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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 22.03.2023*

+ CO.APP. 6/2023 & CAV 145/2023, CM APPL. 13906/2023 & CM APPL. 13907/2023

ASHISH GARG

..... Appellant

Through: Mr. Deepk Biswas, Mr. Manohar Malik, Mr. Prateek Chauhan & Ms. Varsha Aggarwal, AdvsVersus

M/S SHREE SHYAM COTSPIN LTD
& ORS.

..... Respondents

Through: Ms. Ruchi Sindhwani, SSC with Ms. Megha Bharara, Adv. for OL.
Mr. Dinkar Singh & Mr. Rohit Singh, Adv. for R4..

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant has filed the present intra-court appeal impugning an order dated 20.02.2023 passed by the learned Company Court, whereby the appellant's application, CO.APPL.627/2022 in CO.PET.318/2003, was rejected. The appellant had moved the said application, *inter alia*, praying that the winding up proceedings relating to Shree Shyam Cotspin Ltd. (hereftaer '**the company**') be

transferred to the National Company Law Tribunal for further proceedings under the Insolvency and Bankruptcy Code, 2016 (hereafter '**IBC**'). The said application was resisted by respondent no.4, which is an asset reconstruction company.

2. It is claimed that respondent no.3 (Allahabad Bank) had assigned its secured debt as well as security interest relating to the company to respondent no.4.

3. Both the parties rely on the decision of the Supreme Court in *Action Ispat and Power Pvt. Ltd. v. Shyam Metallics and Energy Ltd.: (2021) 2 SCC 641*, whereby the Supreme Court had explained that if no irreversible steps have been taken by the Company Court in winding up of a company; the proceedings may be transferred to the National Company Law Tribunal under IBC. According to the appellant, no irreversible steps have been taken in winding up of the company; therefore, the winding up proceedings are liable to be transferred to the National Company Law Tribunal. This is stoutly contested by respondent no.4

4. The learned Company Court had noted the relevant facts obtaining in the matter to address the aforesaid controversy. It would be apposite to refer to the said facts recorded in the impugned order which read as under:-

“4. The Court has considered the aforementioned contentions. Before advertng to the issue at hand, it would be apposite to briefly take note of the preceding proceedings/facts:

4.1 On 10th June, 1999, the Company filed a reference before the Board for Industrial and Financial Reconstruction [“*BIFR*”] under Section 15(1) of the

Sick Industrial Companies (Special Provisions) Act, 1985 [*“SICA”*]². The BIRF declared the Company as a ‘sick company’ vide order dated 11th November, 1999.

- 4.2 In light of BIRF’s recommendation under Section 20(1) of SICA dated 13th February, 2003, the Court directed winding up of the Company and appointed the Official Liquidator [*“OL”*] as the Liquidator, vide order dated 08th December, 2004.
- 4.3 On 24th January, 2005, direction was issued to Allahabad Bank to issue sale proclamation and invite bids from the public. However, since SDM, Sonapat had placed locks on the Company’s property, Allahabad Bank was unable to proceed with the sale. Thus, on 14th July, 2005, the Court ordered SDM to remove the said locks and redirected issuance of sale proclamation.
- 4.4 Pursuant to the above-noted, three bids were received by Allahabad Bank and five were received in the Court, of which the bid of PP Homes and Infrastructure Private Limited [hereinafter, *“Auction Purchaser”*] was accepted on 29th September, 2005.
- 4.5 Despite acceptance of the bid, Allahabad Bank Could not hand over physical possession of the Company’s assets to Auction Purchaser in view of notification dated 28th November, 2002 under Section 6 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 issued by the Government of Haryana. Subsequently, on an application filed by the Auction Purchaser, the Court directed Allahabad Bank to refund the entire money deposited with interest, to Auction Purchaser vide order dated 05th December, 2014.³
- 4.6 The acquisition of the Company’s land has not been challenged by Applicant and Allahabad Bank continued to pursue alternative remedies of recovery. In OA No. 398A/98, the DRT vide order

dated 20th April, 2012, issued a recovery certificate in favour of Allahabad Bank and against the Company, including Applicant herein, for recovery of Rs. 6,51,54,168/- with interest.

- 4.7 By way of Assignment Deed dated 27th September, 2013, Allahabad Bank assigned debt of the Company to Pegasus, who was later substituted as a party.⁴ Subsequent thereto, Pegasus took possession of the Company's entire assets and undertook further steps for sale thereof."

5. After taking note of the aforesaid course of events, the learned Company Court concluded that irreversible steps had been taken for winding up of the company; therefore it was not apposite to transfer the winding up proceedings to the National Company Law Tribunal.

6. There is no dispute that the winding up proceedings have been pending for over two decades. Even prior to that, the net worth of the company stood eroded. Accordingly, a reference was filed before the Board for Industrial and Financial Reconstruction (hereafter '**BIFR**') under the Sick Industrial Companies (Special Provision) Act, 1985 (hereafter '**SICA**'). The BIFR had declared that the company was a sick company as way back, as on 11.11.1999.

7. It is apparent that the company could not be revived and therefore, BIFR, by its order dated 13.02.2003, had recommended that the company be wound up under Section 20(1) of the SICA. Pursuant to the said recommendations, proceedings had commenced before the learned Company Court. The Official Liquidator was appointed for liquidation of the company's assets.

8. The Official Liquidator had invited claims and had also taken steps for sale of the assets of the company. In the meantime one of the principal assets (land located in the State of Haryana) was acquired under the Land Acquisition Act, 1894. Thus, the auction of the said property conducted by the Official Liquidator could not be concluded. The funds deposited by the auction purchaser for purchasing the said property were returned.

9. Insofar as the movable assets of the company are concerned, the same were taken over by respondent no.4 in exercise of the power under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter '**SARFAESI Act**'). The learned counsel appearing for respondent no.4 states that the said assets were sold on 14.03.2023 and a sale certificate had already been issued.

10. The learned Company Court had also noted that the assets available are insufficient to meet the liability of the company to respondent no.4.

11. It is also apparent from the events that had transpired that the winding up proceedings had progressed to an irreversible stage.

12. The principal contention, advanced by the appellant, is that there is a possibility that proceedings for acquisition of land acquired by the Haryana Government may be dropped and the said land could be released. The learned Company Court had not found it apposite to proceed on the said assumption as it was without any basis.

13. The learned counsel appearing for the appellant contends that there is a possibility that the company's land may be de-notified and

therefore the proceedings may be transferred to NCLT. However, there is no material on record to indicate that the release of land under acquisition is imminent. In any view of the matter, even if the land is de-notified, the same would be required to be sold to liquidate the debts of the company.

14. The limited question to be addressed by this Court is whether the learned Company Court had erred in proceeding on the basis that irreversible steps have been taken. In our opinion, the said question is required to be answered in the negative. It is clear from the record that several steps have been taken for winding up of the company; assets claims have been invited from creditors; parts of the company's assets have been sold; all movable assets taken over by respondent no.4 SARFAESI Act have been sold; the immovable asset of the company is under acquisition; and the assets are insufficient to meet the company's liabilities.

15. In the circumstances, we find no error in the impugned order. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

MARCH 22, 2023

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