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APOT/72/2023
With
CP/535/2014
IA No.ACO/1/2023

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

RAMGARH SPONGE IRON PVT. LTD.

-Versus-

SRIRAMPUR ISPAT PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE SOUMEN SEN
And
THE HON'BLE JUSTICE UDAY KUMAR
Date : 3rd July, 2023

Appearance :
Mr. Sudhir Mehta, Adv.
...for the appellant.

Mr. A. Rao, Adv.
Mr. A. Basu, Adv.
Ms. S. Tibrewal, Adv.
...for the respondent.

The Court : This appeal is arising out of an order dated 27th February, 2023 in connection with an application for recalling of an order dated 29th September, 2022 dismissing the company petition for default. The learned Single Judge directed transfer of the company petition being CP/535/2014 to the National Company Law Tribunal (NCLT), Kolkata.

Mr. Sudhir Mehta, learned advocate for the appellant submits that by reason of Section 434, the company petition could not have been transferred suo motu without there being an application filed for transfer of such proceedings. Moreover, the company petition being CP/535/2014 could not have been transferred to NCLT, Kolkata in view of second proviso to Rule 5 of the Companies (Transfer of Pending Proceedings) 2nd Amendment Rules, 2017.

The learned Single Judge transferred the company petition in view of the amended provisions of the Companies Act, 2013 and the decisions in *Action Ispat and Power Private Limited vs. Shyam Metaliks and Energy Limited* reported in (2021) 2 SCC 641 and in *A. Navinchandra Steels Private Limited vs. Srei Equipment Finance Limited and Others* reported in AIR 2021 SC 1180. The learned Single Judge was also of the view that there is no irreversible situation which has arisen warranting the Court retaining this proceedings. It would not appear from the impugned order that reliance was placed on second proviso to Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 notified on 29th June, 2017. Rule 5 of the Rules of 2016 reads:

> ***5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.—***
>
> *(1) All petitions relating to winding up of a company under clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and, where the petition has not been served on the respondent under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Companies Act, 2013 exercising territorial*

jurisdiction to be dealt with in accordance with Part II of the Code:

Provided that the petitioner shall submit all information, other than information forming part of the records transferred in accordance with rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal upto 15th day of July, 2017, failing which the petition shall stand abated:

Provided further that any party or parties to the petitions shall, after the 15th day of July, 2017, be eligible to file fresh applications under sections 7 or 8 or 9 of the Code, as the case may be, in accordance with the provisions of the Code:

Provided also that where a petition relating to winding up of a company is not transferred to the Tribunal under this rule and remains in the High Court and where there is another petition under clause (e) of section 433 of the Act for winding up against the same company pending as on 15th December, 2016, such other petition shall not be transferred to the Tribunal, even if the petition has not been served on the respondent."

The said rule would not apply since by reason of operation of the law, the said petition would stand automatically transferred to NCLT without there being any requirement in law to file an application. This will be clearly evident from the objects and purpose of the Act of 2013. In the instant case, the winding-up petition was not even admitted and at that stage the same was dismissed for default. In fact, on the date when the matter came up for consideration, instead of dismissal, the matter could have been transferred to NCLT, that is, at the stage of pre-service of notice of the winding-up petition. Moreover, the petitioning creditor did not object to the said petition being transferred to the NCLT.

In our view, the learned Single Judge, on consideration of the aforesaid factors and relying upon the aforesaid two decisions of the Hon'ble Supreme Court in *Action Ispat and Power Private Limited (supra)* and in *A. Navinchandra Steels Private Limited (supra)* has correctly transferred the proceedings to NCLT. The present appellant has no say in the matter unless notice is issued upon the present appellant.

Under such circumstances, the appeal (APOT/72/2023) fails and is dismissed. Accordingly, the connected application (ACO/1/2023) also stands dismissed.

There shall, however, be no order as to costs.

(SOUMEN SEN, J.)

(UDAY KUMAR, J.)

A/s.