

IN THE HIGH COURT OF JUDICATURE AT PATNA
COMPANY PETITION No.8 of 2016

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M/s Swastika Steel and Allied Products Pvt. Ltd.

... .. Petitioner/s

Versus

M/s Mehrotra Engineering Works Pvt. Ltd.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	None
For the Respondent/s	:	Mr. Gautam Kejriwal, Adv. Mr. Atal Bihari Pandey, Adv. Mr. Alok Kr. Jha, Adv. Mr. Mukund Kr. Adv. Mr. Akash Kr. Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

17 21-12-2023 Upon repeated call, no one appears on behalf of the petitioner, however Mr. Gautam Kejriwal, Advocate assisted by Mr. Atal Bihari Pandey, Advocate appeared for the respondent.

2. It transpires to this Court that vide order no.16 dated 21.09.2023, specific order has been passed considering all legal aspect for easy reference. Those reasonings are hereby mentioned again which are as follows:-

“4. Counsel for the respondent further submits that in the light of the gazette notification issued by the Central Government which is annexed as Annexure- D & F to the second supplementary counter affidavit, the present company petition is not maintainable here and actually it has become infructuous.”

“5. Learned counsel for the respondent further submits that the present Company Petition has been filed with a prayer for winding up of the



Company under Sections 433, 434, and 439 of the Companies Act, 1956 (hereinafter referred to as 'the Act of 1956'). He further submits that under the Companies Act, 2013 (Act No. 18 of 2013) (hereinafter referred to as the 'Act of 2013') which is applicable w.e.f. 29th of August, 2013, and the present Company Petition was filed on 17.06.2016, therefore, the present Company Petition has to run according to the Act of 2013."

"6. He further submits that according to Section 408 of the Act of 2013, the power of winding up the company has been vested in the National Company Law Tribunal, but in the light of Section 434 (1) (c) of the Act of 2013 every case pending before the High Court for winding up shall be subject to transfer before the National Company Law Tribunal. On the basis of the said notification, this case ought to be transferred immediately before the National Company Law Tribunal, Kolkata."

"7. Learned counsel for the respondent further submits that in the 2nd supplementary counter affidavit, he has annexed the order sheet by which it became clear that the present petitioner has filed another winding up petition, against the respondent company before the National Company Law Tribunal bearing No. CP (IB) No. 453/KB/2018. Subsequently, he has also filed an application under Section 9 of the Insolvency and Bankruptcy Act, 2016 before the National Company Law Tribunal, Kolkata. In that light, the said CP (IB) No. 453/KB/2018 filed for winding up before the NCLT has not been pressed, as the company petition for winding up become infructuous. The ordersheet attached (P-88) of the supplementary counter affidavit. He further submits that in view of such development, the present Company Petition pending before this Hon'ble Court has also become infructuous, as not



maintainable.”

3. Counsel for petitioner has been granted one last opportunity in this case to appear, but he has opted not to appear in this case.

4. As such, this Court has no option but to draw a conclusion that the petitioner is not interested to pursue this case and therefore, in the light of the reasons assigned and considering the position of law, this Company Petition No. 8/2016 is hereby dismissed in the light of the observations made above.

(Dr. Anshuman, J.)

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