

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI BENCH-VI
COMPANY PETITION NO.61/271-72/ND/2022**

IN THE MATTER OF :

SECTION 272 OF THE COMPANIES ACT, 2013 READ WITH RULE 3 OF THE
COMPANIES (WINDING UP) RULES 2020.

AND

IN THE MATTER OF :

TACTFULL INVESTMENTS LIMITED.

Address- 8/19/3-F, Pvt No.303/304,
West Ext Area, Karol Bagh,
Delhi Central, New Delhi—110001.

(Company incorporated under Companies Act, 1956)

.....PETITIONER COMPANY

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER, JUDICIAL

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER, TECHNICAL

Appearance:

For the Petitioner/Applicant :

:Adv Ashutosh Gupta, Adv
Gaurav Rana and Adv Ajitesh
Kumar and Adv Yatahrth Jain

For the IT Department:

:Mr. Sunil Agarwal Sr Standing
Counsel, Mr. Shivansh B Pandya
Jr Standing Counsel with Adv
Mr. Utkarsh Tiwari

For the RoC

:Adv. Himanshu Singhal

ORDER

PER: RAHUL BHATNAGAR, MEMBER, (TECHNICAL)

Pronounced on: 07.06.2024

1. This is a petition under Section 272 of the Companies Act, 2013 read with Rule 3 of the Companies (Winding Up) Rules 2020 by Tactfull Investments Limited, a Company incorporated under the Companies Act, 1956 for Winding Up of the Company.
2. The following facts as averred in the petition necessary for adjudication are summarized below:
 - (i) The Company i.e. Tactfull Investments was incorporated on August 5, 1994 under the Companies Act, 1956 as a public Company limited by shares. The Registered Office of the Company is situated at 8/19/3-F, Pvt No. 303/304, West Ext Area, Karol Bagh, New Delhi—110005.
 - (ii) The nominal share capital of the Company is Rs. 10,70,00,000 (Rupees Ten Crore Seventy Lakh Only) divided into 1,07,00,000 equity shares of Rs. 10 each. The amount of paid up capital is Rs. 10,30,05,000 (Rupees Ten Crore Thirty Lakh and Five Thousand Only) divided into 1,03,30,500 equity shares of Rs. 10 each.
 - (iii) The objects for which the Company was incorporated are to carry on the business of manufacturing, importing, exporting, assembling and dealing in all kinds of computers, computer equipment and components.

- (iv) The Company has been suffering losses in the previous years due to adverse market scenario. It has been averred that the loss suffered by the Company for Financial Year 2020-2021, 2019-2020, 2018-2019 are Rs. 16,000, Rs.18,91,715 and Rs. 56,025,24 respectively.
- (v) The Company also has dues of Rs.16,61,83,054 (Rupees Sixteen Crore Sixty-One Lakh Eighty Three Thousand and Fifty Four Only) of the Income Tax Department in respect of 2 years passed by the Income Tax Officer. The Income Tax Department has also frozen the erstwhile Bank Account of the Company at Central Bank of India, Janpath on account of non-payment of dues. The Company has filed 2 appeals which are pending before the Commissioner Income Tax for amount of Rs. 6,57,00,912 and Rs. 4,04,58,781.
- (vi) The Company opted of voluntary delisting from Bombay Stock Exchange (BSE) and was delisted on 03.10.2019.
- (vii) It has been averred that on account of accumulated losses, outstanding liabilities and liquidity crunch facing the Company, the Board of Directors considering that there is no remedy available for the Company and there is no scope for its recovery by any means, vide its resolution dated 15.12.2021 approved for filing for Winding Up petition by the Company. Further, An Extraordinary General Meeting of the Company was held on 10.01.2022 and approved the filing of Winding Up petition by special resolution.

- (viii) The Company has filed the Statement of Affairs, Income Tax Returns for last three years.
- (ix) It is pertinent to mention that there is no order for voluntary Winding Up by Tribunal, against the Company.
- (x) That the Petitioner Company falls within the Jurisdiction of this Bench as the registered address of the Petitioner Company situated in Delhi.
3. It has been prayed to this Tribunal to pass an order for commencement of Winding Up proceedings against the Company and for that purpose appointment of Provisional Liquidator and also to pass orders declaring stay on suits or commencement of legal proceedings against the Company in terms of Section 279 of the Companies Act.
4. Notices were issued to the Registrar of Companies and Income Tax Department for their appearance and reply, public notice were also issued by the Company in daily newspapers an affidavit was filed.
5. No objections were received in response to the public notice.
6. The RoC filed reply along with their observations. The observations of the RoC and the reply of the petitioner to the same are as below:
- 7.

S.No.	ROC OBSERVATIONS	REPLY OF THE PETITIONER
1.	As per petition, the Company has existing dues towards the Income Tax Department amounting to Rs. 6,57,24,274 (Rs. Six Crore Fifty- Seven Lakh	The Company has dues for Income Tax amounting to INR 6,57,24,274 (Rs. Six Crore Fifty- Seven Lakh Twenty-Four Thousand Two Hundred and Seventy-four only)

<p>Twenty-Four Thousand Two Hundred and Seventy-four only) and Rs. 4,04,58,781 (Rs. Four Crore Four Lakh Fifty-eight Thousand Seven Hundred and Eighty-One only) for the assessment Year 2016-17 and Assessment Year 2012-13 respectively. The Company has preferred appeals before Commissioner of Income Tax (Appeal) against the impugned orders. Therefore, keeping in view of huge pending demand, before passing any order in the matter w.r.t Winding Up of the Company, the Income Tax Department may be impleaded as party to submit their version on winding application.</p>	<p>and INR 4,04,58,781 (Rs. Four Crore Four Lakh Fifty-eight Thousand Seven Hundred and Eighty-One only) for the Assessment Year 2016- 17 and Assessment Year 2012-13 respectively. This is the matter of fact that an appeal was filed before the Commissioner of Income Tax (Appeal) in Form no. 35 u/s 246A of the Income Tax Act, 1961.</p> <p>For the FY 2012-13 the appeal was filed on 22nd February 2020 against the order of Income Tax u/s 147 read with Section 144 of the Income Tax Act, 1961 dated 13th December 2019.</p> <p>The last notice was served on the Company on 7th November 2022 and Company is in a process to reply the same.</p>
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		<p>For the FY 2016-17 the appeal was filed on 4th January 2019 against the order of Income Tax u/s 143(3) of the Income Tax act, 1961 dated 28th December 2018.</p> <p>The last notice was served on the Company on 1st November 2022 and the Company is in a process to reply the same.</p> <p>Both the appeals are still pending before Commissioner of Income Tax (Appeal).</p> <p>It is humbly submitted that court notice is already issued by this Hon'ble Tribunal vide its order dated 01.09.2022 through court officer. However, Income Tax Department has neither appeared nor filed any reply till date. Thus, pleading or submission of RoC is virtually become infructuous.</p>
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		<p>Further, present proceedings are not adversarial to the interest of the Income Tax Department as stated by the RoC. Pertinently, present case is not for dissolution of the Company instead it is for Winding Up of the Company and if Income Tax Department has any outstanding claim as suggested by ROC then they can file such claim with Liquidator so appointed by this Hon'ble Tribunal in present proceeding.</p>
<p>2.</p>	<p>Company may be asked to clarify as to whether steps were taken by the Company to rectify the falsification of the accounts done by it as reported in complaint filed by ROC office. In this respect the Company may be asked for production of a certificate from its Statutory</p>	<p>This is to clarify that a complaint was filed before Tis Hazari Court, Delhi dated 18.10.2012 by the Registrar of Companies, NCT of Delhi and Haryana against the following directors of the Company which are as follows:</p> <ul style="list-style-type: none"> • Mr Ajay Singhal • Mr Jaswant Singh • Mr Ved Prakash Bhupinder

	<p>Auditor and apprise same before Hon'ble NCLT.</p>	<p>Puri</p> <ul style="list-style-type: none"> • Mr Ashok Agarwal • Mr. Kuldeep Bansal <p>Further, as per the latest order dated 22nd May 2015 of Tis Hazari Court, Delhi 3 of the directors(accused) has already been prosecuted by the court in the following manner:</p> <ul style="list-style-type: none"> • Mr. Jaswant Singh being the independent director was prosecuted with Fine. • Mr Ashok Agarwal was already expired at the time of pronouncement of such order. • Mr. Kuldeep Bansal was discharged. <p>Rest two Mr Ajay Singhal and Mr Ved Prakash Bhupinder Puri were not prosecuted yet.</p>
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		<p>Although, both of them have already vacated the office of the Company dated 25.07.2009. They have no relation with the Company till then and long period has already been passed.</p> <p>Further, as stated above, case is not filed against the Company and Company is neither impleaded in said proceedings by either of the parties. Therefore, no steps are required to be taken by the Company for rectification of the accounts falsified.</p>
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8. The Income Tax Department has submitted their report and raised certain observations. The observations of the Income Tax Department and the reply to the same filed by the Company are as below:

S.No.	INCOME TAX OBSERVATION	REPLY OF THE PETITIONER
1.	<p>There is an outstanding Income-tax Demand of Rs. 4,17,16,570/- for Assessment Year 2012-13 and for Assessment Year 2016-17 the outstanding income tax demand is Rs. 6,57,17,790/-, against Applicant/Petitioner Company.</p>	<p>The Petitioner Company ("Tactfull Investments Limited") has dues for Income Tax amounting to INR 6,57,24,274 (Rs. Six Crore Fifty- Seven Lakh Twenty Four Thousand Two Hundred Seventy Four only) and INR 4,04,58,781 (Rs. Four Crore Four lakh Fifty Eight Thousand Seven Hundred and Eighty One. Only) for the Assessment Year 2016-17 and Assessment Year 2012-13 respectively. This is a matter of fact that an appeal was filed before the Commissioner of Income Tax (Appeal) in Form no. 35 u/s 246A of the Income Tax Act, 1961.</p> <p>For the AY 2012-13 the appeal was filed on 26th February 2020 against the order dated 13th December 2019 of Income Tax u/s</p>

		<p>147 read with Section 144 of the Income Tax Act, 1961.</p> <p>For the A.Y 2016-17 the appeal was filed on 4th January 2019 against the order dated 28th December 2018 of Income Tax u/s 143(3) of the Income Tax Act, 1961.</p> <p>It is pertinent to mention that both the appeals are still pending before Commissioner of Income Tax (Appeal).</p> <p>Further, present proceedings are not adversarial to the interest of the Income Tax Department. Pertinently, present petition is not for dissolution of the Company instead it is for commencement of winding up of the Company and if Income Tax Department has any outstanding claim then they can</p>
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		file such claim with Liquidator so appointed by this Hon'ble Tribunal in present proceeding.
2.	That the penalty proceedings U/s 271(1)(c) of the Income Tax Act, 1961 for AY 2012-13 and AY 2016-17 are also pending against the Applicant/Petitioner Company.	It is humbly submitted that there is no embargo in any law that the Company cannot be wound up if the penalty proceedings against the Company are going on or there are any dues of any state agency or Departments, instead it is always viable to Liquidate the Company which is not able to clear its dues so that stake of all stake holders can be protected and maximised at the same time. Further, it is not the case of dissolution of the Company. If any Income Tax dues are pending against the Company, the Income Tax Department can file their claim before the Liquidator so appointed by this Hon'ble National Company Law Tribunal.

		<p>It is humbly submitted that no interest of Income Tax will be prejudiced by initiation of winding up proceedings against the Petitioner Company, instead same will foster their dues which will be cleared in accordance with procedure prescribed under Law and in much faster and efficient manner.</p> <p>In the light of the above, it is humbly submitted that objections submitted by the Income Tax Department vide their reply dated 11.01.2023 is misplaced and needs no consideration in the present matter.</p> <p>Hence, it is a fit and proper case for the winding up of the Petitioner Company under Section 272 of the Companies Act, 2013.</p>
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9. During the course of the proceedings ARoC appeared on 18.05.2023 and submitted that they are satisfied with the response to their queries given by the petitioner.
10. We have heard the Counsel for the Income Tax Department as well as the Counsel for the petitioner with regard to the observation made by the Income Tax Department. The Counsel for the petitioner has submitted that this is a matter of Winding Up of an insolvent Company and not a case of voluntary liquidation. In matter the voluntary liquidation, the same can be done only in respect of Companies which are solvent. However, this being an insolvent Company, the Creditors (including Income Tax Department) would file their claim before the Liquidator) and thereafter Liquidator would distribute the assets of this Company, among the Creditors and the Income Tax Department would also get its share from the liquidation proceedings.
11. We are satisfied that in terms of the above, the process of Winding Up of the Company should be commenced with the appointment of a Provisional Liquidator.

ORDER

- I. The present petition stands admitted.
- II. This Tribunal appoints Mr. Sanjay Kumar Gupta, having Reg. No. IBBI/IPA-002/IP-N00768/2018-2019/12368, having E-mail ID:- gskisa@gmail.com from the list of IP(s) issued by IBBI (valid for 01.01.2024 to 30.06.2024) as Provisional Liquidator for the Petitioner Company who shall be paid a remuneration of

Rs.75,000/- per month plus actual reasonable expenses incurred for conducting the process or Winding Up of the Company.

- III. The Provisional Liquidator shall have the same power as a Liquidator has;
- IV. The Provisional Liquidator shall file a declaration (in Form WIN 10, prescribed under Rule 14(5) and 21 of the Companies (Winding Up) Rules, 2020) within seven days from the date of his appointment in the prescribed form, disclosing conflict of interest or lack of independence in respect of his appointment if any with this Tribunal and such obligation shall continue throughout the appointment;
- V. The Provisional Liquidator shall forthwith take charge of all the property and effects of the Company.
- VI. No suit or other legal proceedings shall be commenced or proceeded with by or against the Petitioner Company except with the leave of this Tribunal and subject to such terms as this Tribunal may impose as provided under Section 279 of the Companies Act, 2013.
- VII. The Registrar of NCLT shall send notice of appointment of Provisional Liquidator to him, in Form WIN 9, prescribed under Rule 14(4) of Company (Winding Up) Rules, 2020, within seven days from today. The Registrar shall also make a copy of this order available to the Jurisdictional Registrar of Companies within seven days from today. The Petitioner Company shall also serve a copy of this order upon Provisional Liquidator and the Jurisdictional Registrar of Companies. The Liquidator shall make a publication regarding his

appointment in two national newspapers both in English and Vernacular, in circulation in the district/state/locality where the registered office of the Petitioner Company is located.

- VIII. The Petitioner shall pay an amount of Rs. 2 lacs to the Provisional Liquidator to enable him to meet the initial cost of the Liquidation process. Subsequently, the cost shall be adjusted against the assets to be recovered and distributed.
- IX. The Provisional Liquidator is directed to file an application within three weeks from the date of this order for the Constitution of the Winding Up Committee in accordance with the provisions of Section 277 of the Companies Act, 2013.
- X. The Registry is directed to communicate this order to the Registrar of Companies, Income Tax Department all the parties, and to the Company Liquidator within seven days.

SD/-

(MAHENDRA KHANDELWAL)

MEMBER (JUDICIAL)

SD/-

(RAHUL BHATNAGAR)

MEMBER (TECHNICAL)