



2025:DHC:7987



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 08.09.2025***+ **W.P.(C) 9889/2025**

SU KAM POWER SYSTEMS LIMITEDPetitioner

Through: Ms. Bani Brar, Adv.

versus

OFFICE OF REGISTRAR OF COMPANIES AND
ANR.RespondentsThrough: Mr. Rohan Jatiley, CGSC with Mr.
Dev Pratap Shahi, Mr. Varun Pratap
Singh and Mr. Yoyga Bhatia, Adv.
for UOI.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. This Court by order dated 15.07.2025 passed the following directions:

“1. The present Petition has been filed under Article 226 of the Constitution of India seeking to impugn the Notice dated 28/29.01.2025. In addition, the Petition seeks quashing of Show Cause Notices dated 14.11.2022 and 30.06.2023 [which was not served upon the Petitioner].

2. Learned Counsel for the Petitioner submits that the Petitioner/ Company has undergone a sale as a going concern in liquidation under the provisions of Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as “IBC”]. After completion of liquidation proceedings, the Petitioner received Notices from the Respondent No.2 for non-compliance of Section 148 of the Companies Act, 2013 [hereinafter referred to as “Companies Act”] for the financial years 2016-2017, 2017-2018 and 2023-2024.

3. Learned Counsel for the Petitioner further submits that initially these Notices were responded to by the Petitioner by a letter dated 25.11.2022 wherein it was pointed out to Respondent No.2 that the Petitioner/Company had undergone liquidation and that pursuant to an order passed by the National Company Law Tribunal, Principal Bench [hereinafter referred to as “NCLT”] being Order No. 233 (PB/2021) dated 11.05.2022. The Petitioner/Company was sold as a going concern and a new



management was appointed by the NCLT. Reliance is placed by the learned Counsel for the Petitioner to the order passed by the NCLT, more specifically the following extract:

*“In the result, we hold that, the e-auction was conducted on 12.10.2020 and 14.10.2020 on the reserve price of Rs. 40 crores, and the letter of intent issued in favour of respondent nos. 1 to 4 on 16.10.2020, stands confirmed. **The sale of the Corporate Debtor as a going concern in favour of respondent nos. 1 to 4 stands confirmed.** As a result, prayer (A) & (B) of this application stand allowed. In so far as penalty and other issue are concerned it will be dealt with in accordance with law.”*

[Emphasis supplied]

4. Learned Counsel for the Petitioner submits that the grievance of the Petitioner essentially stems from the fact that despite the fact that the IBC provides the auction purchaser shall not be saddled by the liability for these offences prior to the date that the Petitioner/Company was sold as a going concern, the Impugned notices were sent for the offences committed by the Petitioner/Company [Petitioner herein].

4.1 Reliance is placed on Section 32A(2) of the IBC in this behalf to submit that it is set out in the IBC that no action would be taken in relation to offences committed against the corporate debtor [Petitioner herein] in relation to offences committed prior to the commencement of the CIRP process when the process results in a change of control of the corporate debtor to a person who is not either a promoter or a person involved in an investigation which has been launched against the corporate debtor who has neither aided or abetted or conspired for the commission of such offence.

5. Learned Counsel for the Petitioner submits that since the Petitioner/Company has undergone sale as a going concern with effect from 23.05.2022, the Petitioner cannot be make liable for the period prior to the cut off date, and thus, the show cause notices that have been issued are without any jurisdiction and not in accordance with law.

6. The matter requires further examination.

7. Issue Notice.

7.1 Learned Counsel for the Respondents accept Notice and seeks some time to file a response.”

2. Learned Counsel for Respondent No. 1 submits that the Respondent No.1 has filed its Affidavit in response to the Petition, wherein it is set out that Respondent No. 1 had initiated prosecution against the officers of the Petitioners priorly. In addition, it is contended that the impugned notices



were not intended to be sent to the Petitioner Company. Reliance in this behalf is placed on paragraphs 4 and 5 of the Counter-Affidavit which are set out below:

“4. At the outset, it is essential to highlight that prior to the order passed by this Hon'ble Court on 15.07.2025, the Respondent No. 1 had already initiated prosecution against the 'then Officers in Default' in the Petitioner Company for violation of section 148 of the Companies Act, 2013 for the Financial Year 2017-18. The said complaint has been filed before the Ld. ACMM (Special Acts), Tis Hazari District Court on 24.06.2025 bearing Case Acknowledgment No. DLCT020297792025. Pertinently, no prosecution has been initiated against the Petitioner in furtherance of the direction issued by the Respondent No. 2 vide Office Memorandum dated 17.01.2024. It is stated at the cost of repetition that prosecution has been initiated only against the 'then officers in Default' in Petitioner Company.

5. It is also submitted that the Impugned Notices were not intended to be issued to the Petitioner Company but were rather intended to provide an opportunity to the 'then Officers in Default' in the Petitioner Company for compounding the violation in accordance with Section 441 of the Companies Act, 2013. Further, the Respondent No. 2 vide Office Memorandum dated 17.01.2024 had affirmed that action for violation of Section 148 of the Companies Act, 2013 will be initiated only against the "officer who is default" when the offence had taken place, as defined under Section 2(60) of the Companies Act, 2013 and thus, no action was to be initiated against the Petitioner.”

3. Learned Counsel for the Petitioner submits that in view of the statement made on affidavit by Respondent No. 1, the prayers in the present Petition stand satisfied. However, learned Counsel for the Petitioner points out that office memorandum dated 17.01.2024 issued by the Deputy Director (Cost), Government of India, Ministry of Corporate Affairs, Cost, Audit Branch contains certain typographical errors and that the Petitioner may be granted liberty to take appropriate steps to have these errors corrected.

4. The Petition is accordingly disposed of in the foregoing terms. Liberty is granted to the Petitioner to take appropriate steps for correction of



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any errors in the Office Memorandum dated 17.01.2024, *albeit* in accordance with law.

5. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

SEPTEMBER 8, 2025/r