Comp.A.No.394 of 2022
in C.P.No.15 of 2014

KRISHNAN RAMASAMY, J.

This application was filed for modification as per the Annexure A to the scheme sanctioned in the company petition No.15 of 2014 vide order dated 30.04.2014.

2. The applicant filed for the following modifications to the scheme set out in C.P.No.15 of 2014:

"MODIFICATIONS TO THE SCHEME SET OUT IN CP 15/2014

***PART-1 DEFINITIONS**:-*

*1. "**Appointed Date**" means 31.01.2013 (ie, the 31 day of January 2013.*

*2. "**Creditors**" shall mean and include Secured Debenture holders (as defined under the Scheme) of the Company as on Appointed date.*

3. "Effective Modified Date" means the last of the dates on which the sanctions, consents, approvals required for the Scheme are obtained.

4. Company shall mean Viswapriya India Limited a company registered under the Companies Act with its registered office at 2 First Cross Road Kasturba Nagar Adyar Chennai 600020

PART II-THE MODIFIED SCHEME

1. The Scheme shall become effective from the Appointed Date,

2. The Company shall transfer all rights vested on it in the properties as set out in Annexure to Affidavit dated 26.10.2015 filed at the Madras High Court to a Trust created for the benefit of the Debenture holders

3. The Trust will be managed under the Directions of the Madras High Court which is vested with the power of supervision of the Scheme

4. All Debenture holders of the company will be beneficiaries of the Trust pro rate to their holdings as at 31.01.2013 including all amounts accrued if any as interest as on that date

5. All proceeds realised from the Trust properties shall be distributed net of expenses pro rata to the debenture holders at the end of each quarter and such payment shall be made within 2 weeks of the last date of each quarter

6. Payments from the Trust made to debenture holders will be treated as repayment of the debentures to extent of such repayment in the books of the Company upto to the value of Debenture outstanding

7. Payments from the Trust made to the debenture holders in excess of the principal amount due as on 31.01.2013 shall be treated by the Company as premium on redemption

8. All realisation from the Trust, net of expenses, will be wholly paid to the Debenture holders upto a premium of 50% of the amount due on the debenture as on 31.01.2013

9. All balance assets of the Trust as available after the distribution of the amount due as at 31.01.2013 and the 50% premium thereon will vest on the company provided however that such vesting will occur only after payment of the entire dues as at 31.01.2013 and the premium thereon

10. The entities set out as the persons who have obtained the rights over the properties from the registered owners as set out in the Annexures to Affidavit dated 26.10.2015 shall execute all necessary documents to pass over the rights vested on them to the Trust including by way of authorisation by Power of Attorney to the Trust to represent them in all proceedings and matters including suits and other such proceedings

11. That as it would be advantageous and expedient that all the disputes if any in respect of the properties set out in the Annexures to Affidavit dated 26.10.2015 are all placed before a single forum, whether such forum is this Court itself or any other Civil Court, with directions for expeditious disposal, the Company and each of the entities in whose names the legal right and entitlement to the properties shall consent and also take any steps as may be directed by this Hon'ble Court to consolidate all the proceedings in any form relating to the various properties pending at any stage at any Court to the file of these proceedings or to any other civil court as may be directed by this Hon'ble

Court so that the issues in respect of the properties and the rights.

12. In case of any property where only partial undivided share is vested with the Company, the Company shall obtain undertaking from the persons holding the balance undivided share that they shall abide by the decision of the Trust in respect of disposal/monetisation of the property as long as the pro rata share to the trust and to them is in line with the respective undivided shares.

13. That the trust would have all power to deal with the properties vested on it including the power to borrow against the same

14. In respect of any legal proceedings of the Trust in respect of the properties the Trustee shall be entitled but not obliged to use the legal services of Mr R Subramanian Advocate who is Director of the Company and Mr R Subramanian shall be bound to provide services without any professional charges whatsoever except however that all out of pocket expenses would be reimbursed

15. On and from the Effective Modified date the terms of repayment set out at the time of issue of debentures and under the scheme dated 31.01.2013 set out in CP 15/2014 shall stand modified by the terms set out here above and that there shall be no other amounts payable to the debenture holders other than as set out in this Modified scheme."

3. In the above modification, the applicant asked for transfer of all the rights vested in the properties as set out in Annexure to the affidavit dated 26.10.2015 filed at the Madras High Court, to a Trust created for the benefit of the debenture holder. Though he had stated the details with regard to the properties in the modification, which is available in the Annexure to the affidavit dated 26.10.2015, the said Annexure has not been furnished before this Court. However, the details with regard to the 14 properties have been furnished separately. Upon going through those properties, it is clear that there are lot of litigations, which are pending with regard to more than 11 properties and those properties were also available at the time of sanctioning the scheme by this Court on 30.04.2014. When the scheme was sanctioned by this Court, the applicant provided the financial position of the M/s.Viswapriya India Limited (hereinafter called as “VIL”) as on 30.09.2013, which reads as follows:

Share holders Funds: Share Capital Reserve & Surplus	 4,95,31,350 28,29,34,597
Loan Funds:	

Secured Debentures Deferred Tax Liability Total	124,12,09,000 74,162 157,37,49,109
Application of Funds: Fixed Assets: Gross Block: Less: Accumulated Depreciation Net Block Intangible Assets Other Non Current Assets	 1,06,60,242 91,48,530 15,11,712 625 11,378
Current Assets Loans and Advances Other Current Assets Cash & Bank Balance Loans and Advances	 8,17,415 4,15,305 171,64,81,657
Current Liabilities and Provisions Liabilities Provisions	 12,33,68,870 221,20,113
Total	157,37,49,109

4. A perusal of the above financial position shows that Rs.171.64 crores of current Assets and loans in advances are available in VIL. On this strength only, the scheme was filed and the same was also approved by the debenture holders. As per the original scheme approved by this Court, the

VIL should have repaid the principal amount along with the interest on the due date within a period of 9 months, with effect from 01.04.2013. Subsequent to the sanctioning of scheme by this Court, the applicant had not at all furnished any details with regard to the repayment made by VIL and it appears that no payment has been made as approved by this Court, except a meager amount.

5. Further Mr.Prakash Goklaney, learned counsel for the applicant and Mr.R.Subramanian, party-in-person, who is the Ex-director of VIL, in unison, submitted that the original scheme had been approved by this Court but the same was not implemented due to the reason of registration of the criminal proceedings by the EOW. They have also submitted that upon sanctioning the scheme, the relief also granted to free from the prosecution of EOW. However, since they have initiated the criminal proceedings after some point of time, the scheme was not workable. Hence, they have come with the present scheme to transfer all the rights in the 14 assets said to have mentioned affidavit dated 26.10.2015. Though the asset particulars are not available, both Mr.Prakash Goklaney, learned counsel for the applicant and

Mr.R.Subramanian, party-in-person would submit that they provided the particulars with the regard to the 14 properties. Upon perusal of the details of those 14 properties, it is clear that there are lot of litigations pending and during the pendency of litigations, it was suggestion by the applicant to transfer those properties to a Trust as per the modification of the scheme. When that being the case, if modification is considered and any order is passed for transfer of those properties with litigation to the Trust, it will only be a relief for the Directors of VIL including Mr.R.Subramanian, party-in-person and other accused in the criminal proceedings and it will not at all provide any immediate relief for the debenture holders.

6. Further Mr.H.Karthik Seshadri, learned counsel, who is appearing for the debenture holders also submitted that this application for modification of scheme is filed only at the instigation of Mr.R.Subramanian, party-in-person, who is Ex-director of VIL. The applicant filed this application only to escape from the criminal liabilities and it will not be beneficial for the debenture holders. The applicant as well as the Directors of the VIL are intended to transfer all the liabilities and responsibilities to the

Trust, so as, they could safely come out of the criminal prosecution and other liabilities. Therefore, for this purpose only the present scheme is mooted.

7. Upon hearing Mr.Prakash Goklaney, learned cousnel for the applicant and Mr.R.Subramanian, party-in-person and Mr.H.Karthik Seshadri, learned counsel appearing for the debenture holders Association, as observed above, no doubt that this present application for modification is not for the benefit of the debenture holders, but it would benefit only to Mr.R.Subramanian, party-in-person, who is the Ex-director of VIL and the other Directors of VIL. The sanctioning of modification would further stall the hope for the debenture holders and other creditors of VIL from getting the payment from the VIL upon the realization of the assets.

8. On the other hand, the original scheme sanctioned by this Court vide order dated 30.04.2014 was not at all implemented as promised therein by the promoters/sponsers of the VIL. Though this petition is pending for very long period of time, no report has also been filed and they were not at

all bothered to report before this Court about the implementation of the scheme periodically. For the said act, the only reason provided by them from time to time was the criminal prosecution lodged by the EOW. No doubt, the said proceedings are even pending before filing the original scheme and the said original scheme proceedings was initiated as early as in the year of 2013 itself. If the VIL has initiated any payment to the debenture holders, definitely the EOW would have been considered it. Further, all of a sudden, after the period of 7 years, the applicant herein, who moved the earlier company petition for sanctioning the scheme, had filed this application for modification, under the pretext if the modification is allowed, they will settle the debenture holders.

9. A mere perusal of the above balance sheet would clearly shows that there are assets about Rs.171.64 crores and after the liabilities, about a sum of Rs.157 crores are available. If they had realized those advances and loan, easily the company would have paid the amount to the debenture holders but it appears that no steps have been taken on their part and no report was filed with regard to the collection of those advances and loans.

10. Further, the total amount outstanding to the debenture holders is about Rs.125 crores along with interest. If really the VIL and its sponsors had any intention to implement the scheme, they could have very well implemented the same with the realization of the current assets alone. When the scheme was approved, they have highlighted the above financial position and obtain the approval of this Court as well as the approval of the debenture holders. However, when the present modification has been filed, nothing has been mentioned about the recoveries made by VIL against the advances and loans mentioned in financial position as on 30.09.2013.

11. Under these circumstances, this Court is of the view that allowing the modification only affect the interest of the debenture holders and further it would be more beneficial for the promoters to safeguard them from all the criminal proceedings and other liabilities and thereby, they will absolve from all the responsibilities. Therefore, this Court cannot be wittingly or unwittingly be a party for all those misdeeds of the applicant as well as Mr.R.Subramanian, party-in-person and other Directors of VIL.

12. Ultimately, for the reasons assigned above, this Court is not inclined to entertain this application and the same is liable to be dismissed.

13. While dismissing this application, this Court is inclined to hold that the scheme sanctioned by this Court dated 30.04.2014, as approved by the debenture holders, was not able to be implemented by VIL. Further, this Court finds that it is not viable for implementation, even with or without modification, as sought by the applicant and hence, this company is liable to be wound up.

14. After arguments, Mr.R.Subramanian, party-in-person, made a submission with regard to the jurisdiction of the Court. He would submit that under the provisions of New Companies Act and the law laid down by the Hon'ble Supreme Court, if this Court is inclined to reject this application and pass the winding up order in the present petition in terms of Section 392 of the Companies Act, 1956 due to the reason of non-viability of the scheme, the same has to be transferred to the NCLT.

15. A similar issue was raised before the Court in Comp.A.Nos.413 & 414 of 2019 in C.P.No.15 of 2014, wherein this Court had elaborately dealt with those aspects and the relevant portion of the order is extracted here under:

> *"8. The rival contentions raise several questions. Although the contention that CA 1956, including Section 391 thereof, was repealed was the last contention, this issue should be dealt with first for the following reason: if accepted, this Court cannot exercise authority to consider and decide these applications irrespective of the answer to the other queries. For such purpose, Section 434(1)(c) and the relevant provisos thereto are set out below:*
>
> *"S.434.* ***Transfer of certain pending proceedings.***
>
> *(1)On such date as may be notified by the Central Government in this behalf,-*
>
> *(c)all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding-up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:*
>
> *Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government: Provided further that only such proceedings relating to cases other than winding up, for which orders for allowing or otherwise of the proceedings*

are not reserved by the High Courts shall be transferred to the Tribunal:

Provided also that-

(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts; shall be dealt with in accordance with the provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959....”

The other provision of relevance, in this regard, is Section 465 of CA 2013, which, in relevant part, is as under:

"65(1) The Companies Act, 1956 (1 of 1956) and the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961) (hereafter in this section referred to as the repealed enactments) shall stand repealed:

....

Provided further that until a date is notified by the Central Government under sub-section (1) of section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 (1 of 1956) in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed."

9. Section 465 of CA 2013 indicates beyond doubt, by drawing express reference to Section 434 thereof, that these two provisions should be interpreted harmoniously by reading and applying both provisions. The third proviso to Section 434(1)(c) -

which deals with matters retained by the High Court: matters other than winding up in sub-clause(i) thereof, and winding up in sub-clause (ii) thereof - stipulates categorically that such retained matters "shall be dealt with in accordance with the provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959. The second proviso to Section 465(1) uses the expression "as if the Companies Act, 1956 has not been repealed". Thus, the unequivocal position that emerges is that CA 1956 and the Companies (Court) Rules, 1959 continue to apply to matters retained by the High Court. In effect, if validly retained, Section 465 of CA 2013 has no effect on the continued application of CA 1956 or the rules framed thereunder.

10. The question whether these proceedings are required to be transferred is, however, a distinct matter. Since this issue was considered previously, it warrants scrutiny whether the earlier order of this Court constitutes a bar to the present request for transfer. By order dated 05.01.2017 in CA No.1175 of 2016 and C.A.Nos.609 to 614 of 2016, this Court concluded that the proceedings are not liable to be transferred to the jurisdictional NCLT. In paragraph 12 of the said order, this Court held, in relevant part, as under:

> *"12....All these factors would clearly establish that the Scheme having been approved, and this court having appointed an Administrator, by order, dated 22.08.2016, it is for this Court to monitor as to whether the Scheme has been implemented or not, and what is the intent and purport for giving up the scheme and whether there were any hidden agenda for giving up the Scheme with an*

> *intention to stall the criminal proceedings, etc. Therefore, the submission of the Director of VIL, Mr.R.Subramanian, that the applications have to be transferred to NCLT, stands rejected and this Court will continue to hear these applications."*

From the above extract of the order dated 05.01.2017, there is no doubt that this Court rejected the earlier request for transfer primarily on the ground that this Court had sanctioned the Scheme and had initiated action pursuant thereto by also appointing an Administrator. This order is the subject matter of O.S.A.SR.No.26384 of 2017. Although an appeal was filed, the said appeal is stated to be at the stage of consideration of an application to condone the delay in filing thereof. Notwithstanding the above position, both Analog and Mr.Subramanian contend that the order dated 05.01.2017 does not preclude the reiteration of a request for transfer because the order dated 05.01.2017 is erroneous and, therefore, does not operate as res judicata.

11. In this regard, both Analog and Mr.Subramanian rely upon Section 231(3) of CA 2013. Sub Section 3 of Section 231 reads as under:-

> *"3. The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement"*

Section 231 of CA 2013 mirrors Section 392 of CA 1956. These provisions are enabling provisions whereby the Court under Section 392 of CA 1956 or the NCLT under Section 231 of CA 2013, as the *case may be, may consider applications relating to a scheme of arrangement sanctioned under earlier company law legislation such as the Indian Companies Act 1913 or CA 1956, as the case may be. Thus, Sub-section 3 of Section 231 is not a provision which confers exclusive jurisdiction to supervise schemes of arrangement on the NCLT. More importantly, S.231(3) is undoubtedly not a provision which divests this Court of jurisdiction in such matters.*

12. This leads to the central issue: is it either obligatory or even appropriate, in exercise of discretion, for this Court to transfer the applications, as per Analog's request, to the NCLT? Both Section 434 of CA 2013 and the Transfer Rules throw light on this issue. At the outset, it should be noticed that Section 434(1)(c) of CA 2013 deals with all proceedings under CA 1956, collectively, including proceedings for winding up or schemes of arrangement. To put it differently, only the provisos deal separately with winding up proceedings and other proceedings, and not the principal clause. Secondly, it should be noticed that the above provision deals with proceedings and not applications or even petitions. While enumerating proceedings illustratively, the language used is "including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies... shall stand transferred...." The expression "proceedings" is not defined either in CA 1956 or CA 2013. The expression "relating to" is also undefined but certainly widens the scope of the expression "proceedings". In effect, Section 434 of CA 2013 deals with transfer *of proceedings, including proceedings relating to a scheme of arrangement, and not transfer of individual applications or petitions relating thereto. As regards proceedings relating to schemes of arrangement, the second proviso to Section 434(1)(c) provides for transfer thereof if orders were not reserved. Rule 3 of the Transfer Rules also deals with the transfer of pending proceedings other than winding up proceedings. Rule 3 is as under:*

> ***"Transfer of Pending Proceedings relating to cases other than winding up:***
>
> *All proceedings under the Act, including proceedings relating to arbitration, compromise, arrangements and reconstruction, other than proceedings relating to winding up on the date of coming into force on these rules shall stand transferred to the Benches of the Tribunal exercising respective territorial jurisdiction:*
>
> *provided that all those proceedings which are reserved for orders for allowing or otherwise of such proceedings shall not be transferred."*

From the above Rule, it is evident that except proceedings reserved for orders, all other proceedings pending before the Companies Court are liable to be transferred. On the basis of this Rule, both Mr.Goklaney and Mr.Subramanian contended that since none of the pending applications are reserved for orders, they are liable to be transferred.

13. In the specific context of the Scheme, Analog, the propounder, initially filed applications to convene meetings of stakeholders to consider the draft scheme, and thereafter filed a petition to sanction the draft scheme upon approval by its *stakeholders. By this process, the Scheme was sanctioned by order dated 30.04.2014 in C.P.No.15 of 2014. Subsequent thereto, applications were filed under Section 392 of CA 1956 in C.P.No.15 of 2014 by various stakeholders. From the above narration, there is no doubt that all the applications and the petition under Section 391 are closely interconnected. The power under Section 392 of CA 1956 is a consequential power vested in the court, which sanctioned a scheme of arrangement, to supervise and ensure the implementation thereof, if feasible, or order winding up otherwise. Therefore, this power is ordinarily exercised only by the court which sanctioned the relevant scheme.*

14. The contention of Analog and Mr.Subramanian that each application in C.P.No.15 of 2014 should be construed as an independent proceeding for purposes of Section 434 of CA 2013 remains to be considered. In the context of winding up proceedings, the legislative intent is clear from the first proviso to Section 434(1)(c) of CA 2013 read with Rule 5 of the Transfer Rules. The first proviso stipulates that the cut-off stage to determine whether the proceedings would stand transferred would be prescribed by the Central Government, and Rule 5 prescribes that the criterion or cut-off factor is whether the petition was served on the respondent under Rule 26 of the Companies (Court) Rules 1959. If served, the proceedings before the jurisdictional high court shall not stand transferred unless a request is made by a party thereto in terms of the amended last proviso to Section 434(1) of CA 2013. If the *expression "proceedings" is construed as each individual application relating to a winding up petition, given the cut-off criterion, if the petition for winding up had crossed the Rule 26 stage, such petition would be retained by the relevant high court, whereas individual applications in the winding up petition would stand transferred. Clearly, this would result in ludicrous consequences. Even in the context of a scheme of arrangement, it could lead to a situation wherein the petition in which the scheme is sanctioned and individual applications in which orders are reserved would be retained by the high court concerned, whereas other applications relating to the same scheme of arrangement would stand transferred to the NCLT. In such event, the appeals arising out of the retained petition and applications would also remain in the high court. This would make a mockery of the object and purpose of transfer, which is to consolidate the petition and all applications relating to and arising out of a winding up petition or a scheme of arrangement, as the case may be, so as to enable one forum to deal with the same in a meaningful way. As regards proceedings relating to schemes of arrangement, the second proviso to Section 434(1)(c) of CA 2013 is applicable. This proviso uses the expression "only such proceedings...shall be transferred to the Tribunal" and makes it clear that if orders are reserved in the proceedings, the proceedings shall not stand transferred. Thus, in contrast to service of notice under Rule 26 (i.e. pre-admission), the cut-off is fixed further down the road at the point of reserving orders in the proceedings. Significantly, the cut-off criterion is if orders are* *reserved in the proceedings, and not in an application in the proceedings. In the case at hand, orders were passed in the petition under Section 391 as early as on 30.04.2014 and only consequential applications under Section 392 of CA 1956 are pending. If an analogy is drawn to winding up proceedings, once the Scheme was sanctioned, the applications under Section 392 of CA 1956 are similar to applications filed after a winding up order is passed under Section 433 read with 443 of CA 1956. Thus, this Court is dealing with applications at the post-sanction stage of proceedings initiated under Section 391 of CA 1956. In an appropriate case, where no applications are pending after the sanction of a scheme of arrangement, it may be possible for a party to request the jurisdictional high court for permission to prosecute an application under Section 231(3) before the jurisdictional NCLT. Upon consideration thereof, the jurisdictional high court may, at its discretion and not as a transfer by operation of law, transfer the proceedings, and enable prosecution of the application under Section 231(3) of CA 2013 by the applicant concerned.*

15. In this case, as pointed out by Mr.Karthik Seshadri, the Scheme could not be implemented on account of default by the propounder and Viswapriya. Therefore, by order dated 22.08.2016, this Court recorded as under:

> *"11. I am of the view that a propounder of the scheme cannot resile from its obligation in the manner, in which, AFSPL today seeks to do; given what was portrayed to this Court, when the scheme was*

sanctioned in the first instance."

After recording the above finding, the Court appointed Mr.P.H.Arvindh Pandian, Senior Advocate, as the Administrator. The said Administrator has also filed about five reports before this Court. Criminal proceedings are also pending before the TNPID Court and the learned Public Prosecutor has filed a status report dated 26.10.2021 in such regard. In addition, a contempt petition is pending before this Court.

16. While Mr.Goklaney and Mr.Subramanian referred to and relied upon several orders of the Hon'ble Supreme Court relating to Section 434 of CA 2013, the said orders pertain to winding up proceedings, which were retained by the High Court because such proceedings had crossed the stage of issuance of notice as per Rule 26 of the Companies (Court) Rules 1959. Pursuant to the amendment to Section 434 by the introduction of the last proviso thereto, a party to the proceedings is entitled to file an application for transfer in retained matters. Applications for transfer were filed in those cases by resorting to such proviso. In contrast, in the present case, as indicated above, the Scheme was sanctioned by this Court and several applications were dealt with thereafter under Section 392 of CA 1956. Indeed, it bears repetition that the cut-off, as regards schemes of arrangement, is fixed at the advanced stage of reserving orders in the proceedings. Consequently, there is no *provision analogous to the last proviso to Section 434(1) of CA 2013 to seek transfer of retained matters. In fine, these applications are completely misconceived and premised on the mistaken notion that CA 2013 provides for transfer of applications.*

17. For reasons set out above, the order dated 05.01.2017 does qualify as res judicata and is not erroneous in any respect. In any event, for reasons set out in the preceding paragraphs, the specific applications and, indeed, the proceedings relating to the Scheme are not liable to be transferred to the NCLT. Except for the assertion that this Court has no jurisdiction, no reasons are set out in Comp.A.No.313 of 2021 to dismiss Comp.A.No.56 of 2021. For these misadventures, in the face of the earlier order of this Court, each set of applicants should be suitably rewarded.

18. As a corollary, Company Application Nos. 413 and 414 of 2019 and Company Application No.313 of 2021 are dismissed. Each set of applicant/s shall pay costs of Rs.1,00,000/- to the Tamil Nadu State Legal Services Authority within two weeks from the date of receipt of a copy of this order. All the other pending applications shall be retained in this Court. List all pending applications on 11.02.2022. The Registry is directed to communicate a copy of this order to the National Company Law Tribunal, Chennai, in view of the assertion by Viswapriya (India) Limited that an application under Section 231(3) of the Companies Act 2013 is pending before the said Tribunal."

16. Therefore, the issue raised by Mr.R.Subramanian, party-in-person and the applicant was appropriately addressed by this Court in the above application. Hence, the question of transferring the company petition, even if the Court is inclined to pass the winding up order, does not arise.

17. For all the reasons assigned above, this Court is inclined to dismiss the present application. While dismissing the application, this Court is of the considered view that this application came to be filed only to cheat debenture holders by gaining more time. Therefore, for wasting the Court time and making an attempt to defraud the creditors and the debenture holders, this Court is inclined to dismiss this application with the cost of a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) to the Official Liquidator and the said amount shall be utilised by the learned Official Liquidator to defray his expenses with regard to the taking over of assets and realization of assets of VIL. The applicant is directed to pay the said amount within a period of 2 weeks from the date of receipt of copy of this order/order made ready.

18. Accordingly, this application is dismissed with cost as stated above.

.04.2023
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Note: *Upload order copy on 24.04.2023.*

KRISHNAN RAMASAMY, J.

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