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

+ **CO.PET. 668/2014**

**ABHINANDAN KUMAR JAIN** ..... Petitioner

Through **Mr.Nikhilesh Kumar, Adv.**

versus

**MVL LIMITED** ..... Respondent

Through **Mr.Neeraj Malhotra, Sr.Adv. with  
Mr.Rachit Devgan, Adv. for SEBI**

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**ORDER**

% **05.07.2018**

1. This petition is filed under section 433(e) and 434 read with section 439 of the Companies Act, 1959 seeking winding up of the respondent company. It is the case of the petitioner that the respondent has launched a project, namely, "IBC at Sector-35, NH-8", Gurgaon. Various representations were made by the respondents regarding the construction. It was held that the project would be ready within a period of three years starting from 2009-10. Based on the said reports the petitioner is said to have purchased the proposed space at IT/Cyber Space No. 20,21 and 22 at 3<sup>rd</sup> floor having super area 4504 sq.ft. @ Rs.3950 per sq.ft. for a total consideration of Rs.1,77,90,800/-. The parties entered into an agreement on 17.8.2011. The parties also entered into an Assured Return Agreement on 17.8.2011. The petitioner has paid 95% of the total consideration being Rs.1,69,01,260/- and was entitled to as per the Assured Return Agreement to receive Rs.1,49,758/- per month. It is pleaded that the respondents started paying the assured return but the said payments were made only for 10



months from September 2011 to June 2012. On account of the default by the respondent it is pleaded that under duress the petitioner entered into a supplementary agreement on 15.4.2013 whereby the respondent allotted 13% additional space in lieu of the pending assured return. It is stated that the date of handing over possession, namely, August 2014 lapsed. A physical inspection of the site revealed that the project was not ready and only a bare structure was standing on the land. A notice was issued to the respondent on 8.9.2014 under section 434(a) of the Companies Act, 1956. It is further pointed out that the petitioner recently learnt that SEBI had passed an order dated 26.9.2013 holding the assured return scheme as illegal and had issued various directions to the respondent. Hence, the present winding up petition.

2. Learned counsel for the petitioner has also pointed out that an FIR has been registered against the Ex. Directors being 5/2015 dated 7.1.2015.

3. I may note that in this petition notice was issued to the respondent on 31.10.2014. The matter was continued to be adjourned for one reason or the other. At one stage it was pointed out that pursuant to the order of SEBI dated 19.12.2014 the respondent company had filed an appeal which was pending before the Securities Appellate Tribunal, Mumbai. On the last date of hearing this court had noted the submission of learned counsel for the respondent that he will file an affidavit indicating the list of assets as directed by the Court on 11.9.2017. It is also stated that the respondent company has not disposed of or alienated any of these assets after order of this court dated 24.1.2017.

4. Today, learned counsel for the respondent states that she has been engaged yesterday only and is unable to make any submission on the merits



of the case. Affidavit which was directed to be filed way back on 11.9.2017 has also not been filed. In my opinion, there are no reasons to continue to keep adjourning the matter as is being sought to be done by the respondent.

5. A perusal of the reply filed by the respondent shows that the respondents have not denied receipt of the payments and the fact that there is a default in handing over the proposed space to the petitioner.

6. Mr.Malhotra, learned senior counsel has appeared on behalf of SEBI pursuant to order of this court dated 28.4.2015. He submits that the collective investment scheme which was being carried out by the respondent has been declared to be illegal vide order dated 19.12.2014 and a direction has been passed to the company to refund the said amount to the investors. It is further pointed out that the respondent company has filed an appeal before the Security Appellate Tribunal which appeal is likely to be heard shortly. He further submits that in the eventuality that the appeal filed by the respondents is dismissed and there is a continued default on the part of the respondents, SEBI would have a prior right on the assets of the respondent company under section 28A(3) of the Security and Exchange Board of India Act, 1992.

7. In my opinion, this is a fit case for admitting the petition and appointing the OL as the Provisional Liquidator. Accordingly, the petition is admitted and the Official Liquidator attached to this Court is appointed as the Provisional Liquidator. He is directed to take over all the assets, books of accounts and records of the respondent-company forthwith. The citations be published in the Delhi editions of the newspapers 'Statesman' (English) and 'Veer Arjun' (Hindi), as well as in the Delhi Gazette, at least 14 days prior to the next date of hearing. The cost of publication is to be borne by the



petitioner who shall deposit a sum Rs.75,000/- with the Official Liquidator within 2 weeks, subject to any further amounts that may be called for by the liquidator for this purpose, if required. The Official Liquidator shall also endeavour to prepare a complete inventory of all the assets of the respondent-company when the same are taken over; and the premises in which they are kept shall be sealed by him. At the same time, he may also seek the assistance of a valuer to value all assets to facilitate the process of winding up. It will also be open to the Official Liquidator to seek police help in the discharge of his duties, if he considers it appropriate to do so. The Official Liquidator to take all further steps that may be necessary in this regard to protect the premises and assets of the respondent-company.

8. Regarding the contention of SEBI regarding the consequences that may follow in case of default of the respondent in terms of section 28A(3) of the SEBI Act, these issues can be adjudicated upon later on by the court at an appropriate stage. At this stage, it is necessary to ensure that the respondent does not dissipate any assets and the same are taken over by the OL.

9. List on 23.10.2018.

**JAYANT NATH, J**

**JULY 05, 2018**

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