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

Date of Decision: 24th August, 2023

+ **CO.PET. 802/2016 and CO.APPL. 1401/2017, 494/2023**

MURTHAL AUTO (P) LTD.

..... Petitioner

Through: Mr. Kumar Bhaskar, Advocate (M:
9810028445).

versus

HYLEX TRADE LINKS (P) LTD.

..... Respondent

Through:

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Sections 433, 434 and 439 of the Companies Act, 1956 seeking winding up of the Respondent - Hylex Trade Links (P) Ltd. The case of the Petitioner- Murthal Auto Pvt. Ltd. is that it is an authorized Maruti Service station engaged in the business of running service station of Maruti vehicles. The Respondent is a dealer in home appliances and other electronic items.
3. According to the Petitioner the Respondent approached the Petitioner for repair of vehicle bearing No. DL-1LE-2062, Model Maruti Eco Flexi C in the name of the Respondent Company, which had met with an accident on 29th July, 2015. For repairing the vehicle a sum of Rs. 3,23,313/- was quoted by the Petitioner and the same is stated to have been agreed to by the Respondent. As per the schedule of payment, the Respondent had to make a complete payment of Rs. 1,64,121/-, however as per the Petitioner, the same has been illegally retained by the Respondent.

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4. It is stated by the Petitioner that the vehicle was insured by New India Insurance Co. Ltd. vide Policy bearing No. 35420031140100003503 and that the Respondent has received the payment from the Insurance Company towards the said bill amount. Copies of the invoices *etc.* have also been placed on record by the Petitioner.

5. In the present case, notice was initially issued by this Court on 20th October, 2016. Vide the said order the Court had also given directions to the Respondent to disclose certain details. The relevant part of the said order is as under:

“In addition, the Managing Director or in his absence, all the Directors of the respondent company shall file their personal affidavits setting the following:-

(i) All information and particulars with regard to their shareholding in the company, their involvement in the affairs of the company and the nature of steps taken by them with regard to the management of the company;

(ii) The Profit & Loss Account and the Balance Sheets of the Respondent Company for the last three years;

(iii) The list of the bank accounts of the Respondent Company;

(iv) The names and residential addresses of the Directors and company secretary of the company along with their PAN and DIN numbers;

(v) The particulars of assets held in the name of all the directors or the respondent company along with the dates of acquisition as well as the nature of their right, title and interest therein; to be disclosed in a sealed cover at the time being;

(vi) The address of the Registered Office and the Corporate or branch offices, if any, of the Respondent Company;

(vii) The location of the statutory records and books of account of the company;



(viii) *The list of immovable assets, land and building etc. of the respondent company, along with full particulars thereof sufficient to accurately identify and locate the said assets;*

(ix) *The details of location of the assets of the company and their value;*

(x) *Details of the debtors and creditors of the company with their complete addresses;*

(xi) *The details of workmen/employees and any amount outstanding to them; and*

(xii) *The respondent company as well as its Directors shall disclose their connection with any other entities whether incorporated or not and the extent of their interest therein, with full particulars.*

The said affidavits shall be filed within six weeks from today with an advance copy to counsel for the petitioner.

In case the said affidavits are not filed for any reason, the concerned Directors, including the Managing Director of the respondent company shall remain personally present in Court on the next date of hearing, in order to enable this Court to examine them, if required, on that date.

Till the next date of hearing, the respondent company shall not dispose of or alienate or encumber either directly or indirectly or otherwise part with possession of any assets of the company to the tune of Rs. 1,64, 121.111-, except in the ordinary course of business and for the payment of salaries and statutory dues."

6. The matter has since then remained pending and the Respondent has not entered appearance till date.

7. During the pendency of this petition, the Insolvency and Bankruptcy Code, 2016 has been enacted and pending proceedings under Section 434 of the Companies Act, 1956 are to be transferred to the National Company Law Tribunal (NCLT). The said section 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.”

8. The issue of transfer of winding up petitions to the NCLT has also been dealt with in the notification dated 7th December, 2016 passed by the Ministry of Corporate Affairs where, in respect of pending proceedings for winding up, Rule 5 states as under:-

“5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts. (1) All petitions relating to winding up 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 as required 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 Act, exercising territorial jurisdiction and such petitions shall be treated as applications under sections 7, 8 or 9



of the Code, as the case may be, and 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 within sixty days from the date of this notification, failing which the petition shall abate.

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.”

9. The issue of transfer of pending cases has been considered by this Court in ***Co. Pet 446/2013*** titled ***Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited*** wherein the Court observed as under:



“20. As per the proviso highlighted above, upon the application being filed by any of the parties to the proceedings, the transfer may be made by the Court in terms of the second proviso of Section 434 (1) of the Companies Act, 1956. In Action Ispat (supra), if the winding up is not at an advanced stage, the High Court may transfer the matter to the NCLT. The relevant portion of the said judgement is set out below:

31. Given the aforesaid scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are contemplated, with the Tribunal retaining the power to control the proceedings in a winding up petition even after it is admitted. Thus, in a winding up proceeding where the petition has not been served in terms of Rule 26 of the Companies (Court) Rules, 1959 at a pre-admission stage, given the beneficial result of the application of the Code, such winding up proceeding is compulsorily transferable to the NCLT to be resolved under the Code. Even post issue of notice and pre admission, the same result would ensue. However, post admission of a winding up petition and after the assets of the company sought to be wound up become in custodia legis and are taken over by the Company Liquidator, section 290 of the Companies Act, 2013 would indicate that the Company Liquidator may carry on the business of the company, so far as may be necessary, for the beneficial winding up of the company, and may even sell the company as a going concern. So long as no actual sales of the immovable or movable properties have taken place, nothing irreversible is done which would warrant a Company Court staying its hands on a transfer application made to it by a creditor



or any party to the proceedings. It is only where the winding up proceedings have reached a stage where it would be irreversible, making it impossible to set the clock back that the Company Court must proceed with the winding up, instead of transferring the proceedings to the NCLT to now be decided in accordance with the provisions of the Code. Whether this stage is reached would depend upon the facts and circumstances of each case.”

21. *In the present case, the Provisional Liquidator was appointed in 2017. However, the winding up is not at an advanced stage. No auction has been conducted, no claims have been invited. Clearly the winding up process could consume considerable time. Accordingly, the present company petition is transferred to the NCLT. The entire record of the present petition shall also be remitted in the electronic form to the Registrar, NCLT, and the same shall be listed before the NCLT. All the parties appearing before the Court are also permitted to appear before the NCLT on 3rd August, 2023. The OL shall continue to exercise the control over all the properties of the Company under liquidation, subject to any orders that the NCLT may pass in future.*
10. A conjoint reading of Rule 5 of the notification dated 7th December, 2016 along with the aforementioned judgment would show that in cases where the petition is not at an advanced stage, and in cases where the Respondent has not been served till date, the matter is to be transferred to the NCLT.
11. In the present case, notice was issued on 20th October, 2016. However, the petition is still at a nascent stage and even the liquidator has not been appointed. Further, as recorded in the order dated 23rd August, 2022, the Respondent company has shifted to a new address and the Petitioner is yet to ascertain the same. In view thereof, the judgment in *Citicorp (supra)* would



be squarely applicable in the present case.

12. Applying Section 434 of the Companies Act, 1956, Rule 5 of the MCA notification dated 7th December, 2016 and the judgment in *Citicorp (supra)*, the present petition is directed to be transferred to the NCLT.

13. Parties to appear before the NCLT on 18th September, 2023.

14. The electronic records of this Court shall be transmitted to the Registrar NCLT within five working days along with a copy of today's order.

15. The present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 24, 2023/mr/sk