



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 14 December 2023**
Judgment pronounced on : 30 January 2024

+ CO.PET. 340/2010
M/S MAA TARINI MINERALS Petitioner
Through: Mr. Arunav Patnaik and Mr.
Nirbhay Nitya Nanda, Advs.
versus

M/S TECHNICAST ENGINEERS LTD. Respondent
Through: Mr. Anil Sapra, Mr. P. K.
Bansal and Mr. Adhish Sharma,
Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This petition has been moved under Sections 433(e), 434 and 439 of The Companies Act, 1956 by the petitioner company, seeking winding up of the respondent company, namely **Technicast Engineers Pvt. Ltd.**, predicated on the non-payment of an amount of Rs. 1,01,61,225/- by the respondent, which is due to the petitioner company.

2. Briefly stated, the petitioner company is engaged in the business of mining and raising lumpy Iron Ore at Inganijaharan Mines, Joda. While on the other hand, the respondent company is involved in various activities related to Ferrous and Non-ferrous casting, forgings, fabrication and engineering assembly of machinery and equipment as well as spare parts in all kinds of engineering industries.

BRIEF FACTS:

3. The broad conspectus of the factual matrix is that the respondent company entered into an agreement with one M/s. Bhanja



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Minerals Private Limited, the original lease holder of the mines, as a contractor for raising iron ore and further for deploying necessary personnel and machinery for the purpose of such raising. Thereafter, the respondent company entered into an agreement dated 20.06.2003 with the petitioner company engaging them as a sub-contractor for a period of three months, w.e.f. 01.07.2003. The agreement was further extended vide letter dated 30.10.2003 for a period of three years, w.e.f. 01.10.2003.

4. The agreement as well as the letter dated 30.10.2003 set out the relevant terms and conditions for payments to be made by the respondent company to the petitioner in accordance with the quantities of ore raised at different prices. Furthermore, in order to fulfil its obligations under the agreement, the petitioner deployed men and machineries at the site and raised monthly weigh bills in keeping with the weigh reports from the weigh bridge, which the respondent company was to settle within 15 days of submission.

5. The long and short of the matter is that the petitioner carried out its obligations till 05.05.2006, when unexpectedly and without reason, vide a letter of the same date, the respondent cancelled the work order of the petitioner. At that point, even after several representations by the petitioner, the respondent company failed to pay the dues owed to the petitioner, and withheld payment of Rs. 1,01,61,225/-. It has been stated that various representations were made by the petitioner on 04.05.2006, 22.05.2006 and 06.06.2006. Thereafter, a settlement was also arrived at before the Deputy Director of Mines (DDM), Joda Circle, Joda, Keonjhar in a meeting held on 31.05.2006, and the same



was recorded vide the petitioner's letter dated 14.06.2006. Subsequent to this, the petitioner also sent letters dated 09.07.2006 and 04.08.2006 to the respondent, however the dues remained unpaid.

6. Given that the status quo remained unchanged, the petitioner was pressed to send a statutory notice to the respondent and pursuant to the same, legal notice dated 13.12.2006 was sent to the respondent through registered post, to clear the outstanding dues of Rs. 1,01,61,225/- along with interest @ 18% p.a. within a period of three weeks from the receipt of the notice. Despite the legal notice, the respondent company failed to repay its debts, and drawing an inference of its inability to pay the amount due to the petitioner, the present winding up petition was moved against the respondent company.

7. It may be appropriate to note that submissions have been made by the respondent company, challenging the maintainability of the present winding up on various grounds. The ground of challenge taken by the respondent company is primarily that the petitioner herein is neither a creditor of the respondent company nor is there any privity of contract between the parties, therefore the petitioner has no *locus standi* to move such a winding up petition. It is stated that the work order and agreement dated 20.06.2003, entered into by the respondent company, was with the sole proprietorship of Mr. B.N. Rana and not the partnership firm, that is the petitioner herein. It has further been contended that the ledger of accounts placed on record by the petitioner are not supported by any bills or invoices, and neither has it been stated when such bills arose and became payable, thus it cannot





be ascertained as to on what date the cause of action arose in favour of the petitioner. It is further the case of the respondent company that even on a perusal of the ledger accounts placed on the record, the claims made by the petitioner for any period prior to 07.12.2005 are barred by limitation as the petition was only moved on 08.12.2008. These submissions, amongst others, are also reflected in the reply to the petition, filed by the respondent on 30.11.2011.

8. In rejoinder, the petitioner alludes to the fact that the amount due had been shown in the books of accounts of the respondent company till April, 2010, which acknowledgement of debt extends the period of limitation under Section 18 of The Limitation Act, 1963. It is further submitted that though initially Mr. B.N. Rana was the sole proprietor but later on he constituted a partnership concern with his four sons and the same firm rendered services to the respondent company and it is pointed out that TDS for the financial year 2005 to 2006 was in fact deposited to the PAN Account of the petitioner partnership firm by the respondent company.

ANALYSIS & DECISION:

9. A perusal of the record shows that the present winding up petition has been a complete non-starter, such that neither a Provisional Liquidator nor an Official Liquidator has been appointed to the company. Furthermore, the petition is still at a nascent stage and substantive orders are yet to be passed pursuant to the winding up proceedings.

10. Considering that The Insolvency and Bankruptcy Code, 2016 has since been enacted, along with The Companies Act, 2013, it



would be expedient to examine the provisions which envisage the transfer of winding up petitions pending before the High Courts to the National Company Law Tribunal¹, specifically Section 434 of the Companies Act, 2013, which 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

¹ NCLT





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.”

11. At this stage, it is apposite to cite and rely on the decision of the Supreme Court in **Action Ispat and Power Private Limited v. Shyam Metalics and Energy Limited**², wherein it was held 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 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

² (2021) 2 SCC 641



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.”

12. Furthermore, with regards to the pending winding up petitions before this court which ought to be transferred to the NCLT, this court in its judgement dated 25.07.2023, titled **Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited**³ considered the prevailing legal position as well and held that those petitions which have not reached an advanced stage of proceedings shall be transferred to the NCLT.

13. Therefore, in the opinion of this Court, given the inceptive nature of the proceedings and the absence of any definitive orders pertaining to the winding up of the company, it is hereby determined that this petition shall be forthwith transferred to the NCLT.

14. The issues raised by the respondent company about the claim being barred by limitation and/or want of privity of contract between the parties are left open. It is left to the domain of the NCLT to consider the matter and pass appropriate orders in accordance with law.

15. The electronic record of this petition be transmitted to the NCLT within a period of one week by the Registry. List before the NCLT on 06.02.2024.

DHARMESH SHARMA, J.

JANUARY 30, 2024

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³ 2023:DHC:5206