

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM ORDER PASSED IN ITS
ORIGINAL JURISDICTION

APO/36/2022
With CP/1127/2014
IA No. ACO/2/2022

M/S M. S. GLASS INDUSTRIES LIMITED (IN LIQN)
-AND-
M/S RMC READYMIX (INDIA)
-Vs-
THE O/L, HCOS AND ANR

BEFORE:

The Hon'ble JUSTICE DEBANGSU BASAK

-AND-

The Hon'ble JUSTICE MD. SHABBAR RASHIDI

For the Appellant : Mr. Debrup Bhattacharjee, Adv.
Mr. Ritesh Kr. Ganguly, Adv.

For the Respondent No.2 : Mr. Sayantan Chatterjee, Adv.

HEARD ON : 13.11.2025

DELIVERED ON : 13.11.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a company who claims to render security guard services for the protection of the assets of a company (in liquidation).
2. Appeal is directed against an order dated January 20, 2022 passed in IA CA/15/2021 in CP/1127/2014.

- 3.** Learned advocate appearing for the appellant submits that, since the dues of the appellant are yet to be paid by the secured creditor, winding up proceedings being CP/1127/2014 should not be transferred to the National Company Law Tribunal. He submits that, the employees of the appellant are still continuing to guard the assets of the company (in liquidation). He points out that, the appellant was engaged by the official liquidator by a letter dated August 31, 2015. From time to time, appellant raised bills on the official liquidator for rendering services. A portion of such bills were paid. As on date, a portion still remains unpaid. Till such time the entire payment is made, the winding up proceedings should not be transferred.
- 4.** Learned advocate appearing for the appellant relies upon an unreported decision of the Co-ordinate Bench dated December 7, 2023 rendered in APO/30/2022 with CP/77/2012 (Fortune Furnitech Private Limited & Tapas Chakrabarty & Ors. -Vs- Asset Reconstruction Company (India) Ltd. And Anr.) and contends that, in the facts and circumstances of the present case, the winding up petition should not be transferred to the National Company Law Tribunal. He submits that the impugned order be set aside.
- 5.** Learned advocate appearing for the appellant draws the attention of this Court to the order admitting the appeal dated March 25, 2022 passed by the Co-ordinate Bench. He submits that, a

jurisdictional issue and substantial point of law is raised in the present appeal as was noted by the Co-ordinate Bench while admitting the appeal.

- 6.** Learned advocate appearing for the appellant submits that, since the winding up proceedings are yet to be concluded and that, since the appellant is required to continue with guarding the assets of the company (in liquidation) and since the bills of the appellant continue to remain unpaid, transferring the proceedings to the National Company Law Tribunal will be prejudicial to the appellant. If transfer is made, the appellant will be left without any remedy.
- 7.** The secured creditor is represented. Learned advocate appearing for the secured creditor relies upon (2021) 2 Supreme Court Cases 641 (Action Ispat And Power Pvt. Ltd. -Vs- Shyam Metalics And Energy Ltd.) and contends that, in terms of the ratio laid down therein, the winding up petition should be transferred.
- 8.** None appears for the official liquidator.
- 9.** A winding-up petition in respect of M. S. Glass Industries Limited now in liquidation was presented being CP/1127/2014 before the High Court. Such winding up petition was admitted by the Court. An order of winding up was passed in respect of such company now in liquidation on August 5, 2015.
- 10.** Official liquidator took possession of the assets of the company (in liquidation). The official liquidator by a letter dated August 31,

2015 appointed the appellant as an agency to provide security guards for protection of the assets of the company (in liquidation).

11. The order of winding up was passed under the provisions of the Companies Act, 1956. The Act of 1956 was repealed by the Companies Act, 2013. Section 255 of the Insolvency and Bankruptcy Code, 2015 stipulated that, the provisions of the Companies Act, 2013 shall be amended in the manner specified in the 11th Schedule. Section 434 of the Act of 2013 was amended with effect from November 15, 2016.

12. Section 434 of the Act of 2013 is as follows:-

“[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 subsection (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:

2 [Provided further that any party or parties to any proceedings relating to the winding up of companies pending before any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application of transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

3 [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

4 [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.]

5 [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 sub-section (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.]

(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.]”

13. In terms of the provisions of the Insolvency and Bankruptcy Code, 2015, and in view of the amendment introduced to the provisions of the Act of 2013, Companies (Transfer of Pending Proceedings) Rules, 2016 was promulgated. The Transfer Rules of 2016 provided, compulsory transfer of all winding-up proceedings pending before the High Courts to the NCLT at a stage prior to the service of the petition in terms of Rule 26 of the Companies (Court) Rules, 1959.

14. Section 434(1)(c) of the Act of 1956 were amended to provide for mandatory transfer of all winding-up proceedings from the High Court to the National Company Law Tribunal.
15. The effect of the transfer provisions introduced in the statute was considered by the Supreme Court in a number of authorities, one of them being Action Ispat And Power Pvt. Ltd. (Supra).
16. Action Ispat And Power Pvt. Ltd. (supra) in paragraph 22 laid down as follows:-

“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 pre-admission 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.”

17. Action Ispat And Power Pvt. Ltd. (supra) along with other authorities were considered by the Co-ordinate Bench in Fortune Furnitech Private Limited (supra). The Co-ordinate Bench considered various issues, one of which was what are the types of winding-up proceedings which are to be retained by High Court and not transferred to the Tribunal.

18. In answering such an issue, the Co-ordinate Bench noted in the facts of that case, that, there was no application for transfer of the proceeding made before the Company Court. The order impugned before it was passed suo motu without any application. It also noted that, the secured creditors introduced intending purchasers to the Court who were willing to buy the assets of the company (in liquidation) through which the claim of the secured creditors and others could be made.

19. In our understanding of Fortune Furnitech Private Limited (supra), the Co-ordinate Bench did not lay down any parameters

governing the field of the issue of transfer of winding-up petition to the National Company Law Tribunal broadly in respect of issue (a) that it framed. It limited its enquiry on issue (a) to the facts of the company before it only.

20. Action Ispat And Power Pvt. Ltd. (supra) is a binding authority on us. Fortune Furnitech Private Limited (supra) deals with the facts and circumstances of that particular case only without laying down broad guidelines.

21. In Action Ispat And Power Pvt. Ltd. (supra) Supreme Court is of the view that, a proceeding for winding-up pending before the High Court is mandatorily required to be transferred to the National Company Law Tribunal, save and except where, the winding-up proceedings reached a stage where it would be irreversible making it impossible to set the clock back. It also notes that so long as no actual sales of the assets of the company takes place, nothing irreversible would be done which would warrant the Company Court staying its hand on a transfer application made to it by a creditor or a party to the proceeding.

22. Applying such ratio of Action Ispat And Power Pvt. Ltd. (supra) in the facts and circumstances of the present case, we find that there is an application by the secured creditor for transfer of the proceeding to the National Company Law Tribunal, Kolkata. We also find that, the assets of the company (in liquidation) are yet to be put up for sale and at least not sold. Therefore, nothing

irreversible is done which would warrant the Company Court to not transfer the Company Petition on the application for the same.

23. Therefore, on the strength of the ratio of Action Ispat And Power Pvt. Ltd. (supra), the winding-up proceedings along with all connected applications therein are transferred to the National Company Law Tribunal, Kolkata, forthwith.

24. The department will transmit such records forthwith.

25. So far as the claim of the appellant is concerned, we grant leave to the appellant to raise such claim before the appropriate authority, in accordance with law.

26. APO/36/2022 along with the connected applications stand disposed of without any order as to costs.

(DEBANGSU BASAK, J.)

27. I agree

(MD. SHABBAR RASHIDI, J.)