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HIGH COURT OF CHHATTISGARH, BILASPUR

Company Petition No.9 of 2014

Axis Bank Limited, a banking company formed under the provision of the Banking Regulations Act, 1949 and incorporated under the provision of the Companies Act, 1956, having its Registered Office at "Trishul" – 3rd Floor, Opp. Samartheswar Temple, Near Law Garden, Ellisbridge, Ahmedabad – 380006 and carrying on its banking business inter alia at Raipur Branch, Opposite New Bus Stand, Jeevan Bima Marg, Pandri, Raipur – 492004, Chhattisgarh through its authorized signatory Mr. Saibal Kumar Bose, working as Deputy Vice President and Head Stressed Assets of Axis Bank Ltd., office at Stressed Assets – East, Nagaland House, 7th Floor, 11, Shakespeare Sarani, Kolkata – 700 071

---- Petitioner

Versus

M/s. Hi-Tech Abrasives Ltd. a company incorporated under the Companies Act, 1956 having its registered office at MIG – 21, Indrawati Colony, Raipur, Chhattisgarh – 492001.

---- Respondent

For Petitioner:	Mr. Shishir Dixit, Advocate.
For Respondent:	Mr. Harsh Wardhan, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

27/09/2018

1. This is a company petition filed by petitioner Axis Bank Limited under Section 433 of the Companies Act, 1956 in which notice was issued to the respondent borrower on 12-9-2014 at pre-admission stage, thereafter, reply affidavit has been filed, but the matter has not been proceeded further. Now, an application under Section 434 of the Companies Act, 2013 as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 for transfer of winding-up proceedings has been filed before this Court in which reply has been filed opposing the said application.

2. I have heard learned counsel for the parties on the said application.

3. By the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018,

following provision has been inserted in sub-section (1) of Section 434 of the Companies Act, 2013, in clause (c), after the proviso: -

> "Provided further that any party or parties to any proceedings relating to the winding up of companies pending before any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application for transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016."

4. A careful reading of the aforesaid provision would show that the newly inserted proviso to Section 434 of the Companies Act, 2013 gives an option to either party to file an application for transfer of proceedings before the National Company Law Tribunal treating it to be an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016. The language employed by the proviso makes it amply clear that firstly, an application is to be filed by either party for transfer of proceeding and secondly, the Court may by an order transfer such proceeding to the Tribunal and the proceeding so transferred shall be dealt with by the Tribunal as an application under the Insolvency and Bankruptcy Code, 2016.

5. The argument of Mr. Harsh Wardhan, learned counsel for the respondent borrower, is that the petitioner Bank has not specified any ground or reason as to why this Court should exercise its discretion and order for transfer of proceedings to the National Company Law Tribunal. The newly inserted proviso firstly uses the word 'may' which is directory in nature. Secondly, the very fact that the proviso has made an arrangement of filing an application before the Court makes it clear that proper consideration and exercise of discretion is imperative.

6. Whereas, reply by Mr. Shishir Dixit, learned counsel for the petitioner

Bank, is that the power is discretionary and since the proceeding is only at pre-admission stage and as the winding-up petition has not been admitted and the proceeding is pending since 2014, it would be apt to transfer those proceedings.

7. It is well settled that when a discretion is conferred on the Court to allow any relief claimed by a party to a legal proceeding, the Court must judicially exercise such discretion. In the instant case, undoubtedly, present petition for winding-up proceeding is at initiation stage, only pre-admission notice has been issued on 12-9-2014 and thereafter, nothing has substantially progressed and the petition has not yet been admitted for winding up of the company and no Official Liquidator has been appointed.

8. In this view of the matter, I am of the considered opinion that it is a fit case where I deem it appropriate to exercise the power conferred under the proviso to Section 434 of the Companies Act, 2013 as amended with effect from 6th day of June, 2018 and direct transfer of the present company petition to the National Company Law Tribunal. It is ordered accordingly.

9. Registry is directed to take steps for transfer of the matter to the National Company Law Tribunal, Mumbai for further needful action and this company petition is deemed to have been disposed of from the file of this Court. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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