7-C IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP- 144-2016(O&M)
Date of decision: 06.05.2022

TATA CAPITAL FINANCIAL SERVICES LTD
....Petitioner

Versus

M/S IQBAL AGENCIES PVT LTD
..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amarinder Vir Singh Barsat, Advocate for for the petitioner

Mr. Harkirat S Jagdev, Advocate for the respondent

ANIL KSHETARPAL, J (Oral)

This is a petition filed under Section 433, 434, 439 of the Companies Act, 1956 with a prayer to order winding up of the respondent-Company. It has been noticed that on 23.08.2016 notice was issued to the respondent-Company but thereafter till date no order of admission of the petition has been passed. Even no reply to the petition has been filed by the respondent.

Attention of the Court has been drawn to the judgment passed by the Hon'ble Supreme Court in **'Action Ispat and Power Pvt. Ltd. vs. Shyam Metallics and Engery Ltd.' AIR 2021 SC 309** wherein after examining the scheme of winding up in Chapter XX of the Companies Act, 2013, the court has laid down as under:-

> "22. 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 preadmission 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."

It is evident that in view of the aforesaid position of law, the matter is required to be referred to the National Company Law Tribunal. Hence, let the office transfer the petition to the National Company Law Triibunal, Chandigarh Bench, Chandigarh. The parties through their counsel are directed to appear before the Tribunal on 31.05.2022.

06.05.2022 **(ANIL KSHETARPAL)**
rekha **JUDGE**
Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No