$~CP-10

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision: 13.09.2018

\+ CO.PET. 81/2014

TATA CAPITAL FINANCIAL SERVICES LTD ..... Petitioner
Through Mr.Varun Kumar, Mr.Dheeraj Pratap Deo and Ms.Avshreya P.S.Rudy, Advs.

versus

SHREE SHYAM PULP & BOARD MILLS LTD ..... Respondent
Through Mr.Rishi Manchanda, Standing Counsel for the OL.
Mr.Rajesh Rattan, Adv. for the UCO Bank.
Mr.Siddharth Bhatli, Mr.Harsh Kakkar and Ms.Rishith Srivastava, Advs. for the respondent.
Mr.Akshay Goel and Ms.Priyambada Sharma, Advs. for applicant in CAs.888-889/2018

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

CA Nos.741-742/2018

1. CA No.741/2018 is filed by the UCO Bank seeking to implead the UCO Bank as a party in the present company petition. CA No.742/2018 is also filed by the UCO Bank seeking transfer of this petition under section 434 of the Companies Act, 1956 to the NCLT.

2. The learned counsel appearing for the applicant/UCO Bank states that they come to know about the pendency of the present petition on 23.05.2018

during the pendency of the proceedings filed by the UCO Bank before the NCLT under the Insolvency Code. It is pleaded that the respondent company was enjoying several credit facilities from different banks. There is a consortium of banks whereby the UCO Bank has taken over as the Lead Bank in terms of Letter of Authority of the consortium member dated 21.05.2007. The respondent company is said to owe about Rs.200 crores plus interest to UCO Bank and the consortium banks in all have to recover about Rs.800 crores plus interest from the respondent company. It has also been pleaded that the only immoveable assets/properties available with the respondent company is Factory Land and Building at Moradabad Road, Kashipur, District Rudrapur, Uttarakhand. The immovable properties are mortgaged to the members of the consortium. Similarly, the Plant and Machineries are hypothecated to the consortium members. Other than the said immoveable assets/properties no other moveable assets/properties are available with the respondent company. Relying on the provisions of the Insolvency & Bankruptcy Code, 2016, it is pleaded that the applicant would like to pursue the remedy before NCLT as the proceedings under the Insolvency Code are settled expeditiously in view of the time line stipulated in the statutory provisions. Reliance is placed on newly added proviso in section 434 of the Companies Act that was inserted by Notification dated 06.06.2018 to submit that this matter be transferred to NCLT.

3. I have heard the learned counsel for the parties.

4. The learned counsel for the applicant has submitted that firstly the phrase used in the newly added proviso in section 434 of the Companies Act, 2013 states that "any party or parties to any proceedings may request for transfer of the proceedings" to the Tribunal. He submits that UCO Bank

will be covered by the phrase ‘any party’. He further submits that as a precaution an application for impleadment has been filed. This court may implead the applicant UCO Bank as a party in the present petition. He has reiterated that given the magnitude of debt owed to the consortium of bank, it would be in the interest of the creditors that this matter is transferred to NCLT. He submits that the consortium of bank would like to try the insolvency resolution process so that the unit of the respondent under liquidation can be sold as a running unit.

5. The learned counsel for the petitioner has pointed out that the applicant bank has been needlessly lethargic in the matter. The loan account of the respondent company was declared as Non Performing Assets (*in short the ‘NPA’*) on 01.11.2014. He further submits that e-auction was held by the respondent company on 10.10.2017 but no bid was received. The dues of the petitioner were originally Rs.5 crores but including the interest it is more than Rs.10 crores now. He submits that there are no reasons to transfer the proceedings before the NCLT merely because the secured creditors have now woken up belatedly to try and recover the dues.

6. The learned counsel for the Ex.Directors has also opposed the transfer stating that the applicant is not a party to the proceedings. It is also pointed out that the OL was actually appointed on 07.08.2015 and this court has recently reappointed the OL as the provisional liquidator. Fresh appointment of the OL took place on 15.05.2018 relating back to 2015. He has also stated that the respondent faced problem only after the flood affected the area which left the unit of the respondent company crippled.

7. Learned counsel for the Official Liquidator has pointed out that the OL has filed a reply stating that they have no objection to the transfer of

these proceedings. He however submits that the OL would like to withdraw this reply and file a fresh reply opposing the transfer.

8. The plea of the OL is taken on record. There is no particular reason to adjourn the matter to enable the OL to file a new reply.

9. Section 434 of the Companies Act, 2013 reads as follows:

> "[434. (1) On such date as may be notified by the Central Government in this behalf,—
>
> (a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;
>
> (b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:
> Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and
>
> (c) all proceedings under the Companies Act, 1956 (1 of 1956), 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:

> Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.
>
> Provided further that any party or parties to any proceedings relating 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.
>
> (2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section."

10. As per the proviso any party or parties to the proceedings relating to the winding up of companies may file an application for transfer of such proceedings to the NCLT which will be dealt with by the Tribunal under Insolvency & Bankruptcy Code, 2016. The proviso further adds that this court may by an order transfer the winding up proceedings to NCLT. It is clear from a reading of the proviso to Section 434 of the Companies Act, 2013 that the proviso is discretionary and it gives discretion to this court to transfer the matters. However, in my opinion, once an Official Liquidator has been appointed as Provisional Liquidator, normally the matter would not be transferred to NCLT.

11. However, the present winding up petition is at an initial stage. This court on 15.05.2018 had revived the order appointing the OL as the

provisional liquidator. The order appointing the OL was originally passed on 07.08.2015 which had been put in abeyance on account of settlement between the petitioner and, the respondent. Pursuant to this order of revival passed on 15.05.2018 the OL has taken steps and sealed the head office, as per ROC records, which is located at A-257, Road No.6, Mahipalpur, New Delhi-110037. Regarding the Factory premises, the possession of the same has already been taken over by the UCO Bank under the SARFAESI Act, 2002. Clearly the proceedings for winding up of the respondent company are at an initial stage.

12. The other factor which is admitted by learned counsel for the parties is that other than the factory and land at District Rudrapur, Uttrakhand, there is no immovable or worthwhile movable asset of the respondent company. The registered office at Mahipalpur, New Delhi is a tenanted property which has been sealed by the OL. The landlord of the premises is seeking desealing of the suit premises.

13. In my opinion in the facts and circumstances of this case, it would be in the interest of the creditors that the proceedings are transferred to NCLT and an attempt is made for initiation of corporate insolvency resolution. In case the same is successful, the same would be in the interest of creditors.

14. To overcome any objection raised by the petitioner and the ex-directors, I also allow CA No. 741/2018 and implead UCO Bank as a party to the present company petition.

15. The order appointing the OL as the provisional liquidator initially passed on 07.08.2015 and revived on 15.05.2018 is revoked subject to UCO Bank paying the expenses of Rs.75,000/- which has been incurred by the OL. On payment of the expenses to the OL, the order appointing the OL as

the provisional liquidator would stand revoked. Once, the orders are revoked, the proceedings may be transferred to the NCLT. UCO Bank will file with the Registry proof of having made payment of expenses to the OL to enable the Registry of this court to initiate steps for transfer of the proceedings. All issues are left open to be adjudicated upon by the NCLT as per law.

16. The OL will on receipt of the expenses from the applicant will also de-seal the property which was sealed at A-257, Road No.6, Mahipalpur, New Delhi- 110037. If there any records available with the OL, the OL may keep the same, subject to further orders of the NCLT as to whom the records are to be handed over.

17. The applications stand disposed of.

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The Registry will take steps for transfer of the matter to NCLT after compliance of the conditions by the applicant as noted above.

Dasti.

JAYANT NATH, J.

SEPTEMBER 13, 2018/v