

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. No. 781/2014

IN THE MATTER OF:

Sidmark Sales Enterprises Pvt. Ltd.

.....Petitioner

v.

Magnum Interiors Pvt. Ltd.

.....Respondent

SECTION : UNDER SECTION 433(e) & 434 of the Companies Act, 1956

Order delivered on 01.08.2017

Coram:

CHIEF JUSTICE M.M. KUMAR

Hon'ble President

Deepa Krishan

Hon'ble Member (T)

For the Petitioner(s) : Shri Abhigya & Shri Abhay Singh Kushwaha, Advocates

ORDER

1. This petition has been received on transfer from the Hon'ble Delhi High Court in pursuance of order dated 27.03.2017 passed by the learned Company Judge. The aforesaid order reads as under:-

"SIDMARK SALES ENTERPRISES PVT. LTD Petitioner

Through: Mr. Abhigya, Mr. Abhay Singh Kushwana and Ms.
Madhuri, Advocates

versus

MAGNUM INTERIORS PVT.LTD. & ORS. Respondents

Through: None

 CORAM:

C))

)
contd.

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER
7.03.2017

Learned counsel appearing on behalf of the petitioner states that the respondent-company has not yet been served on its registered office, in the accompanying petition.

In view of the foregoing and in terms of the notification Regd. No. D.L.- 33004/99 dated 07.12.2016, issued by the Ministry of Corporate Affairs and in particular, Clause 5 thereof, the present winding up petition under Sections 433(e) & 434 of the Companies Act, 1956, stands transferred to the Principal Bench, National Company Law Tribunal, New Delhi (hereinafter referred to as 'NCLT').

In the first instance, list this matter before the Principal Bench, NCLT on 18.04.2017 for further proceedings, in accordance with law.

The Registry is directed to transmit the record of the present petition to the Principal Bench, NCLT, forthwith."

2. A perusal of the order shows that a statement was made by the learned counsel for the petitioner that respondent No. 1 company was not served.
3. Mr. Abhigya, learned counsel for the petitioner has drawn our attention to the order dated 06.04.2016 and the same reads as under:-

"SIDMARK SALES ENTERPRISES PVT. LTD Petitioner



(2)

Through: Mr Abhigya & Mr Abhay Singh Kushwaha,
Advts.

versus

MAGNUM INTERIORS PVT.LTD. & ORS. Respondents

Through

CORAM: HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

06.04.2016

As per the record, respondent no.1 company has been served. Respondent no.2 and 3 are the directors of respondent no.1 company.

At the request of learned counsel for the petitioner, respondent no.2 and 3 are deleted from the array of parties. Let an amended memo of parties be filed within one week from today.

I am informed that another petition filed against respondent no.1 company i.e. CP 85/2016, is coming up for hearing on 20.07.2016.

At request, list on 20.07.2016."

4. A perusal of the aforesaid order would show that respondent No. 1 company was served and respondent Nos. 2 & 3 who were the Directors of the company were ordered to be deleted from the array of parties. Therefore, it is claimed that the service was complete when the notification dated 07.12.2016 was issued by the Ministry of Corporate Affairs for transferring all cases where the service was incomplete. In the present case, there is an apparent

contradiction and learned counsel for the petitioner Mr. Abhigya states that he will seek clarification of the order dated 27.03.2017. Accordingly, the matter is sent back to the Hon'ble High Court as the respondent No. 1 company had been served on 16.02.2016.

5. In view of the above the office is directed to send all the paper books back to the Hon'ble High Court for appropriate decision. Parties through their Counsel are directed to appear before the Hon'ble Delhi High Court on 8th September 2017 when a connected matter has also been posted for hearing.


(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT


(DEEPA KRISHAN)
(MEMBER TECHNICAL)

01.08.2017
Vineet