



2025:DHC:5537



\$~CO.5

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

Date of Decision: 10.07.2025

+ **CO.PET. 725/2014**

M/S TRIGO IMAGEMENT SLOVAKIAPetitioner

Through: Mr. Viraat Tripathi, Adv.

versus

MADHUSUDAN AUTO LIMITEDRespondent

Through: Mr. Pradeep Aggarwal, Mr. Aman
Kumar, Advs.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed under Section 433(1)(e) of the Companies Act, 1956 for winding up of the Respondent Company.
2. Learned Counsel for the Respondent submits that in terms of the judgment of the Supreme Court in *Action Ispat and Power Pvt. Ltd. vs Shyam Metals and Energy Limited*¹ and Notification G.S.R. 1119(E) dated 07.12.2016 issued by the Ministry of Corporate Affairs, the matter is to be transferred to the National Company Law Tribunal for adjudication.
3. Learned Counsel for the Petitioner concurs with this contention.
4. A review of the record shows that the winding up petition although pending for some time before this Court is at a preliminary stage. The petition has not been admitted and thus the Professional Liquidator or Official Liquidator has not been appointed. In fact, no substantive orders have been passed in this petition for several years.

¹ (2021) 2 SCC 641



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5. 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



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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]

6. Accordingly, the Petition is transferred to the National Company Law Tribunal. The Petitioner is at liberty to take appropriate steps in accordance with law for further proceedings before the National Company Law Tribunal.
7. The Petition is disposed of in the afreging terms.
8. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JULY 10, 2025/jn/r