

**IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI
COURT NO.III**

(IB)-225(ND)/2017

IN THE MATTER OF:

M/s. TKJ Marketing Group (P) Limited

.....PETITIONER

SECTION :

Under Section 59 IBC Code 2016

Order delivered on 20.7.2017

Coram :

**R. VARADHARAJAN,
Hon'ble Member (Judicial)**

For the Petitioner/applicant : Mr. Ashok Tyagi, Company Secy/Liquidator

For the Respondent : -

ORDER

Mr. Ashok Tyagi, Company Secretary/Liquidator for the Company is present and states that this Tribunal has the competency to entertain this petition despite the Notification S.O.2042 (E) dated 29th June, 2017 issued by the Ministry of Corporate Affairs which is to the following effect as relevant for the purpose on hand :

S.O. 2042(E) – Whereas clause (c) of sub-section (1) of section 434 of the Companies Act, 2013 (hereinafter referred to as the 2013 Act) provides that on date which may be notified by the Central Government for the purpose of transfer of pending proceedings, all proceedings under the Companies Act, 1956 (hereinafter referred to as the 1956 Act) including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer.

Contd -

1. Short title and commencement – (1) This Order may be called the Companies (Removal of Difficulties) Order, 2017.
- (2) It shall come into force with effect from the 29th day of June, 2017.
2. In the Companies Act, 2013, in section 434, in sub-section (1), in clause (c) –
 - (a) in the third proviso, for “Provided further that – “, the following shall be substituted, namely :

“Provided also that –“,
 - (b) after the third proviso, the following proviso shall be inserted, namely,

“Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959”.

The proviso extracted above clearly indicates that where the Company has not been dissolved before the 1st April, 2017, even though notice of resolution by advertisement has been given under sub-section (1) of Section 485 of the Companies Act, 1956, as seems to be the case here, then it is to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959, which necessarily connotes that the Liquidator is required to adhere to the provisions of the Companies Act, 1956 and the procedure prescribed thereunder. However, the Learned Liquidator prays for sufficient time to have the matter clarified and if warranted to proceed further in the matter before this Tribunal.

In the circumstances, the matter is posted to 25.9.2017

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(R. V. RADHARAJAN)
MEMBER (JUDICIAL)

Surjit
20.7.2017