IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.31 OF 2021
IN
APPEAL (L) NO.440 OF 2018
IN
COMPANY PETITION NO.723 OF 2016

State Bank of India and Ors. in the matter of	…	Applicants/Intervenors
Raviraj Takawane	…	Appellant/Ex-Director of Org. Respondent Company
Versus		
SKK Steel Enterprises pvt. Ltd.	…	Respondent/Org. Petitioner.

Mr. Rathina Maravarman, for Applicants.
Mr. Siddhesh S. Bhole with Ms. Srishti Joshi i/by SSB Legal and Advisory for Appellant.
Mr. Nirman Sharma with Mr. Manoj Agre i/by Mr. Girish Kedia, for Respondent No.1.
Mr. J.P.Sen, Senior Advocate with Mr. Aditya Pimple, for Official Liquidator.
Mr. Mahendhar Aithe, Company Prosecutor, present.

CORAM: S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.

DATE: 12th AUGUST, 2021

P.C.:

1. The present Application has been filed by four Financial Creditors of Siddheshwar Industries Private Limited, the Company in liquidation. By this Application, these Financial Creditors seek a transfer from this Court to the NCLT, Mumbai of Company Petition No. 723 of 2016 filed by SKK Steel Enterprises Private

Limited, the Respondent in the present Appeal. The Application also seeks vacation of the Order dated 20th June 2018 passed in the said Company Petition directing the Official Liquidator to take symbolic possession of the assets of the Company in Liquidation.

2. Two Company Petitions had been filed before this Court for winding up the Company – (a) Company Petition No.1305 of 2015 on 13th May 2015 by one M/s. Neelkamal Ltd. and (b) Company Petition No.723 of 2016 filed on 26th February 2016 by one M/s. SKK Steel Enterprises Pvt. Ltd.

3. Company Petition No.1305 of 2015 was admitted on 26th July 2017 and Company Petition No.723 of 2016 was admitted on 14th March 2018. Meanwhile, an Operational Creditor by the name of M/s. Gandhar Oil Refinery (I) Ltd. had filed Company Petition No.37 of 2018 on 30th September 2017 under Section 9 of the Insolvency and Bankruptcy Code, 2016 against the said Company for initiation of a Corporate Insolvency Resolution Process before the National Company Law Tribunal ("**NCLT**").

4. On 19th April 2018, a winding up order came to be passed by the Company Court against the said Company in both the aforementioned Company Petitions. Thereafter, it appears that on 14th May 2018, the NCLT admitted the Application pending before it and declared a moratorium in respect of the said Company in terms of Section 14 of the Code. The NCLT also appointed one Mr.

Shrikant Madanlal Zawar as the Interim Resolution Professional ("**IRP**").

5. On 23rd May 2018, the Company Court directed the Official Liquidator to take symbolic possession of the assets of the said Company. Meanwhile, on 24th May 2018, the IRP appointed by the NCLT issued a public announcement in terms of Section 15 of the Code inviting creditors of the said Company to submit their claims on 4th June 2018 in accordance with the Code.

6. Thereafter, on 6th June 2018, the IRP appointed by the NCLT filed Miscellaneous Application No.542 of 2018 in the NCLT Petition bringing to the attention of the Tribunal the conflict that had ensued on account of a winding up order having been passed on 19th April 2018 by this Court.

7. Meanwhile, one Mr. Raviraj Takawane had filed the present Appeal challenging the winding up order. The Appeal was admitted and the Official Liquidator was directed not to take any further steps in the matter.

8. On 4th July 2018, M/s. SKK Steel Enterprises Pvt. Ltd. filed an Intervention Application, being Miscellaneous Application No. 659 of 2018 before the NCLT seeking recall of the admission order passed by the NCLT in respect of the said Company. The NCLT, by its order dated 13th July 2018 in MA No. 542 of 2018 filed by the IRP, directed the IRP to maintain status quo in view of the winding up order passed by this Court.

9. It is at this juncture that the present Application was filed by four

Financial Creditors seeking a transfer of Company Petition No. 723 of 2016 to the NCLT. The question that arises for consideration is whether, after a winding up order has been passed by this Court, an application can be made for transfer of a Company Petition to the NCLT for disposal in accordance with the terms of the Code. Section 434 of the Companies Act, 2013 addresses the issue as to which proceedings are liable to be transferred to the NCLT. the relevant portion of which is reproduced hereunder :

> "434. Transfer of certain pending proceedings. — (1) On such date as may be notified by the Central Government in this behalf,—
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> (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;
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> (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."

10. The proviso to Section 434(1)(c) provides, *inter alia*, 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 Code may file an application for transfer of such proceedings. It further provides that 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 Code. The power conferred by this proviso specifically, as well as the exercise of any discretion by a Court generally, have fallen for

consideration by the Apex Court in various proceedings. The principles that emerge from these judgments are the following:

(a) The expression 'party' or 'parties' in the proviso to Section 434(1)(c) would include a creditor or creditors;[1]

(b) The proviso to Section 434(1)(c) is discretionary and does not mandate a transfer;[2]

(c) However, it has been held that where nothing irreversible has happened, the discretion to transfer the Petition to NCLT ought to be exercised;[3] and

(d) While exercising any discretionary power, a court would be entitled to impose such conditions as it deemed appropriate.[4]

11. Applying these principles to the present case, it is clear that the Applicants, being financial creditors of the said Company would be entitled to bring an Application under the proviso to Section 434(1)(c) for transfer of the Petition to the NCLT. The Application would be maintainable despite the fact that a winding up order had already been passed. In the present case, no irreversible steps have been taken on account of the Official Liquidator having been directed by the Order dated 20th June 2018 not to take any further steps in liquidation. As such, applying the

1 See Kaledonia Jute and Fibers Pvt. Ltd. v. Axis Nirman & Industries Ltd. & Ors., 2020 SCC Online SC 943 (paras 39 to 47).

2 Action Ispat & Power Pvt. Ltd. v. Shyam Metallics & Energy Ltd., 2020 SCC Online SC 1025 (para 20).

3 Action Ispat, Ibid., (paras 31 and 32) A. Navinchandra Steels Pvt. Ltd. v. SREI Equipment Finance Ltd. & Ors. (SC), Civil Appeal Nos.4230 to 4234 of 2020 (Order dated 1st March 2021) (paras 23 and 24).

4 Erach Boman Khavar v. Tukaram Shridhar Bhat, (2013) 15 SCC 655 (para 22) where the Company Court, while granting leave under Section 446 of the Companies Act, 1956 to file an eviction suit against the Company in Liquidation, recognized its power to impose such conditions as may be appropriate.

principles laid down by the Supreme Court in *Action Ispat & Power Pvt. Ltd.* and *A. Navinchandra Steels Pvt. Ltd.*, this would be an appropriate case for exercise of this Court's jurisdiction to transfer the Company Petition to the NCLT. However, it would be appropriate to direct the Applicants to deposit, as a condition for the transfer of the Petition, the expenses incurred by the official liquidator in connection with the Company in Liquidation. We are informed by the official liquidator that a sum of Rs. 2,73,000/- has been incurred as liquidation expenses.

12. We accordingly pass the following Order:

(i) Company Petition No. 723 of 2016 shall stand transferred to the NCLT, Mumbai forthwith;

(ii) The Order dated 23rd May 2018 of the Company Court directing the official liquidator to take symbolic possession of the assets of the Company in Liquidation is set aside;

(iii) The Applicants shall, within a period of two weeks from today, deposit a sum of Rs. 2,73,000/- with the official liquidator;

(iv) There shall be no order as to costs.

(v) The Company Application is accordingly disposed of.

(MILIND N. JADHAV, J.) **(S.J.KATHAWALLA, J.)**