



2025:DHC:7770



\$~CO.15

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 18.08.2025*

+ CO.PET. 400/2012 & OLR 104/2024

REGULUS INFRASTRUCTURE MANAGEMENTPetitioner

Through: Mr. Akhil Sachar, Ms. Sunanda
Tulsyan and Ms. Kashish
Maheshwari, Advocates.

versus

SUPER PROPERTY MAINTENANCE PVT LTDRespondent

Through: Mr. Abhishek Maratha, Standing
Counsel with Ms. Nupur Sharma,
Advocate for OL.
Mr. Kunal Godhwani and Ms. Kinjal
Chadha, Advocate for Applicant in
CA 405/2025.

CORAM:**HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)****CO.APPL. 405/2025 [Transfer of Petition]**

1. This is an Application filed by the Applicant seeking transfer of Petition to the National Company Law Tribunal [hereinafter referred to as "NCLT"].
2. Learned Counsel for the Applicant seeks to rely upon the judgment of the Supreme Court in *Action Ispat and Power Pvt. Ltd. vs Shyam Metalics and Energy Limited*¹ to submit that the winding up proceedings are not at an

¹ (2021) 2 SCC 641



advance stage and no irreversible steps have been taken by the Official Liquidator as no auction has been conducted by the Official Liquidator till today.

3. It is further contended by the learned Counsel for the Applicant that revival of this Company is not possible, and in such circumstances, the beneficial scheme under the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as “IBC”] would be more efficacious for resolution. The Applicant, therefore, prays for transfer of the Petition.

4. Learned Counsel for the Official Liquidator submits that in principal they have no objection to the transfer, however the liquidation expenses which have been incurred by the office of the Official Liquidator are required to be paid.

5. Learned Counsel for the office of the Official Liquidator confirms that no attachment orders have been issued by the office of the Official Liquidator in respect of any property, immovable or otherwise, and thus, in principal, no irreversible steps have been taken towards winding up of the Company but however a claim for liquidation expenses exists.

6. Section 434(1)(c) of the Companies Act, 2013 [hereinafter referred to as “Companies Act”] provides that all proceedings under the Companies Act would stand transferred to the National Company Tribunal [NCLT] and the Tribunal may proceed with such proceedings before the transfer. The fifth proviso to this Section permits an Applicant or a party to the winding up proceedings to file Application to transfer to the NCLT and states that such Application shall be dealt with by the NCLT as an Application for initiation of the corporate insolvency resolution process under the IBC. It is apposite



to set out this provision below:

“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;

(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 Court 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 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:

Provided further that any party or parties to any proceedings relating to the winding up of companies pending before the any court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application for 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).

(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.”

[Emphasis supplied]

7. The Supreme Court in ***Action Ispat*** case has held that where winding up petition pending before the High Court has not progressed to an advanced stage, it ought to be transferred to the National Company Law Tribunal. The Supreme Court has held that even post-admission of a winding-up Petition, and after the appointment of a liquidator, the discretion is vested in the Company Court to transfer such Petition to the NCLT. The relevant extract of the ***Action Ispat*** case is set out below:

“14. What becomes clear upon a reading of the three judgments of this Court is the following:

14.1. So far as transfer of winding-up proceedings is concerned, the Code began tentatively by leaving proceedings relating to winding up of companies to be transferred to NCLT at a stage as may be prescribed by the Central Government.

14.2. This was done by the Transfer Rules, 2016 (supra) which came into force with effect from 15-12-2016. Rules 5 and 6 referred to three types of proceedings. Only those proceedings which are at the stage of pre-service of notice of the winding-up petition stand compulsorily transferred to NCLT.

14.3. The result therefore was that post notice and pre-admission of



winding-up petitions, parallel proceedings would continue under both statutes, leading to a most unsatisfactory state of affairs. This led to the introduction of the 5th proviso to Section 434(1)(c) which, as has been correctly pointed out in Kaledonia [Kaledonia Jute & Fibres (P) Ltd. v. Axis Nirman & Industries Ltd., (2021) 2 SCC 403], is not restricted to any particular stage of a winding-up proceeding.

14.4. Therefore, what follows as a matter of law is that even post admission of a winding-up petition, and after the appointment of a Company Liquidator to take over the assets of a company sought to be wound up, discretion is vested in the Company Court to transfer such petition to NCLT. The question that arises before us in this case is how is such discretion to be exercised?

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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.”

[Emphasis supplied]

8. In the present case, the Petitioner had granted term loan to the Respondent which was secured by way of personal and corporate



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guarantees. Since the Respondent company was irregular in re-payment, their account was categorised as a non-performing asset on 24.04.2018.

8.1 One of the creditors of the Respondent company filed the present Petition seeking winding up of the Respondent company.

9. It is the case of the parties that after the appointment of the Official Liquidator, no steps have been taken for auction or sale of any immovable or movable assets of the company and that no substantive steps have been taken by the Official Liquidator for sale of its assets.

10. In view of the law laid down by the Supreme Court in *Action Ispat* case and having regard to the fact that no auction or sale of assets has yet been undertaken, there is no impediment to the transfer of these proceedings to the NCLT. This Court is, therefore, satisfied that the Petition can be transferred to the NCLT for being dealt with in accordance with the provisions of the Code.

11. The Petition is disposed of in the foregoing terms. Pending Application(s) stand closed.

12. The Applicant is at liberty to take appropriate steps in accordance with law for further proceedings before the NCLT. The office of the Official Liquidator is also at liberty to take appropriate steps in accordance with law for redressal of its grievances.

13. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 18, 2025/pa