.62/- with the Official Liquidator.

10. It is submitted by learned counsel for the Official Liquidator, that this fund balance may be ordered to be utilized for payment of the balance unpaid dues of Central Bank of India, who was adjudged a secured creditor, and only part payment was made to it in view of the circumstances prevalent at that time. It is the submission of the learned counsel that the Official Liquidator many a times keeps some provision on various accounts, but now,



the accounts are on verge of closure and it is seen that a sum of Rs. 12,29,839.62/- is still lying with the Official Liquidator. Hence it will be appropriate to order for its release, subject to deduction of liquidation costs and Government fees, etc, to Central Bank of India. Learned counsel also states that except for this fund balance no further asset remains with the Official Liquidator.

11. I have heard the learned counsel for the Official Liquidator.

12. From the above it can be seen that the Liquidation process had otherwise been duly carried out, as per the Act. The Official Liquidator liquidated the available assets, and sought to distribute the proceeds amongst creditors.

13. The Official Liquidator has expressed his satisfaction, and the Official Liquidator has not received any complaints. The submission now made by the learned counsel for release of the available fund balance to the unpaid Secured Creditor is in accordance with the provisions of Section 529, 529A & 530 of the Act, and there is no reason why a secured creditor should not be paid or partially paid, when funds are still available.

14. In view of the above position, I agree with the submissions made by the learned counsel and hence dispose off the present application and OLR as under:

- i. The Official Liquidator is permitted to utilize and release from the available fund balance of Rs. 12,29,839.62/-, after deduction of liquidation costs and Government fee, to Central Bank of India for paying off the balance unpaid admitted dues;
- ii. Post the aforesaid remittance, if any amount still remains with the Official Liquidator, the same shall be remitted to the Common Pool



Fund;

iii. Subject to the above directions, the Company (In Liquidation), namely, Kingston Electronics Ltd. is ordered to be dissolved.

15. The application is allowed in above terms.

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16. The Official Liquidator may close the books of accounts of the Company (In Liquidation) and shall intimate the concerned ROC about this order within a period of 30 days thereof.

17. The next date of hearing, if any already fixed, stand cancelled.

JYOTI SINGH, J

NOVEMBER 13, 2019

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