2024:BHC-NAG:1637

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

COMPANY PETITION NO. 3 OF 2015

(A S International, A partnership firm Vs. Unistar Forging Private Ltd., Nagpur)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's Orders.	Court's or Judge's orders.

Shri R.R. Deo h/f Shri A.A. Naik, Counsel for the petitioner.

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CORAM : ANIL L. PANSARE, J.
FEBRUARY 9, 2024.

On previous date, the following order was passed :

"Heard.

2. The Petition has been filed in the year 2015. The notice has been served, but none appears for the Respondent. The Hon'ble Supreme Court in the case of Action Ispat and Power Private Limited V/s Shyam Metalics and Energy Limited, (2021) 2 Supreme Court Cases 641 has considered the fact of coming into force the Companies Act, 2013, vis a vis the Petitions pending before the Court which have been lodged prior to 15/12/2016. The Court has ultimately held in paragraph No. 25 as under :

"25. 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 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 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."

3. Thus, the Court has held that post-issuance of notice and pre-admission of the Company Petition pending before the Company Court, ought to be transferred to the NCLT given the beneficial result of the application of the Insolvency and Bankruptcy Code. The Court has further held that even after service of notice and appearance of the Respondent, 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 NCLT.*

4. The learned Counsel for the Petitioner shall take instructions as to whether he intends to approach NCLT or would seek to transfer the Petition to NCLT, Mumbai.

5. Stand over to 9th February, 2024."

2] The learned Counsel for the petitioner states that he has been instructed to seek permission to withdraw the petition with liberty to approach NCLT.

3] Permission is granted.

4] The Company Petition is disposed of as withdrawn with liberty as prayed for.

(ANIL L. PANSARE, J.)

Sumit