

\$~CP-21

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CO.PET. 731/2016**
SHYAM METALICS & ENERGY LIMITED`..... Petitioner
Through **Mr.Pukhrambam Ramesh Kumar, Adv.**

versus

ACTION ISPAT & POWER PVT.LTD. Respondent
Through **Mr.Rishi Manchanda, Adv. for the OL.**
Mr.Sumesh Dhawan, Ms.Vatsala Kak and
Ms.Geetika Sharma, Advs. for Action Ispat.
Mr.P.V.Dinesh and Mr.R.S.Lakshman, Advs. for
SBI alongwith Sh.Kishan Lal, AGM, SBI in
person and Sh.Rajeev Khanna, Manager (Legal),
SBI in person.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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14.01.2019

CA No.1240/2018

1. This application is filed seeking transfer of the present petition being Co.Pet. No.731/2016 to NCLT. This application has been filed by State Bank of India stating that an application under section 7 of the IBC is pending before NCLT. It has been pleaded that the respondent company had failed to pay outstanding dues of about Rs.722 crores to the applicant bank and hence this proceeding have been initiated before NCLT. The applicant bank is also a lead bank of the consortium of banks which have outstanding dues of about Rs.1100 crores.
2. This court had admitted the present winding up petition on 27.08.2018 and appointed the OL as the provisional liquidator of the respondent company.

3. The learned counsel appearing for the OL submits that the OL has already sealed the registered office of the respondent company at New Delhi and factory premises at Orissa. He further submits that the OL has incurred heavy expenses in protecting the factory premises at Orissa in the given facts and circumstances.

4. The Ex. Management however objects to transfer of this petition. They have submitted that they have had no opportunity to defend the proceedings before NCLT.

5. Learned counsel for SBI states that the creditors will reimburse the expenses of the OL.

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

“[434. Transfer of certain pending proceedings

(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 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.”

7. This court has already in CP 152/2016 vide decision dated 27.9.2018 in *Rajni Anand vs. Cosmic Structures Limited* held that the power under section 434(1)(c) of the Companies Act, 2013 for transfer of a petition to NCLT is discretionary and has to be exercised in the facts and circumstances of the case so as to expeditiously deal with the proceedings/winding up.

8. In my opinion, it would be in the interest of justice and in the interest of the respondent company and the creditors that the matter be transferred to NCLT in exercise of the discretionary powers of the court under section 434 of the Companies Act, 1956. The order appointing the OL is a recent order and not much time has elapsed since then. The OL has only taken steps to

seize the office of the respondent company and the factory premises and further exercise is yet to be carried out. The application is allowed as above. The present petition is transferred to NCLT.

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9. In view of the above order, the present petition is transferred to NCLT. All pending applications, if any, stand disposed of. The order admitting the petition and appointing the OL as the provisional liquidator dated 27.08.2018 stands revoked.

10. The OL will give details of necessary expenses to SBI. The costs/expenses will be borne by SBI and also consortium of banks. The OL will hand over the possession of the assets as directed by NCLT.

11. Parties to appear before NCLT on 04.02.2019.

JAYANT NATH, J.

JANUARY 14, 2019/v