

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court- I)
KOLKATA**

CP No. 257/KB/2021

A petition under section 271 and 272 of the Companies Act, 2013

In the Matter of:

The Registrar of Companies, West Bengal, Ministry of Corporate Affairs, having its registered office at Nizam Palace, 2nd MSO Building, 234/4, Acharya Jagadish Chandra Bose Road, Kolkata, West Bengal – 700 020, India

...Petitioner

Versus

1. **Himadri Jewellers Private Limited**, (CIN: U5239WB2009PTC139285), a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 12A, Camac Street, Kolkata-700017, West Bengal, India.

.... Respondent No. 1

2. **Pushpesh Kumar Baid** (DIN: 00633445), director of Himadri Jewellers Private Limited, presently residing at 33, Shakespeare Sarani, Opp. R Birla Girls College, Kolkata – 700017, West Bengal, India;

...Respondent No. 2

3. **Kokila Devi Baid** (DIN: 01759097), director of Himadri Jewellers Private Limited, presently residing at 203/1, Mahatma Gandhi Road, Kolkata- 700007, West Bengal

....Respondent No. 3

CORAM:

Shri Rohit Kapoor : Member(Judicial)

Shri Balraj Joshi : Member (Technical)

Date of Hearing: 12/04/2023

Date of pronouncing the order: 14.09.2023

Appearances (Physically/ via video conference)

Mr. Sailendra Kumar Tiwari, Adv

- For the Petitioner

ORDER

Per:Rohit Kapoor, Member (Judicial)

1. The instant Petition has been filed by **The Registrar of Companies, West Bengal** (“petitioner”) to initiate winding up proceedings under sections 271 and 272 of the Companies Act 2013 against **Himadri Jewellers Private Limited**, an existing company within the meaning of The Companies Act, 2013. The petition has been filed on the grounds that the affairs of the company have been conducted for fraudulent and unlawful purpose under section 271(c) and that the company has defaulted in filing its financial statements with the registrar as per section 271(d) of the Companies Act, 2013.
2. It is submitted by the Ld. Counsel on behalf of the Petitioner that the Ministry of Corporate Affairs (MCA) in exercise of its power had directed the petitioner to inquire under section 206 of the Companies Act, 2013 and directed to submit the report in the matter of **Maa Ambay Jewellers Private Limited and others** *vide* its letter no. 3/164/2020/CL.II(ER) dated 11.01.2021 on the basis of letter received dated 19.01.2020 from the office of Superintendent of Police, Central Bureau of Investigation, Banking Securities Fraud Branch, Kolkata to the Ministry regarding case no. RCBSK2018E0007 against Shri Pushpesh Kumar Baid, Shri Lokesh Poddar, Shri Dharmesh kumar Baid, Smt. Kokila Devi Baid and M/s Maa Ambay Jewellers Private Limited and further on recommendation of SFIO *vide* its letter SFIO/MRAU/0020/2020-MRAU/21021 dated 25.11.2020 as these companies were found to be involved in Bank fraud.
3. Ld. Counsel submits that accordingly, the petitioner conducted inquiry and have

observed and reported that Shri Pushpesh Baid and others, had incorporated Maa Ambay Jewellers Pvt. Ltd. and other 119 Group Companies, including the respondent Company **Himadri Jewellers Private Limited**, (CIN: U5239WB2009PTC139285) during the period 2007 to 2011 and succeeded in taking loans in 44 no. of companies amounting to Rs. 815 crores by submitting forged deeds and other documents and diverted loan funds without any underlying business activities to shell companies owned and controlled by Shri Pushpesh Baid and others.

4. In this regard, the Regional Director (Eastern Region), MCA had issued notice to the company under second proviso of section 272(3) of the Companies Act, 2013 dated 10.08.2021. However, no reply was received from the Company. Further, the respondent company has also defaulted in filing its balance sheets and Annual Returns with the Registrar of Companies (RoC). Therefore, Regional Director (Eastern Region), MCA, *vide* sanction letter RD/T/33884/272(3)/21/4482 dated 31/08/2021, had instructed the petitioner to file winding up petition before this bench and hence, it is just and equitable that the company be wound up by this Tribunal under the relevant provisions of section 271(c) & (d) of the Companies Act, 2013.
5. This Tribunal, *vide* order dated 11.05.2022, had allowed the Petitioners to amend the petition by impleading the directors of the respondent company as respondents and directed to serve the amended petition on the respondents. Accordingly, a service affidavit dated 24.06.2022 was filed by the petitioner.
6. Thereafter, *vide* order dated 02.08.2022, this Tribunal had also directed the Petitioners to cause publication of an advertisement of the petition under Rule 7 of the Companies (Winding Up) Rules, 2020 and also to serve a copy of the same on the company and its directors. Publication notice shows that it was published on 1st September, 2022, indicating herein date of hearing before this Adjudicating Authority and for appearance on 5th of September, 2022. 5 days' time has not been provided in this publication notice. Thereafter, a fresh publication made on 19.02.2023.
7. In compliance of the said order, the Petitioner, by an affidavit of service dated

06.03.2023 confirmed that the petitioner has published the notice of petition in two newspapers as per the details given below:

<i>Language</i>	<i>Name of newspaper</i>	<i>Date of publication</i>
English	Times of India	19.02.2023
Bengali	Ei Samay	19.02.2023

8. Despite such publication of notice, no one has come forward to object or oppose the present company petition before this Tribunal.
9. It is noted that the Tribunal vide order dated 14.12.2022 in COMP.APPL/95/KB/2022 in the matter of Icore Apparels Private Limited amended the previous order dated 25.07.2022 by omitting the words “ *Copies of the paper publication be served on the company and its directors who may file reply to the petition within two weeks of the date of publication in the said papers*” from the said order. The Tribunal made the said amendment applicable to the instant petition as well, thereby amending the order to further serve the copies of paper publication to the respondent company as the necessity to publish the notice had arisen because the regular service could not be made on the known addresses. Thus we are satisfied that pursuant to the publishing of the notice of the petition as required under rule 7, the service is complete.
10. It has been stated by the Petitioner that all the statutory formalities requisite for obtaining the sanction of winding up order by the Tribunal have been duly complied with by the Petitioner. We are satisfied with the explanations given by the Petitioner and thus feel that it would be just and equitable that the Company be wound-up.
11. In view of the above we, therefore, hereby order as follows:-
 - (a) The present company petition stands admitted. The respondent company being **Himadri Jewellers Private Limited** is to be wound up by this Tribunal under the relevant provisions of Companies Act, 2013.

- (b) The **official liquidator** attached with the High Court of Calcutta is appointed as a **company liquidator** of the respondent company as provided under section 275(1) of the Companies Act, 2013
- (c) In terms of section 277 (1) and 277 (2) of the Act, the registry is directed to cause intimation to the company liquidator and the Registrar of Companies, West Bengal. On receipt of the copy of such Order, the Registrar shall make an endorsement to that effect and notify in the Official Gazette that such an order has been made.
- (d) The company liquidator is directed to file a declaration in Form WIN 10, disclosing conflict of interest or lack of independence in respect of his appointment, if any, with this Tribunal within seven days from the pronouncement of this order.
- (e) In accordance with section 277 (3) of the Act, this liquidation order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.
- (f) The company liquidator shall initiate liquidation process in accordance with section 277 (4), 277 (5), 277 (6), 277 (7), 277 (8), 288, 290, 293 and 294 and other relevant sections of the Act read with Winding up Rules 2020. The company liquidator shall fulfil the following functions, namely:—
 - (i) taking into custody, all properties, actions and actionable claims to which the respondent company appears to be entitled to;
 - (ii) preservation and protection of the properties of the respondent company
 - (iii) examination of the statement of affairs;
 - (iv) recovery of property, cash or any other assets of the company including benefits derived there from;
 - (v) review of audit reports and accounts of the company;
 - (vi) finalization of list of creditors and contributories;

- (vii) sale of assets;
 - (viii) compromise, abandonment and settlement of claims;
 - (ix) payment of dividends, if any;
 - (x) Updating of & keeping the accounts of the company during winding up process.
 - (xi) any other function, as the Tribunal may direct from time to time.
- (g) As envisaged under section 279 (1) of the Act, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose.
- (h) In accordance with section 281, the Company Liquidator shall submit to the tribunal, a report in Form 16 within sixty days of passing this order. Further the company Liquidator shall file periodical reports to the Tribunal as envisaged under section 288.
- (i) The company liquidator shall prepare and file in the Tribunal a provisional list of contributories of the company in terms of rule 28 of the Companies (Winding Up) Rules, 2020 within twenty-one days after the date of the instant order.
- (j) In case there are creditors and contributories of the company, the company liquidator shall facilitate the creation of an advisory committee in accordance with the provisions of section 287 read with the Companies (Winding Up) Rules, 2020.
- (k) All powers and duties of the company liquidator will be exercised in accordance with section 290 and section 292.
- (l) List the **CP No. 257KB/2021** on **20.10.2023** for filing periodical report.
- (m) Copy of the order be sent to the parties, the Registrar of Companies, West

Bengal and the Authorised Representative for the Petitioner and also to the Official Liquidator, within seven days through email and registered post.

- (n) Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Order signed on the day of 14th September, 2023

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