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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 19th October, 2023
+ **CO.PET. 267/2015**
SNOWPACK POLYMERS PVT. LTD Petitioner
Through: Mr Jeetender Gupta & Mr. Ashish
Mishra, Advocates.
versus

APC POLYCOAT INDIA PVT. LTD Respondent
Through: Mr. Akhilesh Pandey & Ms Manisha,
Advocates.

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 seeking winding up of the Respondent-Company on the ground of non-payment of a sum of Rs.13,23,444/-.
3. In the present case, notice was issued on 14th May, 2015 and the pleadings have been completed. However, no further steps have been taken.
4. With the enactment of the Insolvency and Bankruptcy Code, 2016 (*hereinafter 'IBC'*), the introduction of Companies Act, 2013 and in particular Section 434 of the said the Companies Act, 2013, the present petition does not deserve to be continued before this Court as it is still at the initial stage and no Provisional/Official Liquidator has been appointed in this matter.



5. Transfer of proceedings relating to winding up, pending before High Courts to the NCLT, has been provided for in 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 subsection (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.”

6. The Hon’ble Supreme Court in ***Action Ispat and Power Limited v. Shyam Metals and Energy Limited (2021) 2 SCC 641***, has held that winding up proceedings which have not reached an advanced stage ought to be transferred to the NCLT. The relevant extract of the said decision is extracted as under:

“22. 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 preadmission 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."

7. This Court has also examined the legal position in respect of cases where the winding up petition is not at an advanced stage in judgement dated 25th July, 2023, ***Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited, 2023: DHC:5206.***

8. In the opinion of this Court, since hardly any proceedings have been taken towards winding up of the company, the petition deserves to be



transferred to the NCLT. The petition is itself at the very nascent stage and no substantive orders have been passed towards winding up of the company.

9. In view of the above legal position, as set out in *Action Ispat (supra)* and Section 434 of the Companies Act, 2013, the present petition stands transferred to NCLT to be taken up from the stage at which it has been transferred.

10. Accordingly, the parties shall appear before the NCLT on 20th November 2023. It is left to the NCLT to consider the matter and pass appropriate orders in accordance with law.

11. No fresh demand notice would be required to be issued by the Petitioner to the Respondent.

12. The electronic record of this petition be transmitted to the NCLT within a period of one week by the Registry.

13. List before the NCLT on 20th November, 2023.

PRATHIBA M. SINGH
JUDGE

OCTOBER 19, 2023

Rahul/kt