

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court No 1)
KOLKATA**

C. P. No. 357/KB/2022

A petition under section 271 (c) 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. Topclass Repair Works Private Limited** (CIN: U74900WB2010PTC153251), a Company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 27, Brabourne Road R. NO-501 Kolkata West Bengal - 700001.;
- 2. Saroj Sharma** (DIN: 02515205), Director of Topclass Repair Works Private Limited, presently residing at 7, Grant Lane, 2nd Floor, Kolkata West Bengal - 700012.
- 3. Harmohan Mondal** (DIN: 07421670), Director of Topclass Repair Works Private Limited, presently residing at 22, Canning Street, Kolkata 700001, West Bengal, India.
- 4. Avishek Ghosh** (DIN: 07608531), Director of Topclass Repair Works Private Limited, presently residing at 22, Canning Street, Kolkata 700001, West Bengal, India.

...Respondent/ Company

CORAM:

Shri Rohit Kapoor: Member (Judicial)

Shri Balraj Joshi: Member (Technical)

Date of pronouncing the order: 21/02/2024

Appearances (Physically/ via video conference)

For Registrar of Companies, West Bengal:

- 1) Mr. Ajay Chaubey, Adv

ORDER

Per: Balraj Joshi, Member (Technical)

1. The instant Petition has been filed by **The Registrar of Companies, West Bengal** (“petitioner”) to initiate winding up proceedings under sections 271 (c) of the Companies Act 2013 against **Topclass Repair Works 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(4) of the Companies Act, 2013 and directed to submit the report in the matter of **Topclass Repair Works Private Limited** *vide* its order dated 17.08.2017 on the basis that the company was found to be involved by the Income Tax Department to providing accommodation entries or was beneficiary.
3. The petitioner has observed discrepancies in the financial statements of the company, noting an increase in authorized and paid-up capital without the corresponding filing of required e-Forms with the Registrar of Companies (ROC). The company allegedly issued 80,64,975 shares at a face value of Rs. 1/- each with a substantial premium, collecting Rs. 13,79,50,000/- during FY 2011-12, but failed to file e-Forms-5 and 2 for the capital increase. Additionally, the company has not filed annual returns from FY 2011-12 to 2013-14, omitted details of shareholders with more than 5% shares, and not

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attached the list of shareholders in certain annual returns. The company's response to ROC notice is inconsistent, citing internal financial crisis for not increasing share capital but blaming the portal for non-filing, despite filing financial statements with increased capital on the MCA portal.

4. The ROC has noted discrepancies in the financial position of the newly incorporated company during the issuance of shares, highlighting a lack of substantial assets or revenue to justify the high premium. It is further observed that immediately after raising funds through share issuance, the company invested an equivalent amount in shares of other entities, a detail not disclosed in the balance sheets, constituting a material omission of facts. The company, in response to the notice under section 206(4) of the Companies Act, 2013, provided a list of invested body corporates. However, cross-verification revealed that four of these companies did not disclose shareholder lists in their annual returns, and five did not file annual returns for FY 2011-12. This discrepancy raises concerns about the transparency and completeness of the information provided by the company. It is pertinent to note that the same modus operandi has been followed by the subject company and the investee companies wherein in the notes to financial statements or in the annual return, the particulars with regard to investments and shareholding respectively were very conveniently omitted.
5. The mentioned list of invested companies reveals that two of them hold 50% of the total shares in the subject company, indicating a mutual cross-holding arrangement. This suggests the involvement of the company in fund rotation practices, reinforcing the need for a thorough investigation into potential financial irregularities.
6. The ROC has identified these companies as exemplifying involvement in money siphoning and round-tripping activities. There are suspicions about the subject company, which seems inactive in terms of business activities and lacks revenue from operations. The issuance of shares at a substantial

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premium, coupled with the absence of revenue, raises concerns about the shareholders' purchase of shares. The management's failure to contribute to the company's valuation and the overall lack of public interest sustainability, coupled with improper filing or omissions of statutory returns, further accentuate the irregularities in the company's operations.

7. The ROC concludes that the company, through various violations and non-disclosures, is potentially engaging in converting unaccounted money under the guise of investing in share capital. There are discrepancies in share issuance, with a substantial premium, despite the company lacking a profit-making apparatus or engaging in significant business activity. This suggests a fraudulent practice aimed at evading taxes, leading to wrongful gain for the company's stakeholders and losses for the government. The company's modus operandi involves rotation of securities premium without evident commercial benefits, making its continued functioning detrimental to the healthy economy. The ROC recommends winding up the company under Section 271(c) of the Companies Act, 2013, citing fraudulent activities.
8. The Regional Director's office issued a notice to the company under the second proviso of Section 272(3) of the Companies Act, 2013, providing an opportunity for representation. Despite the notice, the company failed to respond, as indicated in the annexed letter marked as **Annexure "B."**
9. The Directorate has sanctioned the filing of a winding-up petition under Section 271(c) of the Companies Act, 2013 against the respondent company. A copy of the Directorate's letter dated 30.08.2022 is attached as **Annexure "C."**
10. The petitioner proposes that it is just and equitable for the company, TOPCLASS REPAIR WORKS PRIVATE LIMITED, to be wound up by the Hon'ble Tribunal under the provisions of Section 271(c), read with Sections 272(1)(d) and 272(3) of the Companies Act, 2013. The Official Liquidator

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attached to the Hon'ble High Court, Calcutta, is to be appointed to take possession of the company's assets, properties, including movable and immovable assets, books of accounts, and records.

11. The petitioner asserts that it is not only just and convenient but absolutely necessary to appoint the Official Liquidator, High Court of Calcutta, as the provisional liquidator of the company during the hearing and final disposal of the petition. This includes taking charge of the company's affairs, business, assets, documents, and books of accounts.
12. Pursuant to the order dated 2nd January 2023, this tribunal directed the Registry to issue notice to the respondent via speed post and email, with the instruction to include tracking information on record. Subsequently, on 1st November 2023, the tribunal acknowledged, based on the postal department's report, that the respondents were duly served; however, no representation was made on their behalf. On the subsequent hearing date of 15th December 2023, the tribunal confirmed the absence of appearance on behalf of the respondents, leading to their *ex-parte* status. On 29th January 2024, the respondents were set *ex-parte*, and considering that enough opportunities were afforded to the Company for making representations, the matter was reserved for orders.
13. 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 should be wound-up.
14. In view of the above we, therefore, hereby order as follows: -
 - (a) The present company petition stands admitted. The respondent company being **Topclass Repair Works Private Limited** is to wound

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up by this Tribunal under the 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

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- (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; and
 - (x) 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

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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 **Company Petition 357/KB/2022 on 22.03.2024** for filing periodical reports.
- (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)

Signed this on the 21st February, 2024.

A.J.S LRA