IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Company Petition No. 70 of 1999
(New Number 10 of 2003)

M/s Assam Power & Electrical Ltd. .....Petitioner

Versus

Techinvest India (P) Ltd. ....Respondent

Mr. Parikshit Saini, Advocate for M/s Assam Power & Electrical Ltd.
Mr. Pankaj Kumar Singh and Mr. Vinay Kumar, Advocates for major shareholder, namely, Mr. Rajiv Gosain.
Mr. Anil Kumar Joshi, Advocate for Official Liquidator.
Mr. B.M. Pingal, Advocate for Mr. P.K. Seth (one of the secured creditor).
Mr. P.R. Mullick, Advocate for Auction Purchaser.

with

Company Appeal No. 2 of 2012

State Bank of India and another. .....Appellants

Versus

M/s Tech Invest Private Ltd. .....Respondent

There is no representation for the appellants.
Mr. Pankaj Kumar Singh and Mr. Vinay Kumar, Advocates for the respondent.
Mr. Anil Kumar Joshi, Advocate for Official Liquidator.

Dated: 30th December, 2020

Hon'ble Manoj K. Tiwari, J.

Misc. Application (I.A. No. 9649 of 2019) has been filed by M/s Assam Power & Electrical Ltd. (renamed as SAM Global Securities Ltd.), which is an unsecured creditor of M/s Techinvest India Private Ltd. (company under liquidation).

2. By means of this Misc. Application, M/s Assam Power & Electrical Ltd. has sought transfer of Company Petition No. 10 of 2003 to National Company Law Tribunal under Section 434 of the Companies Act, 2013 and Companies (Transfer of Pending Proceedings), Rules, 2016.

3. Section 434 (1) (c) of the Companies Act, 2013 reads as under:

> "**434. Transfer of certain pending proceedings**.- (1) On such date as may be notified by the Central Government in this behalf,—
>
> (a) .....
>
> (b) .....
>
> (c) all proceedings under the Companies Act, 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 only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:
>
> [Provided further that –]
>
> (i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or
>
> (ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts; shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959:]
>
> [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:]

> [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 (31 of 2016).]"

4. A plain reading of fifth proviso to Section 434 (1) (c) reveals that any party to a proceeding relating to winding up of a company pending before any Court immediately before 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.

5. Hon'ble Supreme Court in the case of M/s Kaledonia Jute and Fibres Pvt. Ltd. Vs. M/s Axis Nirman and Industries Ltd. & others, reported in (2020) SCC Online SC 943, has held as under:

> "**47.** Therefore, we are of the considered view that the petitioner-herein will come within the definition of the expression "party" appearing in the 5th proviso to Clause (c) of Sub-section (1) of Section 434 of the Companies Act, 2013 and that the petitioner is entitled to seek a transfer of the pending winding up proceedings against the first respondent, to the NCLT. It is

> important to note that the restriction under Rules 5 and 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016 relating to the stage at which a transfer could be ordered, has no application to the case of a transfer covered by the 5th proviso to clause (c) of sub-section (1) of Section 434. Therefore, the impugned order of the High court rejecting the petition for transfer on the basis of Rule 26 of the Companies (Court) Rules, 1959 is flawed."

6. The view taken in the case of M/s Kaledonia Jute and Fibres Pvt. Ltd. (Supra) has been reiterated by Hon'ble Supreme Court in a subsequent judgment rendered in the case of Action Ispat and Power Pvt. Ltd. Vs. Shyam Metalics and Energy Ltd., reported in (2020) SCC Online SC 1025. Relevant extract of paragraph no. 31 of the said judgment is reproduced below:

> "**31.** ..... So long as no actual sales of the immovable or movable properties have taken place, nothing irreversible is done which would warrant a Company Court staying its hands on a transfer application made to it by a creditor or any party to the proceedings. It is only where the winding up proceedings have reached a stage where it would be irreversible, making it impossible to set the clock back that the Company Court must proceed with the winding up, instead of transferring the proceedings to the NCLT to now be decided in accordance with the provisions of the Code. Whether this stage is reached would depend upon the facts and circumstances of each case."

7. Admittedly, in the present case, Hon'ble Allahabad High Court passed an order of winding up in respect of M/s Techinvest India Private Ltd. on 12.07.2000 and, subsequently, assets of M/s Techinvest Private Ltd. were sold in favour of M/s Texplas India Private Ltd. in an

auction and auction sale was confirmed by this Court. However, the auction as well as confirmation of sale in favour of M/s Texplas India Private Ltd. was set aside by Hon'ble Supreme Court vide judgment dated 11.08.2015 rendered in Civil Appeal No. 6055-6056 of 2015. Thereafter, this Court, on 04.03.2020, passed the following order:

> "Mr. Parikshit Saini, learned counsel appearing for M/s Assam Power & Electrical Ltd. (*petitioner herein*) submits that Hon'ble Supreme Court vide judgment dated 11.08.2015 passed in Civil Appeal Nos. 6055-6056 of 2015 had directed the Official Liquidator to forthwith recover possession of the properties and proceed with a fresh auction after obtaining fresh valuation report and fixing the reserve bid. He further submits that auction purchaser, namely, M/s Texples India (P) Ltd. has not handed-over physical possession of the assets of the Company (*M/s Assam Power & Electrical Ltd.*) under liquidation, despite the order passed by Hon'ble Supreme Court.
>
> In such view of the matter, Official Liquidator is directed to take physical possession of the property in terms of order passed by Hon'ble Supreme Court, within 15 days from today.
>
> Senior Superintendent of Police, Haridwar is directed to provide adequate police force to facilitate taking over the physical possession of the property, by the Official Liquidator.
>
> The Official Liquidator shall secure the assets of the Company in liquidation so that the same is preserved. Compliance report shall be filed by Official Liquidator by the next date of listing.
>
> List this matter on 15.04.2020."

8. The order dated 04.03.2020 was challenged by M/s Texplas India Private Ltd. by filing Special Appeal No. 01 of 2020, which was dismissed by Division Bench of this Court on 09.06.2020. M/s Texplas India Private Ltd.,

thereafter, filed S.L.P. No. 7530 of 2020 and the said S.L.P. was dismissed vide order dated 16.06.2020. Order passed by Hon'ble Supreme Court in S.L.P. No. 7530 of 2020 is reproduced below:

> "We found no ground to interfere with the impugned order passed by the High Court. The Special Leave Petition is, accordingly, dismissed.
>
> However, it is open to the petitioner to pursue the application for refund in accordance with law. Let the order be complied with and report be submitted to this Court within one month."

9. Mr. P.R. Mullick, learned counsel appearing for M/s Texplas India Private Ltd. has opposed the misc. application seeking transfer of proceedings to National Company Law Tribunal on the ground that the assets of Techinvest India (P) Ltd. were purchased by his client in an auction, therefore, these proceedings have reached the stage of irreversibility, thus, proceedings cannot be transferred.

10. This Court is not impressed with the submission advanced by Mr. P.R. Mullick, learned counsel appearing for M/s Texplas India Private Ltd. Hon'ble Supreme Court in Civil Appeal No. 6055-6056 of 2015 had been pleased to set aside the sale of assets of the company under liquidation, in favour of M/s Texplas India Private Ltd. and it was provided that Official Liquidator shall forthwith recover possession of assets from M/s Texplas India Private Ltd. Thus, it is the official liquidator, who is having legal possession over the assets of the company under liquidation, therefore, it cannot be said that point of no return has been reached in these proceedings.

11. Mr. Pankaj Kumar Singh, learned counsel appearing for major shareholder, namely, Mr. Rajiv Gosain, who is supporting the misc. application, submits that Punjab National Bank, which had granted a term loan of ₹ 5.6 Crores to M/s Texplas India Private Ltd., was also a party before Hon'ble Supreme Court in Civil Appeal Nos. 6055-6056 of 2015.

12. Mr. B.M. Pingal, learned counsel appearing for Mr. P.K. Seth (one of the secured creditor) also supports transfer of Company Petition No. 10 of 2003 to National Company Law Tribunal.

13. Mr. Anil Joshi, learned counsel appearing for Official Liquidator, submits that, in view of the judgment rendered by Hon'ble Supreme Court in Action Ispat and Power Pvt. Ltd. (Supra), he is not in a position to oppose the misc. application seeking transfer of proceedings.

14. For the aforesaid facts and reasons, the Misc. Application is allowed. Company Petition No. 10 of 2003 as well as Company Appeal No.2 of 2012 filed under Rule 164 of Companies (Court) Rules, 1959 are transferred to National Company Law Tribunal, Allahabad Bench, for determination, in accordance with law.

15. Registry is directed to send the entire records to National Company Law Tribunal, Allahabad Bench, within a week. Parties shall appear before learned Tribunal on 05.02.2021, without any further notice.

16. In view of the long pendency of the Company Petition, learned Tribunal is requested to dispose of the matter as expeditiously as possible, preferably within a period of nine months from the date of appearance.

(Manoj K. Tiwari, J.)
30.12.2020

Arpan