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

COMPANY PETITION NO. 2 OF 2014

(Gannon Dunkerly & Co. Ltd., through its authorized signatories Mr. Avijit Sur Vs. M/s Gupta Energy Pvt. Ltd.)

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

Shri S.N. Patrikar, Counsel for the petitioner.
Shri R.R. Deo, Counsel for the respondent.

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CORAM : ANIL L. PANSARE, J.
JANUARY 19, 2024.

The learned Counsel for the petitioner submits that the Company has been already liquidated. He makes a request to transfer the petition to the National Company Law Tribunal at Mumbai in terms of the judgment of the Hon'ble Supreme Court in the case of *Action Ispat And Power Private Limited Vs. Shyam Metalics and Energy Limited [(2021) 2 SCC 641],* wherein the Supreme Court in paragraph 25 has observed thus :

> *"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."

2] In view of above and considering the fact that winding up proceedings have not reached an irreversible stage, the Company Petition No. 2/2014 stands transferred to the National Company Law Tribunal at Mumbai for disposal in accordance with law.

3] The parties are at liberty to appear before the National Company Law Tribunal at Mumbai on 12/2/2024.

4] The Registry to do the needful.

(ANIL L. PANSARE, J.)

Sumit