ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

IA NO. ACO/1/2024
APOT/2/2024
WITH
CA/82/2022
CP/4/1956

RE- FIRE & GENERAL INSURANCE CO. LTD. (IN LIQN.)
-And-
TAPAS CHAKRABORTY & ORS.
Vs
OFFICIAL LIQUIDATOR

BEFORE
The Hon'ble Justice I.P. MUKERJI
-And-
The Hon'ble Justice BISWAROOP CHOWDHURY
Date: 19th February, 2024

Mr. Ranjan Bachawat, Sr. Adv.
with Mr. Satyaki Mukherjee,
Mr. Nilay Sengupta &
Mr. Sujit Banerjee, Advs.
...for the appellants.

Ms. Smita Das De, Adv.
...for the Official Liquidator.

Order in terms of prayer (a) of the stay application.

We formally admit the appeal.

All the necessary parties are before us.

We are in a position to dispose of this appeal today itself dispensing with all formalities.

According to the prevailing Supreme Court judgements covering the field, transfer of a winding up proceeding to the tribunal is not as a matter of course but on case to case basis. Transfer is to be sought by an application. The fundamental principle which has to be borne in mind in considering such an application for transfer is that there has been "corporate death" and that the winding up proceedings have to be carried forward irreversibly towards completion.

The amended Companies Act, 2013 stipulates that a transfer can be made by the court only if an application is made in this behalf. This has been reiterated by the Ministry of Corporate Affairs by their letter dated 21st January, 2022, Annexure F at page 218 of the stay petition.

Ms. Das De, learned advocate for the Official Liquidator, confirms that there is no such application in the file of the court.

In the peculiar facts of this case, although the winding up order was made in the 1950s and the procedure for winding up completed, the winding up proceedings have been shown to be officially pending. This is for the reason that the fund for inter alia payment of the salary, allowances and other benefits for the present and past company-paid staff in the office of the Official Liquidator are shown in the accounts and records of this proceeding. All administrative orders are also passed in this proceeding.

For this solitary reason, according to us, the appellants who are company-paid staff have a stake in the matter, a right to participate in the proceedings for transfer of the winding up proceedings to the tribunal.

In those circumstances, this appeal succeeds.

The appeal (APOT/2/2024) is allowed. The application (ACO/1/2024) is disposed of.

As affidavits were not invited, the allegations contained in the application are deemed not to be admitted.

The order dated 18th December, 2023 is set aside.

The application made by the appellants before the learned single judge (CA/82/2022) to be added as a party to the proceedings, is disposed of by this order.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)

K. Banerjee
A.R. (C.R.)