



\$~CO.6

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

% *Date of Decision: 4th February, 2025*

+ **CO.PET. 193/2016, CO.APPL. 857/2016, CO.APPL. 858/2016 & CO.APPL. 546/2017**

COWI INDIA PVT LTDPetitioner
Through: Mr. Sanjay Gupta & Ms. Abhilasha Sharma, Advocates.

versus

PINNACLE AIR PVT LTDRespondent
Through: Dr. Amit George, Mr. Manan Batra, Mr. Varun Tyagi & Ms. Suparna Jain, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. (Oral)

1. The present Company Petition No. 193/2016 has been filed under Sections 433(e)/434(1)(a)/439 of the Companies Act, 1956, ('**Companies Act**') seeking the winding up of the Respondent Company - Pinnacle Air Pvt. Ltd., on the grounds of its inability to pay its debts to the petitioner company - COWI India Pvt Ltd.

2. The matter has been pending adjudication before this Court, and the respondent has now sought a transfer of the matter to the National Company Law Tribunal ('**NCLT**'), Delhi Bench.

3. In view of the same, by order dated 31.07.2024, this court called upon the petitioner to make submissions as to why the



present matter should not be transferred to the NCLT.

4. The learned counsel for the petitioner opposes the transfer to the NCLT and places reliance on the judgment of the Calcutta High Court in ***Abhijeet Projects Ltd. v. Yogesh Khanna : 2023 SCC OnLine Cal 2357***, where it was held that a petition cannot be transferred to the NCLT *suo motu* unless an application is formally made. He argues that since no such application is filed in this case, the matter should not be transferred.

5. The learned counsel for the respondent, on the other hand, submits that there is no bar on this Court transferring the matter to the NCLT, even without a formal application.

6. He submits that the present petition ought to be transferred to NCLT in view of Section 434(c) of the Companies Act. He submits that the present case is squarely covered by the decision in the case of ***Gurbakhsh Singh BA, Builders P. Ltd. v. Fortis Hospital Ltd. : 2024 SCC OnLine Del 3480***, wherein a Coordinate Bench of this Court clarified that even post-admission, a winding-up petition can be transferred if no irreversible steps have been taken.

7. He states that as far as the requirement of moving a formal application for transfer of proceedings is concerned, the relevant provision of the statute itself uses the word 'may', therefore, there arises no need for an application to be moved for the same.

8. He submits that no Official Liquidator has been appointed, no orders have been passed for the sale of assets, and no irreversible steps have been undertaken in the present case. He



argues that this is precisely the kind of matter that should be transferred to the NCLT under Section 434 of the Companies Act, 2013, which mandates such transfers.

9. The short question that falls for consideration before this Court is whether a winding-up petition filed under the Companies Act, 1956, at a stage where no irreversible steps have been taken towards liquidation, can and should be transferred to the NCLT at the instance of the respondent.

10. The learned counsel for the petitioner resists the transfer, arguing that a formal application is necessary for such a transfer, relying on the decision in *Abhijeet Projects Ltd. v. Yogesh Khanna* (*supra*). The learned counsel for the respondent, on the other hand, contends that this Court has the inherent jurisdiction to transfer the matter, even *suo motu*, if warranted in the interests of justice, as per the ruling in *Gurbakhsh Singh BA, Builders P. Ltd. v. Fortis Hospital Ltd. : 2024 SCC OnLine Del 3480*.

11. Upon an examination of the record, it is evident that the present winding-up petition is a non-starter. The proceedings remain at a preliminary stage, with neither a provisional liquidator nor an official liquidator having been appointed to assume control over the assets and affairs of the respondent company. Consequently, no substantive orders have been passed in this petition for seven years.

12. At the outset, it would be apposite to reproduce Section 434 of the Companies Act, 2013 which provides for the transfer of proceedings relating to winding up, pending before the High



Courts, to the NCLT. The same 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 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."

13. The aforesaid provision has been interpreted by the Hon'ble Apex Court in the case titled ***Action Ispat and Power P. Ltd. v. Shyam Metalics and Energy Ltd. : (2021) 2 SCC 641***, wherein it was held that those winding up proceedings pending before the High Courts, which have not progressed to an advanced stage, ought to be transferred to the NCLT. The relevant extract of the said decision is as follows:

"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 preadmission stage,



given the beneficial result of the application of the Code, such winding up proceeding is compulsorily transferable to the National Company Law Tribunal 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 National Company Law Tribunal 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. In the opinion of this court, the present matter is squarely covered by the decision in **Gurbakhsh Singh BA, Buliders (P) Ltd. v. Fortis Hospital Ltd.**, (*supra*), where this Court extensively considered the applicability of Section 434 of the Companies Act, and the transfer of pending winding-up petitions to the NCL. It was held as under :

“13. Thus, what follows is that the entire statutory scheme in respect of winding up of companies, as also a catena of judgments has been considered by the Supreme Court in holding that even post admission, such a petition may be transferred by the High Court to the National Company Law Tribunal, as long as no irreversible steps have been taken pursuant to the winding up of the company concerned. Further, the submission of learned counsel for the petitioner that no application seeking transfer of the present petitions to



the National Company Law Tribunal has been moved, cannot be countenanced. A decision to transfer the matter to the National Company Law Tribunal is a matter of jurisdiction of the court, which transfer can be effected suo motu by this court and mere moving or non-moving of an application by any of the parties seeking such transfer, will not be decisive.

14. In view of the foregoing discussion, it is the opinion of this court, that since no substantive proceedings have been undertaken towards winding up of the company, the present petitions cannot be allowed to be continued before this court. Hence, the instant petitions are transferred to the National Company Law Tribunal. It is left to the National Company Law Tribunal to consider these matters on merits and pass appropriate orders in accordance with law.”

15. In the case of ***Abhijeet Projects Ltd. v. Yogesh Khanna*** (*supra*), the Division Bench of the Calcutta High Court considered multiple appeals arising from the *suo motu* transfer of winding-up proceedings to the NCLT by the learned Single Judge. The Bench set aside two of these transfers, holding that a winding-up petition cannot be transferred in the absence of a formal application by an interested party and that the Single Judge had exceeded jurisdiction by directing the transfer without any request from the parties involved. However, in one instance, the Bench upheld the transfer, observing that secured creditors had expressly consented to the transfer and there was no substantial progress in the liquidation proceeding, and thus, filing a formal application in such a case would be a mere formality. The Court clarified that where parties explicitly seek transfer or indicate their consent, the absence of a formal application should not be an impediment, as the transfer serves the broader objective of streamlining insolvency resolution under the IBC framework.



16. In the present case, the respondent has submitted written submissions explicitly requesting the transfer of the winding-up petition to the NCLT. In view of the respondent's express request for transfer and the legal precedents affirming that a formal application is not indispensable, this Court finds no impediment in treating the written submissions as an application for transfer of the present petition to the NCLT. The Court is not bound to insist on a separate application when the intent of the party seeking transfer is evident from the record.

17. Thus, considering the express request by the respondent, the fact that no substantive proceedings have been undertaken towards winding up of the company, the present petition cannot be allowed to be continued before this Court. Hence, the instant petition is transferred to the NCLT, Delhi Bench, for further proceedings.

18. The electronic record of the present petition be transmitted to the NCLT within a period of one week by the registry.

19. List before the NCLT on 10.03.2025. The parties herein are directed to appear before the NCLT on the said date. The interim orders passed by this court in these petitions, if any, shall continue till the said date.

20. In view of the aforesaid, the instant company petition as well as pending applications, if any, are accordingly disposed of.

AMIT MAHAJAN, J

FEBRUARY 4, 2025

CO.PET. 193/2016

Page 8 of 8