IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, AT NAGPUR.

Civil Application (CAO) No. 222 of 2021
in
Company Petition No. 27 of 2015

(Shri Rajendrakumar M. Mahajan ..**vs**.. Abhijeet MADC Nagpur Energy Pvt. Ltd., Nagpur and ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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Mr. P. S. Khare, Advocate for the applicant/petitioner

CORAM : ROHIT B. DEO, J.
DATED : 08-03-2021

This application is preferred by the petitioner seeking transfer of the winding up petition to the National Company Law Tribunal, Mumbai.

2. None appears on behalf of the respondents. None has appeared on behalf of the respondents since the inception of the litigation.

3. In view of the decision of the Apex Court in ***Action Ispat and Power Pvt Ltd..vs. Shyam Metalics and Energy Ltd, 2020 SCC OnLine SC 1025*** and in particular, paragraphs 31 and 32 thereof, there is no impediment in transferring this petition to the National Company Law

Tribunal, Mumbai since nothing irreversible is done. Relevant observations of the Supreme Court read thus:

"31. Given the aforesaid scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are contemplated, with the Tribunal retaining the power to control the proceedings in a winding up petition even after it is admitted. Thus, in a winding up proceeding where the petition has not been served in terms of Rule 26 of the Companies (Court) Rules, 1959 at a pre-admission stage, given the beneficial result of the application of the Code, such winding up proceeding is compulsorily transferable to the NCLT to be resolved under the Code. Even post issue of notice and pre admission, the same result would ensue. However, post admission of a winding up petition and after the assets of the company sought to be wound up become in custodia legis and are taken over by the Company Liquidator, section 290 of the Companies Act, 2013 would indicate that the Company Liquidator may carry on the business of the company, so far as may be necessary, for the beneficial winding up of the company, and may even sell the company as a going concern. 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.

32. In the facts of the present case, the concurrent finding of the Company Judge and the Division Bench *is that despite the fact that the liquidator has taken possession and control of the registered office of the appellant company and its factory premises, records and books, no irreversible steps towards winding up of the appellant company have otherwise taken place. This being so, the Company Court has correctly exercised the discretion vested in it by the 5 the proviso to section 434(1)(c). Resultantly, civil appeal arising out of SLP (Civil) No.26415 of 2019 stands dismissed.*

Civil Appeal Nos. 4042-4043 of 2020 (arising out of SLP (Civil) Nos. 2033-2034 of 2020)".

4. Company Petition 27 of 2015 is transferred to National Company Law Tribunal, Mumbai.

JUDGE

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