Comp.A.No.330 of 2021
in
C.P.No.195 of 2014

SENTHILKUMAR RAMAMOORTHY, J.

This application is filed by the company which made a reference to the Board for Industrial and Financial Reconstruction (BIFR) under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985. Pursuant to such reference, the BIFR has recommended the winding up of the applicant company. The present petition is pending before this Court pursuant to such reference by the BIFR.

2. The Deputy Official Liquidator represents the Official Liquidator. On instructions, he submits that the assets and affairs of the applicant company were not taken charge of by the Official Liquidator in view of the interim stay granted by this Court on 28.04.2017. He also submits that the order admitting the winding up petition was set aside by the subsequent order dated 03.11.2017.

3.As per the second proviso to Section 434(1) of the Companies Act, 2013, any party to proceedings relating to winding up of a company, which was pending before any Court, prior to the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, is entitled to file an application to transfer the proceedings to the National Law Company Tribunal. The said provision was interpreted by the Hon'ble Supreme Court in *Jaipur Metals and Electrical Employees Organisation vs. Jaipur Metals and Electrical Ltd. (2019 (4) SCC 227*. In paragraph-17 of the said judgment, the Hon'ble Supreme Court held as under:

> *"17. .... This is further made clear by the amendment to Section 434(1)(c), with effect from 17.08.2018, where any party to a winding up proceeding pending before a Court immediately before this date may file an application for transfer of such proceedings, and the Court, at that stage, may, by order, transfer such proceedings to the NCLT. The proceedings so transferred would then be dealt with by the NCLT as an application for initiation of the corporate insolvency resolution process under the Code.* ***It is thus clear that under the schedule of Section 434 (as amended) and Rule 5 of the 2016 Transfer Rules, all proceedings under Section 20 of the SIC Act pending before the High Court are to continue as such until a party files an application before the High Court for transfer of such proceedings post 17.08.2018. Once this is done, the High Court must transfer such proceedings to the NCLT which will then deal with such proceedings as an application for initiation of the corporate insolvency resolution process under the Code.****"*

4. Therefore, after the amendment, if an application for transfer is filed, the Court is ordinarily required to transfer the proceedings. Given the fact that the order

admitting the winding up petition was set aside and keeping in mind that the Official Liquidator has not taken charge of the assets and affairs of the applicant company, this application is liable to be allowed.

5. For reasons set out above, this application is allowed by transferring C.P.No.195 of 2014 to the National Law Company Tribunal, Chennai, to be dealt with in accordance the Insolvency and Bankruptcy Code.

23.12.2021

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