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

% **Date of decision: 12th March, 2024**

\+ CO.PET. 988/2015

AJAY PURNANAND CHITNIS ..... Petitioner

Through: Mr. Anil Nag, Adv.

versus

DSC LIMITED ..... Respondent

Through: Mr. Vineet Tayal and Wadhwa, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

1. This hearing is being conducted through hybrid mode.

2. The instant company petition has been instituted under Section 433(e) read with Sections 434 and 439 of the Companies Act, 1956, seeking winding up of the respondent company – **DSC Limited**, predicated on the non-payment of an outstanding amount of Rs. 35,82,552.90/- along with interest payable @ 24% per annum.

3. Briefly stated, pursuant to an Offer Letter dated 05.08.2010, the petitioner herein was appointed by the respondent company to the designation of 'President P&E' vide Appointment Letter dated 15.09.2010. It is stated that the petitioner was appointed at a salary of Rs. 7,50,000/- per month and was further entitled to a sum of Rs. 20,00,000/- per annum, said amount being in the nature of a Performance Linked Incentive (PLI). Subsequently, the respondent company delayed/stopped the payment of monthly salary and incentives to the petitioner from 01.01.2012 and it is stated that the

petitioner was ill-treated by the respondent company and its management. Owing to the same, the petitioner was compelled to tender his resignation vide letter dated 09.04.2012, which was accepted by the respondent company on 21.04.2012.

4. The total outstanding amount due to the petitioner is stated to be on account of various heads, including non-payment of salary for the period 01.01.12 to 30.04.2012 amounting to Rs. 25,08,907.90/-; as also an amount of Rs. 10,00,000/- payable as Performance Linked Incentive; amount not paid on account of paid leave to the tune of Rs. 5,60,241.70/-; and unpaid conveyance allowance amounting to Rs. 61,800/-; along with interest @ 18% per annum amounting to Rs. 4,51,603.30/-. The sum thereon after adjusting an amount of Rs. 10,00,000/- received by the petitioner as advance is Rs. 25,82,552.90/, as stated to be payable and due.

5. Since the respondent company neglected to make good the payment of said outstanding amount, the petitioner sent a legal notice dated 09.02.2013 calling upon the respondent to make the payment of the outstanding amount. Despite the legal notice, the amount remained unpaid and consequently, the petitioner was constrained to serve a statutory legal notice dated 21.07.2015 upon the respondent company, as provided for under Sections 433 (e) and 434 of the Companies Act, 1956. The notice dated 21.07.2015 was replied to by the respondent company stating that the petitioner company has failed to provide any documentary evidence to establish his claim. However, in this regard it is stated on behalf of the petitioner that since the respondent company did not specifically deny the claim of the petitioner, the

amount due to the petitioner stood admitted by implication.

6. It appears that the respondent company has neglected/failed to repay its debt in the normal and ordinary course of business, hence, the present petition has been filed. However, from a perusal of the record, it is but evident that the present petition is a complete non-starter. No substantive orders have been passed so much so that not even a Provisional Liquidator has been appointed to the respondent company.

7. It is necessary to note that during the pendency of these proceedings, the Insolvency and Bankruptcy Code, 2016 as well as the Companies Act, 2013, have since been enacted. In view of this, it is the opinion of the court that the present petition does not deserve to continue before this Court, and it would be appropriate for the same to be transferred to the National Company Law Tribunal[1]. In this regard, it is relevant to consider Section 434 of the Companies Act, 2013 which provides for the transfer of proceedings relating to winding up, pending before High Courts, to the NCLT, 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

[1] NCLT

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

(b)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 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."

8. Reliance must also be placed on the decision of the Supreme Court in the case titled **Action Ispat and Power Private Limited v. Shyam Metalics and Energy Limited**[2], the relevant extract of which is reproduced hereunder:

"22. Given the aforesaid scheme of winding up under Chapter XX of the Companies Act, 2013, it is clear that several stages are

[2] (2021) 2 SCC 641

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."

9. The above noted decision of the Supreme Court has been relied upon by this court in **Citicorp International Limited v. Shiv-Vani Oil & Gas Exploration Services Limited**[3] wherein it was held that those winding up proceedings pending before High Courts, which are at a nascent stage, ought to be transferred to the NCLT. In view of the above, and in light of the fact that the present company petition is yet to reach an advanced stage, this petition as well as pending applications, if any, are disposed of.

[3] CO.PET. 446/2013

10. Hence, the instant petition is transferred to the NCLT. The parties are to appear before the NCLT on 01.05.2024.

11. It is left to the NCLT to consider the matter and pass appropriate orders in accordance with law.

12. The electronic record of the instant petitions be transmitted to the NCLT within a period of one week by the Registry. List before the NCLT on 01.05.2024.

DHARMESH SHARMA, J.

MARCH 12, 2024
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