

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE**

**APO/44/2025
With CP/413/2015**

CFL CAPITAL FINANCIAL SERVICES LTD. (IN LIQN.)

-AND-

ANIL KUMAR MURARKA

-VERSUS-

THE OFFICIAL LIQUIDATOR AND ANR.

BEFORE:

HON'BLE JUSTICE DEBANGSU BASAK

-A N D-

HON'BLE JUSTICE MD. SHABBAR RASHIDI

For the Appellant : *Mr. Jayanta Kumar Mitra, Sr. Adv.*
Mr. Deepnath Roychowdhury, Adv.
Ms. Urmila Chakraborty, Adv.
Mr. Bhaskar Dwivedi, Adv.
Mr. Tamoghna Saha, Adv.
Ms. Preksha Manot, Adv.

For the Official liquidator : *Ms. Tanushree Dasgupta, Adv.*

HEARD ON : 08.06.2026

DELIVERED ON : 08.06.2026

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of a creditor of a company (in liquidation) and directed against order dated July 28, 2023.

2. By the impugned order, learned Single Judge directed transfer of the winding-up petition being CP/413/2015 along with a connected application being CA/1/2017 to the National Company Law Tribunal (NCLT), Kolkata in terms of Section 434 of the Companies Act, 2013.
3. Learned Senior Advocate appearing for the appellant submits that, the impugned order does not disclose that, any application for transfer of the pending winding up proceeding was filed at the behest of any party. He refers to Section 434 of the Act of 2013 and, particularly, to the proviso to Section 434(1)(c) thereof. He submits that, the last proviso to Section 434(1)(c) of the Act of 2013 requires an application to be made for transfer of the winding up proceeding.
4. Learned Senior Advocate appearing for the appellant relies upon **1985 (1) SCC 591 (S. Sundaram Pillai & Ors. vs. V. R. Pttabiraman & Ors.)** in support of the proposition that the proviso can regulate the provisions of the statute. He contends that, in the facts and circumstances of the present case, the last proviso to Section 434(1)(c) of the Act of 2013 changed the very concept of the intendment of the enactment by insisting on the mandatory condition of an application being filed in order to make the enactment workable.
5. Learned Senior Advocate appearing for the appellant refers to Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016 and submits that, an application for transfer is necessary. Company Court cannot transfer a winding up petition suo moto.

6. Learned Senior Advocate appearing for the appellant relies upon **2023 SCC OnLine Cal 2357 (Abhijeet Projects Ltd. vs. Jogesh Khanna)** and submits that, the issue as to whether the Company Court can *suo motu* transfer a proceeding relating to winding up to NCLT or can such transfer only be made pursuant to an application by one of the parties, was answered. He submits that, in the facts and circumstances of the present case, at least to the knowledge of the appellant, there is no proceeding pending as against the company (in liquidation) under the provisions of the Insolvency and Bankruptcy Code, 2016.
7. Learned Senior Advocate appearing for the appellant relies upon **2021 (2) SCC 403 (Kaledonia Jute and Fibres Pvt. Ltd. vs. Axis Nirman & Industries Ltd. & Ors.)** and submits that, a creditor of a company (in liquidation) was recognized to be a party who is entitled to apply for transfer of a pending winding up proceeding. He submits that, the appellant is a creditor of the company (in liquidation). In response to a query of the Court he submits that, the claim of the appellant is in the region of Rs.5.69 lakhs on account of services rendered.
8. Official Liquidator is represented.
9. The issue as to transfer of pending winding up proceeding before the High Court to the NCLT subsequent to the coming into effect of the Act of 2013 received consideration of the Hon'ble Supreme Court in **Kaledonia Jute and Fibres Pvt. Ltd. (supra); 2021 (2) SCC 641 (Action Ispat and Power Pvt. Ltd. vs. Shyam Metalics and Energy**

Ltd.) and 2021 (4) SCC 435 (A. Navinchandra Steels Pvt. Ltd. vs. Srei Equipment Finance Ltd. & Ors.) The last of the two authorities noted in the previous sentence are referred to and relied upon in the impugned order of the learned Single Judge.

10. In point of time, **Kaledonia Jute and Fibres Pvt. Ltd. (supra)** was first amongst the three authorities noted in the previous paragraph. **Kaledonia Jute and Fibres Pvt. Ltd. (supra)** as well as **Action Ispat and Power Pvt. Ltd. (supra)** were rendered by Three-Judges Bench.
11. In **Kaledonia Jute and Fibres Pvt. Ltd. (supra)** the Hon'ble Supreme Court considered the issue as to circumstances under which a winding-up proceeding pending on the file of a High Court could be transferred to NCLT and at whose instance such transfer could be ordered. It held that, the winding up proceeding could be transferred at the instance of any party to the proceeding. The restrictions under Rules 5 and 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016 relating to the stages at which a transfer could be ordered, did not apply to the case of a transfer covered by the 5th proviso to Clause (5) of Sub-section (1) of Section 434. In the facts and circumstances of that case, the impugned order of the High Court rejecting the petition for transfer of the winding up proceeding on the basis of Rule 26 of the Companies (Court) Rules, 1959 was held to be erroneous and set aside.
12. In **Action Ispat and Power Pvt. Ltd. (supra)** Hon'ble Supreme Court held as follows:

“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 ?”*

13. Question raised in paragraph 14.4 of **Action Ispat and Power Pvt.**

Ltd. (supra) was answered in paragraph 25 which is as follows:-

“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.”

14. **A. Navinchandra Steels Pvt. Ltd. (supra)** considered both **Action Ispat and Power Pvt. Ltd. (supra)** as well as **Kaledonia Jute and Fibres Pvt. Ltd. (supra)**. It held that transfer of pending admitted winding up petition to NCLT for adjudication is permissible. It clarified the irreversible/irretrievable act/stage in the winding up proceeding.
15. In the facts and circumstances of the present case, the learned Single Judge noted, that a company was directed to be wound up by order dated October 6, 2015. The winding up was at the behest of a person claiming to be a creditor of the company (in liquidation).
16. The impugned order also noted that the Official Liquidator was directed to take possession of the assets and properties of the company (in liquidation). There was a status report filed by the Official Liquidator suggesting that three immovable properties constitute a portion of the assets of the company (in liquidation). It also noted that, save and except taking possession of the assets of the company (in liquidation), the Official Liquidator did not take any effective steps in the liquidation proceeding. The immovable property remained unsold.
17. In the facts and circumstances of the present case, therefore, there is no material on record to arrive at the finding that, the winding up

proceeding attained an irreversible or irretrievable stage as enunciated in **Action Ispat and Power Pvt. Ltd. (supra)** and **A. Navinchandra Steels Pvt. Ltd. (supra)**.

18. Rewards placed before Court as well the recordings in the impugned Order establish that the learned Judge sought a report from the Official Liquidator as to the status of the proceedings pending prior to exercising powers under Section 434 of the Act of 2013.
19. The next issue is whether or not, the Company Court can *suo motu* transfer the winding up proceeding which did not attain the irreversible or irretrievable stage. Such question was raised before the co-ordinate Bench in **Abhijeet Projects Ltd. vs. Jogesh Khanna (supra)**. The co-ordinate Bench held that insisting on an application for transfer would be a mere formality.
20. 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 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 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 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.

(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.

21. Section 434 (1)(c) of the Act of 2013 mandates a transfer of pending winding up proceeding to NCLT. Hon'ble Supreme Court in **Action Ispat and Power Pvt. Ltd. (supra)** and **A. Navinchandra Steels Pvt. Ltd. (supra)** held that, unless the winding up proceeding attain an irreversible or irretrievable stage, the same was required to be transferred to NCLT. The last proviso to Section 434(1)(c) of the Act of 2013 does not make an application for transfer to be mandatory. It permits a party to apply for transfer, in the event, the proceedings are not already transferred by the relevant Company Court.

22. ***Kaledonia Jute and Fibres Pvt. Ltd. (supra)*** clarified as to who can be considered as a party to a winding up proceeding entitled to apply to a Company Court for transfer. It cannot be construed to mean that, the transfer of a winding up proceeding which did not attend irreversible or irretrievable stage, in accordance with ***A. Navinchandra Steels Pvt. Ltd. (supra)*** and ***Action Ispat and Power Pvt. Ltd. (supra)*** cannot be transferred *suo motu* by the Company Court.
23. Rule 5 of the Companies (Transfer of Pending Proceeding) Rules, 2016 provides for transfer of pending proceeding of winding up in the ground of inability to pay debts. Sub Rule (1) of Rule 5 provides for a scenario where, the winding up petition although filed was not served upon the respondent under Rule 26 of the Companies (Court) Rules, 1959.
24. As noted above, Section 434(1)(c) mandates transfer of all proceedings under the Companies Act, 1956 including proceeding for winding up pending immediately before the date from which, the NCLT became established. While, the mandatory provisions of transfer, under Section 434(1)(c) of the Act 2016, is a genus, Rule 5 of the Companies (Transfer of Pending Proceedings) Rules 2016 is a specie thereunder. The last proviso to Section 434(1)(c) of the Act of 2016 permits a party to proceeding to file an application for transfer.
25. The provisions of the Companies (Transfer of Pending Proceedings) Rules, 2016 along with the Act of 2016 were considered by the Supreme Court in ***Kaledonia Jute and Fibres Pvt. Ltd. (supra)***. The

same cannot be construed to lay down that, every order of transfer must be on the basis of an application filed for transfer.

26. The scheme laid down under Section 434 of the Act of 2016 is such that, application of judicial mind of the Company Court is required to order a transfer, in the event an issue as to its transfer is raised. It is so recognized in ***Kaledonia Jute and Fibres Pvt. Ltd. (supra), Action Ispat and Power Pvt. Ltd.*** as well as in ***Navinchandra Steels Pvt. Ltd (supra)***. A winding up proceeding which attained the irreversible/irretrievable stage, is not required to be transferred.
27. In the facts and circumstances of the present case, the impugned order discloses application of judicial mind by the Company Court in directing transfer of the proceedings. Company Court called for the status report. Company Court considered the status report. Company Court did not find the winding up petition to reach an irreversible/irretrievable stage preventing its transfer. Consequently the order directing transfer of the winding up petition cannot be faulted.
28. In view of the discussion above, we find no merit in the present appeal. Accordingly, APO/44/2025 is dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

29. I agree.

(MD. SHABBAR RASHIDI, J.)