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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 10th July, 2023

+ CO.PET. 384/2016 & CO.APPL. 480/2023

ULTRATECH CEMENT LTD. Petitioner
Through: Ms. Deepa Sharma, Adv.
versus

MAXOUT INFRASTRUCTURES PVT. LTD. Respondent
Through: Mr. Siddharth Mullick, Adv. for OL.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

CO.APPL.480/2023 (seeking clarification) in CO.PET. 384/2016

2. The present application has been moved seeking clarification in view of the NCLT order dated 1st May, 2023 passed in *TP (Co. Act.)-10(PB)/2022 Old CP No.-386/2016* titled *Ultratech Cement Ltd. v. Maxout Infrastructure Pvt. Ltd.*

3. Ld. counsel for the Official Liquidator (OL) has appeared and submits that the main counsel is in another Court. Let a copy of the application be served upon Ld. Counsel for the OL.

4. A perusal of the record would show that the present winding up petition has been filed by Petitioner - M/s Ultratech Cement Limited against the Respondent in respect of dues which were to be paid by the Respondent.

5. This Court vide order dated 20th December, 2017 had admitted the present petition and the OL attached to this Court was appointed as the Provisional Liquidator in the present proceedings. However, subsequently,



on an application moved by the Respondent vide order dated 20th April, 2018, the said order dated 20th December, 2017 was kept in abeyance, subject to deposit of Rs.5 lakhs with the Registrar General of this Court.

6. The amount of Rs.5 lakhs had been deposited in this Court in the form of FDR. It was in this background that this Court had, considering the decisions of the Hon'ble Supreme Court in ***Action Ispat and Power Limited v. Shyam Metalics and Energy Limited (2021) 2 SCC 641*** and ***Forech India Limited v. Edelweiss Assets Reconstruction Company Limited and Another (2019) 18 SCC 549*** transferred the present petition, to the NCLT vide order dated 25th May, 2022. In the said order, it is clearly recorded that the winding up petition was at a very early stage.

7. Thereafter, the NCLT in its order dated 1st May, 2023 seeks the following clarification.

“Heard the submissions made by Ld. Counsel for the Petitioner. These are the proceedings which are transferred from the Hon'ble High Court. Petitioner is now seeking remedy within the provisions of IBC. Therefore, Petitioner has prayed for grant of time for seeking clarification from the Hon'ble High Court as to from what stage the matter has to be entertained by the Tribunal. More particularly whether the resolution process has to be exhausted first or not as IBC envisages resolution process and maximization of value of the assets of the Corporate Debtor. Whereas resolution and maximization of value of the assets will not be available for the liquidation as liquidation is nothing but to liquidate the assets of the Corporate Debtor at the price at which the purchasers may take the property. List the matter on 30.05.2023.”

8. Thus, the NCLT ordered the Petitioner to seek a clarification from this Court as to whether Resolution ought to be explored by it first or the



company should straightaway be taken to liquidation. Hence the Petitioner has moved the present application.

9. The provision governing transfer of petitions from this Court to the NCLT is Section 434 of the Companies Act, 2013. The said provision reads as under:

“434. Transfer of certain pending proceedings

(1) On such date as may be notified by the Central Government in this behalf,-

(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;

(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and

(c) all proceedings under the Companies Act, 1956 (1 of 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 provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.]

[Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.]

(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.”

10. It is further noted that in ***Forech India Ltd. v. Edelweiss Assets Reconstruction Co. Ltd. (Civil Appeal No. 818 of 2018***, the Hon’ble Supreme Court held that once an application for transfer is filed, the High



Court must transfer such proceedings to NCLT which will then deal with the same as an application for initiation of corporate insolvency resolution process. The relevant part of the said judgment is as under:

“17. The resultant position in law is that, as a first step, when the Code was enacted, only winding up petitions, where no notice under Rule 26 of the Companies (Court) Rules was served, were to be transferred to the NCLT and treated as petitions under the Code. However, on a working of the Code, the Government realized that parallel proceedings in the High Courts as well as before the adjudicating authority in the Code would stultify the objective sought to be achieved by the Code, which is to resuscitate the corporate debtors who are in the red. In accordance with this objective, the Rules kept being amended, until finally Section 434 was itself substituted in 2018, in which a proviso was added by which even in winding up petitions where notice has been served and which are pending in the High Courts, any person could apply for transfer of such petitions to the NCLT under the Code, which would then have to be transferred by the High Court to the adjudicating authority and treated as an insolvency petition under the Code. This statutory scheme has been referred to, albeit in the context of Section 20 of the SICA, in our judgment which is contained in Jaipur Metals & Electricals Employees Organization Through General Secretary Mr. Tej Ram Meena vs. Jaipur Metals & Electricals Ltd. Through its Managing Director & Ors., being a judgment by a Division Bench of this Court dated 12.12.2018.”

11. From a perusal of the second proviso to Section 434(1)(c) as also the aforesaid judgement it is clear that any matter, which is transferred, is to be dealt with by the NCLT as an application for initiation of Corporate Insolvency Resolution Process (CIRP) process under the IBC, 2016.



12. Thus, it is clarified that the NCLT would have to strictly proceed in accordance with the said provision and treat the petition as an initiation of CIRP process.

13. Ordered accordingly.

14. At this stage, Id. counsel for the Petitioner confirms that the expenses of the OL have been paid by the Petitioner and the amount of Rs.5 lakhs deposited before the Registrar General, has already been withdrawn by the Petitioner.

15. In view of the same, no further orders are called for.

16. Application is disposed of.

PRATHIBA M. SINGH
JUDGE

JULY 10, 2023/dk/kt

