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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.PET. 661/2013 & CO.APPL. 238/2024**

**TRACK FRIEGHT EXPRESS LINES LTD..... Petitioner**

**Through: Mr. Sanjay Sharma, Adv.**

**versus**

**TIGER LOGISTICS (INDIA) LIMITED ..... Respondent**

**Through: Mr. Pawanjit S. Bindra, Sr.  
Adv. with Mr. Vinayak  
Marwah, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**ORDER**

**% 27.02.2024**

1. The instant company petition has been instituted under Sections 433, 434 and 439 of the Companies Act, 1956 seeking winding up of the respondent company – **Tiger Logistics (India) Limited**, and is predicated on the ground of non-payment of dues amounting to USD 211,720.20/- along with interest @ 20% per annum.

2. Briefly stated, the parties entered into a contract dated 01.08.2011, whereby the petitioner agreed to provide inland transportation services to the respondent company between England, Mombasa and Kampala. Per the terms and conditions of the contract, the respondent company was to release 70% of the payment to the petitioner as advance, so as to meet the expenses related to customs clearance and transportation. It is stated that the respondent company was irregular in making payments and failed to adhere to the payment schedule from the very first lot of cargo itself. Despite repeated reminders and significant email correspondence between the parties, the respondent company failed to pay its outstanding dues, and



resultantly, the parties entered into a Memorandum of Understanding (MOU) dated 22.12.2011, entailing all the terms of the settlement arrived at between the parties to put to rest the issues regarding outstanding dues. It was agreed therein that the respondent company would be transferring the agreed amount to the petitioner within one week, pursuant to which the cargo would be loaded and transported thereon. In this regard, it is stated that only a delayed part payment was made by the respondent company on 09.01.2012 and despite the MOU, the respondent company failed and neglected to pay the sum outstanding as against the petitioner.

3. In view of the failure of the respondent company to pay its outstanding dues, the petitioner was constrained to serve a legal notice dated 30.01.2013, upon the respondent company, which was duly received and responded to vide reply dated 21.03.2013. Pursuant to the same, the petitioner also served a statutory legal notice dated 01.07.2013 under Section 433 and 434 of the Companies Act, 1956 to the respondent company, calling upon them to repay the outstanding amount of USD 211,720.20 along with interest @ 20% per annum. Since the said notice was not replied to, nor did the respondent company discharge its liability, the present appeal was preferred.

4. From a perusal of the record it is borne out that these winding up proceedings are a complete non-starter. It appears that no effective orders have been passed in this matter so much so that not even a Provisional Liquidator has been appointed to the respondent company.

5. It would be expedient to consider that during the pendency of the present petition the Insolvency and Bankruptcy Code, 2016<sup>1</sup> has

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<sup>1</sup> IBC



been enacted, along with the introduction of Companies Act, 2013<sup>2</sup>. Section 434 of the said Act has to be considered, which provides for the transfer of proceedings relating to winding up, pending before High Courts, to the National Company Law Tribunal<sup>3</sup>, and 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

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<sup>2</sup> The Act

<sup>3</sup> 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.”

6. Reliance must also be placed on the decision of the Supreme Court in **Action Ispat and Power Limited v. Shyam Metalics and Energy Limited**<sup>4</sup>, the relevant extract of which is provided below:

“22. 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 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.”

7. The decision of the Supreme Court in *Action Ispat (supra)* has been relied upon by this court in **Citicorp International Limited v.**



**Shiv-Vani Oil & Gas Exploration Services Limited<sup>5</sup>** wherein it was held that winding up proceedings pending before High Courts, which are at a nascent stage and have not progressed to an advanced stage, ought to be transferred to the NCLT. It is but evident that the present company petition has not yet reached an advanced stage and no substantive orders have been passed towards the winding up of the respondent company.

8. In light of the foregoing discussion the present winding up proceedings deserve to be transferred to the NCLT.

9. The parties are directed to appear before the NCLT on 08.04.2024.

10. The electronic records of this Court shall be transmitted to the Registrar NCLT within one week along with a copy of today's order.

11. The present company petition, along with pending applications, if any, are disposed of accordingly.

12. The date fixed in the matter i.e. 23.04.2024 stands cancelled.

**DHARMESH SHARMA, J**

**FEBRUARY 27, 2024/sa**

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<sup>4</sup> (2021) 2 SCC 641

<sup>5</sup> CO.PET. 446/2013