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

Civil Application (CAO) No. 242 of 2021
in
Company Petition No. 32 of 2016

[M/s. ITC Limited, Kolkata acting through and represented by its constituted attorney Shri Rohit Anand **..vs..** M/s Tristar Tradelinks Pvt. Ltd., Nagpur through its Directors Ms. P. K. Kothari and Mr. K. S. Kothari]

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

Mr. Piyush Rewatkar, Advocate h/f Mr. Masood Shareef, Advocate for the applicant/petitioner

CORAM : ANIL L. PANSARE J.

DATED : 05-01-2024

By the present application, the applicant/ petitioner seeks to transfer the petition to the National Company Law Tribunal (NCLT), Mumbai for disposal in accordance with law.

2. Notice in the petition has been issued on 24-6-2016 and has been served upon the respondent. However, none present for the respondent.

3. Learned counsel for the applicant/petitioner has invited my attention to the judgment passed by the Supreme Court in the case of ***Action Ispat and Power Pvt. Ltd. Vs. Shyam Metalics and Energy Ltd. [(2021) 2 SCC 641]*** wherein the Supreme Court has 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 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."

4. Admittedly, the petition under question has not reached the stage of admission. In view thereof and considering the position of law as explained by the Supreme Court in the case of ***Action Ispat and Power Pvt. Ltd. Vs. Shyam Metalics and Energy Ltd.***, the petition will have to be transferred to NCLT, Mumbai for disposal in accordance with law. Hence, following order.

ORDER

(i) The application is allowed.

(ii) Company Petition No. 32/2016 stands transferred to National Company Law Tribunal, Mumbai for disposal in accordance with law.

(iii) The petitioner shall appear before the National Company Law Tribunal, Mumbai on 5-2-2024.

(iv) Registry to do the needful.

(Anil L. Pansare, J.)

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