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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment Reserved on: 02.09.2025**Date of Decision: 12.09.2025*

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CO.PET. 885/2015, CO.APPL. 4198/2016. CO.APPL. 85/2021, CO.APPL. 536/2021, CO.APPL. 607/2021, CO.APPL. 168/2022, CO.APPL. 243/2022, CO.APPL. 173/2023, CO.APPL. 347/2023, CO.APPL. 475/2023, CO.APPL. 548/2023, CO.APPL. 217/2024, CO.APPL. 339/2024, CO.APPL. 350/2024, CO.APPL. 382/2024, CO.APPL. 422/2024, CO.APPL. 457/2024, CO.APPL. 695/2024, CO.APPL. 696/2024, CO.APPL. 698/2024, CO.APPL. 743/2024, CO.APPL. 744/2024, CO.APPL. 921/2024, CO.APPL. 922/2024, CO.APPL. 1059/2024, CO.APPL. 1060/2024, CO.APPL. 1067/2024, CO.APPL. 97/2025, CO.APPL. 110/2025, CO.APPL. 176/2025, CO.APPL. 178/2025, CO.APPL. 277/2025, CO.APPL. 278/2025, CO.APPL. 279/2025, CO.APPL. 281/2025, CO.APPL. 282/2025, CO.APPL. 283/2025, CO.APPL. 284/2025, CO.APPL. 285/2025, CO.APPL. 286/2025, CO.APPL. 287/2025, CO.APPL. 288/2025, CO.APPL. 289/2025, CO.APPL. 290/2025, CO.APPL. 295/2025, CO.APPL. 296/2025, CO.APPL. 320/2025, CO.APPL. 335/2025, CO.APPL. 428/2025, CO.APPL. 429/2025, CO.APPL. 498/2025, CO.APPL. 525/2025, CO.APPL. 526/2025, CO.APPL. 527/2025, CO.APPL. 528/2025, CO.APPL. 529/2025, CO.APPL. 530/2025, CO.APPL. 531/2025, CO.APPL. 532/2025, CO.APPL. 533/2025, CO.APPL. 571/2025, CO.APPL. 572/2025, CO.APPL. 573/2025, CO.APPL. 574/2025

COL. P.K. UBEROI (RETD.) & ANR.

.....Petitioners

Through:

versus

VIGNESHWARA DEVELOPWELL PVT. LTD
& ORS.

.....Respondents

Through: Ms. Anannya Ghosh, Ms. Mrinalini
Mishra & Ms. Kashish Chhabra, Adv.
for R-2/Mr. Sunil Dahiya.
Mr. Shashank Bajpai, CGSC & Mr.



Shriram Tiwary, Government Pleader
for R/SFIO/Union of India

Mr. Sumit K. Batra, SC for OL.

Mr. Robin Ratnakar Davis & Ms.
Neiting Khongsai, Advs. for Ex-
Director Sanjay Kumar.

Mr. Bharat Gupta, Advs. for ISS and
VVA.

Ms. Pruti Gupta, Ms. Henna George
& Ms. Sunidhi San, Advs. for
Applicant in CA.428/2025.

Mr. R. Ramachandran, SSC with Mr.
Prateek Dhir, Adv. for CGST.

Ms. Aditi Mohan, Mr. Divya Gyan &
Ms. Palak Bhargava, Adv. for R-4 in
CA. 1067/2024.

Ms. Bhabna Das & Mr. Arpit Kumar
Mishra, Advs. for R/Objectors in CA.
347/2023.

Mr. Prabhakar Mehra, Adv. for
Applicant in CA. 168/2022.

Mr. Sandeep Choudhary, Ms. Yati
Dahiya & Mr. Garnav Kumar, Advs.
for Applicant in CA. 339/2024.

Mr. Puneet Dadech, Adv. for
Applicant in CA. 41/2019 &
509/2018.

Mr. Jaideep Singh Sandhu, Ms.
Meera Kaur & Mr. Dilmol Singh
Sandhu, Advs. for Applicant in CA.
382/24, 439/24, 921/24, 922/24,
110/25 & 498/25.

Mr. Bharat Gupta, Mr. Vishesh
Chauhan, Mr. Ishan Srivastava & Ms.
Shagun Gupta, Adv. for
Applicants/ISS & VVA in CA.
548/22, 743/24, 744/24, 1060/24 &
1067/2024.

Mr. Arjun Nanda, Adv. for Applicant



in CA. 335/25.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

JUDGMENT

TARA VITASTA GANJU, J.:

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CO.APPL. 428/2025 [Transfer of Proceedings To NCLT]

PREFACE

1. The present Company Petition No. 885/2015 has been filed under Sections 433(e), 434 and 439 of the Companies Act, 1956, [hereinafter referred to as “1956 Act”] seeking the winding up of the Respondent Company – Vigneshwara Developwell Pvt. Ltd., on the grounds of its inability to pay its debts to the Petitioner(s).

2. The matter has been pending adjudication before this Court, and Ms. Lalita and Mr. Sudeep Malik [hereinafter referred to as the “Applicants”] has now sought a transfer of the matter to the National Company Law Tribunal [hereinafter referred to “NCLT”], Delhi Bench.

2.1 It is the case of the Applicants that they had invested in a real estate project called Aquarius Cyber Park, Sector 74, Gurgaon, Haryana [hereinafter referred to as the “Project”] pursuant to an agreement dated 24.10.2012 for a commercial unit admeasuring 200 sq. feet located on the



ground floor, paying Rs.24 lakhs toward the same. The Applicant No.1 is stated to be a Senior Citizen who invested her entire retiral benefits into this Project and despite repeated requests and follow ups, the Respondent Company has failed to complete the Project or handover possession of the allotted commercial units to the Applicants and several other persons [collectively referred to as the “Allottees”].

3. This Court had by its order dated 18.08.2025 had passed a direction to complete pleadings in this Application, since the parties had contended that they have no objection to the transfer of these proceedings, given the possibility of a revival of the Respondent Company, for the benefit of the public at large.

4. The short question that falls for consideration before this Court is whether this Petition is at a stage where no irreversible steps have been taken towards liquidation, and should be transferred to the NCLT.

BRIEF FACTS

5. Briefly the facts are that the winding up Petition was admitted by the Court against the Respondent Company - Vigneshwara Developwell Pvt. Ltd., on 22.07.2016 at the instance of several allottees, who are also financial creditors in terms of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as the “IBC”]. Pursuant thereto, on 27.01.2020, a scheme for revival of the Company was approved by this Court Subsequently, and in view of no concrete proposals coming forth and non-infusion of the requisite funds by the propounders of the Scheme, the Scheme was set aside by an order passed by this Court on 04.01.2023. On



that date, Official Liquidator was also appointed as the Liquidator of the Company.

6. It is the case of the Allottees that the existence of a debt and a default already stand admitted, thus, it is contended that, since the winding up Petition has been admitted, the matter be transferred to the NCLT and an Interim Resolution Professional be appointed to take over the assets of the company to proceed with the Corporate Insolvency Resolution Process [CIRP] under Section 7 of the IBC.

ARGUMENTS BY THE APPLICANTS

7. Learned Counsel for the Applicants submits that the present Petition ought to be transferred to NCLT in view of Section 434(1)(c) of the Companies Act, 2013 [hereinafter referred to as the “Act of 2013”]. Ms. Gupta further submits that the present case is squarely covered by the decision of the Supreme Court in the case of *Action Ispat & Power (P) Ltd. v. Shyam Metalics & Energy Ltd.*¹, wherein it was held that even post admission, a winding-up petition can be transferred if no irreversible steps have been taken.

7.1 Learned Counsel for the Applicants submits that although the Official Liquidator was appointed and the assets of the company were taken over by the Official Liquidator, however, no irreversible steps have been taken since the assets have not yet been sold and are all in the custody and possession of the Liquidator. It is further contended that no disbursement of funds has made by the office of the Official Liquidator either.

¹ (2021) 2 SCC 641



7.2 Learned Counsel for the Applicants also relies upon the judgment of the Supreme Court in the case of *A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd. & Ors.*² to submit that in similar circumstances, it was held by the Supreme Court that the IBC has an over-riding effect over all other provisions which would include Section 446 of the 2013 Act. In addition, it was held that unless irreversible and irretrievable steps are taken with respect to the property of the company in liquidation., there is no bar to the matter being transferred in terms of the provisions of the Section 7 or Section 9 of the IBC.

7.3 Learned Counsel for the Applicant further submits that the pendency or initiation of criminal proceedings, does not in any manner operate as a bar to the institution or continuation of proceedings under the IBC including preferential undervalued and fraudulent transactions under Sections 43 to 51 of the IBC and Section 66 of the IBC before the NCLT. In view thereof, it is urged that the objections sought to be raised by the promoters of the Respondent Company are liable to be rejected.

7.4 Learned Counsel for the Applicants lastly submits that this is a fit case for transfer of proceedings to the NCLT since the properties of the Applicants and hundreds of other similar investors, who have been deprived of their hard-earned money by the Respondent Company, would be benefitted. In addition, the scheme of arrangement that was proposed by the Ex-Director/Promoter before this Court was rejected and thus it is expedient that the matters be adjudicated by the NCLT.

² (2021) 4 SCC 435



ARGUMENTS BY THE OFFICIAL LIQUIDATOR

8. Learned Counsel for the Official Liquidator has filed a detailed Reply to this Application, wherein it has been clarified that the Official Liquidator is in custody of certain properties and assets of the Respondent Company/Company in liquidation. It has also been stated therein that the Official Liquidator has had these properties valued and has attached the valuation report thereto. Learned Counsel has contended that the official valuer has submitted his report on 21.01.2024 and in terms of such report, the detail of the assets under possession of the Official Liquidator is set out below:

“(A) Ground floor 12,13,14 & 15 Augusta Point, Sector-53, Golf Link Road, Gurgaon, Haryana – The property is in the name of ex-directors of the company.

(B) Aquarius Business Park, Sector-74, Gurgaon, Haryana – License was granted by Town and Country Planning Department, Haryana for setting up a Cyber Park. The property was allotted in the name of Aquarius Buildcon Pvt. Ltd. in 2009 and the licence was cancelled on 20.07.2015. Further, HSIIDC has certain dues against the said plot.

(C) Land at Village Begumpur Khatola, NH-8, Sector-74, Gurgaon – Title Suit pending [Ramphal & Ors. V Aquarius Buildcon Pvt. Ltd.]

(D) CP-2, Sector-8, Near Antraj, IMT Manesar, Gurgaon - Half constructed site having outstanding dues of Rs. 56,50,94,408/- of HSIIDC, time period of implementation of project was 09.05.2015 and as per HSIIDC plot is liable to resume.

(E) D-16/C, Bhagwani House, Hauz Khas, New Delhi- 110016. The property documents are not available, steps are being taken to ascertain the title docs. This address has been used by the Dahiya Brothers for all their companies. Title documents of the said property have not been made available to the Official Liquidator.”

8.1 It is contended by the Official Liquidator that in view of the developments in the interregnum period, the transfer of proceedings is a viable alternative. Learned Counsel for the Official Liquidator submits that



since the final order of winding up was passed, about 1250 investors and claimants have lodged their claims with the office of Office Liquidator. It is stated that even today, there are multiple claim petitions being filed by the claimants.

8.2 Learned Counsel for the Official Liquidator further contends that the framework under the IBC vests the NCLT with broader and more effective powers to deal with wrongdoings including preferential undervalued and fraudulent transactions under Sections 43 to 51 of the IBC and Section 66 of the IBC. It is stated that the IBC would also offer revival of the Respondent Company keeping a possibility of preserving the corporate debtor as a “going concern” to maximize the value of its assets for the benefit of all stakeholders.

8.3 Lastly, learned Counsel for the Official Liquidator has also submitted that Serious Fraud Investigation Office [SFIO] has been conducting an extensive investigation in the matter of the Respondent Company and 16 other group companies on account of wrong doings and diversion of funds and assets of the companies for the personal benefits of its Ex-Directors.

ARGUMENTS BY THE EX-DIRECTORS

9. Learned Counsel for Ex-Directors oppose this Application. It is contended that the IBC is primarily intended to secure revival of the corporate debtor, however, in the present case, the winding up process has irreversibly transitioned from revival to liquidation under the 1956 Act. It is contended that once there are irreversible steps in law, the High Court contains the jurisdiction to continue with the proceedings.



9.1 Reliance in this behalf is placed by learned Counsel on the judgement of a Coordinate Bench of this Court in the case of *Deutsche Trustee Company Ltd. v. Tulip Telecom Ltd.*³ to submit that in similar circumstances, the Coordinate Bench has held that where the Official Liquidator had taken possession of certain moveable assets and properties of the company, the proceedings have reached an advanced stage, and hence the Petition cannot be transferred to the NCLT.

ARGUMENTS BY THE ALLOTTEES

10. In addition, arguments have also been conducted by the Investors Sanghars Samiti and Vigneshwara Victims Welfare Association. Learned Counsel, Mr. Bharat Gupta, appearing for these parties have made submissions supporting the Applicants. Learned Counsel submits that where no actual sale of properties has taken place and nothing irreversible has been done, the matter can be transferred to the NCLT. It is contended that despite the liquidation order, the proceedings are still at a nascent stage.

10.1 Learned Counsel submits that the interest of the creditors, which is more than 1,700 small investors, is involved and there is no opposition to this Application, other than one Ex-Director. Reliance is placed by learned Counsel on the judgement of the Supreme Court in the case of *Kaledonia Jute & Fibres (P) Ltd. v. Axis Nirman & Industries Ltd. & Ors.*⁴, and the *Gurbakhsh Singh BA, Builders P. Ltd. v. Fortis Hospital Ltd.*⁵ in support of its contentions.

³ 2023 SCC OnLine Del 6185

⁴ (2021) 2 SCC 403

⁵ 2024 SCC OnLine Del 3480



10.2 Lastly, it is submitted that the exercise of power to transfer proceedings to NCLT is only procedural and no substantive rights are being adjudicated upon. Since IBC is a special code and NCLT is a specialised forum, the proceedings would take place there at a much faster pace.

ANALYSIS AND FINDINGS

11. Although the factual matrix in this matter has briefly been set out above, for the purposes of this Application, the following facts are essential:

11.1 By an order dated 22.07.2016, this Court admitted the present Petition and appointed the Official Liquidator as the Provisional Liquidator directing him to take over all the assets and books of accounts and records of the Respondent Company forthwith.

12. Subsequently, an Application was filed by promoters of the Respondent Company and its sister concern under Section 391 to 393 of the 1956 Act, being a scheme for arrangement [hereinafter referred to as the “Scheme”]. This Court examined the Scheme and the objections to the Scheme, and by its judgement dated 27.01.2020, passed an order directing that the Scheme is just, fair and reasonable and approved the Scheme, subject to supervision of the Court through a retired Judge of the Court.

12.1 It is apposite to set out the relevant extract of the judgement dated 27.01.2020 passed by this Court, as follows:

*“38. Keeping in view the facts of this case, in my opinion, the Scheme as a whole is just, fair and reasonable. There is no violation of any statutory provisions. **It is in the interest of justice that the Scheme is approved subject to supervision of this court through a retired Judge of this Court.**”*

39. The Scheme is accordingly approved subject to the following:-



(i) *Mr. Justice Vinod Goel (Retd.) (Mobile No.9910384637) is appointed as the Court Appointed Supervisor to supervise implementation of the Scheme/ **The Propounders would be entitled to implement the Scheme, as above, under supervision of the Court Appointed Supervisor.***

(ii) *The Court Appointed Supervisor will ensure that the initial task as stipulated in the Scheme are completed expeditiously in a time bound manner. The OL will permit the promoters to implement the Scheme, as stated above, under the supervision of the Court Appointed Supervisor.*

(iii) ***The propounders of the Scheme will be permitted to open a separate** escrow account where all revenues received pursuant to the revival scheme would be deposited. The escrow account would be operated under the supervision of the court appointed supervisor.*

(iv) *The Court Appointed Supervisor is empowered to pass any directions or orders to the promoters for the purpose of implementing of the Scheme.*

(v) ***The functioning of the Scheme shall be reviewed by the Company Court after three months.** If necessary, this court would be at liberty to pass further directions as the developments may require.*

(vi) *The fees of the Court Appointed Supervisor is fixed at Rs.1,00,000/- plus out of pocket expenses per month. This will be subject to enchancement thereafter, if required.*

(vii) *I have noticed that the Scheme in para 85 states that the statutory authorities including ROC, Income Tax Department, Service Tax Department and Value Added Tax Department would be directed not to initiate proceedings in respect of non-compliance on the part of the companies, the promoters, Directors, Shareholders for a period of six months. The statutory authorities including DTCP, HSIIDC and Income Tax Departments were also to waive off interest/penalties charged/levied for noncompliance under applicable laws. I may only clarify that the Scheme is approved subject to a direction to the said departments may take a lenient view while dealing with the company keeping in view the attempts to revive the company.”*

[Emphasis Supplied]

13. Subsequently however, the parties including the Official Liquidator had submitted that the Scheme propounded has become unworkable, and in this regard, submissions were made by various stakeholders, including for the Vigneshwara Victims Welfare Association and the Investors Sanghars Samiti and also for individual investors.



13.1 This Court by its order dated 04.01.2023, while observing that the pre-requisite for implementation of the Scheme, which included the clearance of the dues of the statutory authorities, after which the land for the projects could be handed over, could not be undertaken since the propounders of the Scheme were in judicial custody. The Court found that the statutory dues running into approximately Rs.95 crores as well as claims of landowners in approximately Rs.70 crores have not been settled. It was held that the Scheme has become unworkable since it is incapable of performance as there is no concrete proposal as to how funds would be generated for clearance of dues.

13.2 In view of these submissions, this Court by its order dated 04.01.2023 directed that the Respondent Company as well as Vigneshwara Developers Private Limited [VDPL] be wound up and that the Official Liquidator be appointed as the liquidator of the Company. The Court further directed that all stakeholders would file their claims before the Liquidator. It is apposite to extract the relevant part of the order below:

*“3. The Scheme provides that the **Propounders i.e., ex-Management of Companies (in Lign), will clear dues of statutory authorities, which includes HSIIDC and OTCP, as well as outstanding dues towards landowners, after which, the allotted area under the Projects in question, was to be handedover to the concerned Associations/allottees on "as-is-where-is" basis. This fundamental step has not been taken till date.** Ms. Reena Choudhary, counsel for ex-Management/Propounders of the Scheme, cites a HSIIDC circular dated 27th September, 2021, which, inter-alia, allows part-payment to be made for the purpose of reviving the iValley Project. This reliance is misplaced as the circular is not contemplated under the Scheme. **The Court finds no reason to make a modification to that effect as the Propounders are only attempting to prolong the proceedings and have exhibited no intention to comply with the Scheme. As noted above, the Scheme is a non-starter; Propounders of the Schemel ex-Management who had to infuse funds have failed to do so. The order dated 27th July, 2022 takes note of the unfortunate state of affairs demonstrating lack of interest to***



implement the Scheme. In fact, the Court appointed Supervisor, a Retd. Judge of this Court, has not been paid his fees and out-of-pocket expenses since April 2020. In that light, the Court requested the Supervisor to not proceed further in the matter. Even the security expenses incurred by OL are not being reimbursed by the Propounders.

4. **The pre-requisite for implementation of the Scheme is clearance of statutory authorities' dues, whereafter land for the Projects in question could be handed-over to the concerned Associations for the purpose of raising construction, etc. Propounders are in judicial custody and through their counsel, they have filed applications to give a semblance of their intention to make the Scheme workable, however, the reality is that no effective steps have been taken to clear statutory dues of HSIIDC or DTCP which, in total, run into approximately INR 95 Crores. The claims of landowners also have not been settled, which is approximately INR 70 Crores. The sale of properties of Companies (In Lign.), for infusing funds, has also failed. More than three years have lapsed and there is a complete deadlock. Ms. Choudhary, counsel for ex-Management/Propounders of the Scheme, is unable to give any concrete proposal as to how funds will be generated for clearance of dues.**

5. Mr. Kunal Sharma, counsel for OL reiterates that the Scheme has become unworkable. In view of the above, **the Court is satisfied that the Scheme sanctioned vide judgment dated 27th January, 2020 is incapable of performance and cannot be worked satisfactorily with or without modifications.** It is ordered accordingly.

6. The Official Liquidator already stands appointed as the Provisional Liquidator by this Court in the instant petition as well as CO. PET. 534/2015 vide separate orders both dated 22nd July, 2016. **Vigneshwara Developwell Private Limited is now ordered to be wound up. The Official Liquidator attached to this Court is appointed as the Liquidator.**

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9. Now that the Liquidator has been appointed, all stakeholders are permitted to file their claims before the Liquidator, within a period of four weeks from today, who shall consider the same, in accordance with law.”

[Emphasis Supplied]

14. At this stage, it is apposite to set out the Section 434 of the 2013 Act which provides for the transfer of proceedings relating to winding up, pending before the High Courts, to the NCLT, which is extracted 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]

15. It is no longer res-integra that unless irreversible steps, such as the sale of assets have occurred, pending winding up proceedings ought to be transferred to the NCLT in terms of the 5th proviso to Section 434(1)(c) of the 2013 Act.

16. 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 NCLT. 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. It was emphasised by the Court that even post admission of winding up Petition and appointment of liquidator, as long as no actual sale of movable for immovable property of the company in liquidation has taken place and nothing irreversible is done, proceedings before the Company Court can be transferred to the NCLT. The Court cautioned that it is only when the winding up proceedings have reached an irreversible state making it impossible for the clock to be turned back,



should the Company Court proceed with the winding up instead of a transfer 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]

17. The Supreme Court in the *Kaledonia Jute & Fibres* case has, while deciding whether a winding-up proceeding should be transferred to the NCLT, held that since all creditors would be parties to such proceedings in realm, a secured creditor could move to the Company Court under the 5th proviso to Section 434(1)(c) of 2013 Act to transfer proceedings to the NCLT to be tried as proceedings under Section 7 or section 9 of the IBC as the case may be. The relevant extract of the *Kaledonia Jute* case is set out below:

*“43. The above conclusion can be reached through another method of deductive logic also. If any creditor is aggrieved by any decision of the Official Liquidator, he is entitled under the 1956 Act to challenge the same before the Company Court. Once he does that, **he becomes a party to the proceeding, even by the plain language of the section. Instead of asking a party to adopt such a circuitous route and then take recourse to the 5th proviso to Section 434(1)(c), it would be better to recognise the right of such a party to seek transfer directly.***

*44. As observed by this Court in *Forech (India) Ltd. [Forech (India) Ltd. v. Edelweiss Assets Reconstruction Co. Ltd., (2019) 18 SCC 549: (2020) 4 SCC (Civ) 286: (2019) 2 SCR 477]*, **the object of IBC will be stultified if parallel proceedings are allowed to go on in different fora.** If the Allahabad High Court is allowed to proceed with the winding up and NCLT is allowed to proceed with an enquiry into the application under Section 7 IBC, the entire object of IBC will be thrown to the winds.*



45. Therefore, we are of the considered view that the petitioner herein will come within the definition of the expression “party” appearing in the 5th proviso to clause (c) of sub-section (1) of Section 434 of the Companies Act, 2013 and that the petitioner is entitled to seek a transfer of the pending winding-up proceedings against the first respondent, to NCLT. It is important to note that the restriction under Rules 5 and 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016 relating to the stage at which a transfer could be ordered, has no application to the case of a transfer covered by the 5th proviso to clause (c) of sub-section (1) of Section 434. Therefore, the impugned order [Girdhar Trading Co. v. Axis Nirman & Industries Ltd., 2020 SCC OnLine All 1401] of the High Court rejecting the petition for transfer on the basis of Rule 26 of the Companies (Court) Rules, 1959 is flawed.”

[Emphasis Supplied]

18. In addition, the Supreme Court in the *A. Navinchandra* case has held that the pendency of admitted winding up proceedings is not a bar to proceedings under Section 7 or Section 9 of the IBC. It was held that Section 7 of the IBC is an independent proceeding, which has to be tried on its own merits and that stands by itself. It was further held that the discretionary provision under the 5th proviso to Section 434(1)(c) of the 2013 Act cannot prevail over the jurisdiction of the NCLT under the IBC, once the parameters of Section 7 of the IBC and the other provisions of the IBC have been met. The relevant extract of the *A. Navinchandra* case is below:

“29. Dr Singhvi and Shri Ranjit Kumar have vehemently argued that SREI has suppressed the winding-up proceeding in its application under Section 7 IBC before NCLT and has resorted to Section 7 only as a subterfuge to avoid moving a transfer application before the High Court in the pending winding-up proceeding. These arguments do not avail the appellant for the simple reason that Section 7 is an independent proceeding, as has been held in a catena of judgments of this Court, which has to be tried on its own merits. Any “suppression” of the winding-up proceeding would, therefore, not be of any effect in deciding a Section 7 petition on the basis of the provisions contained in the IBC. Equally, it cannot be said that any subterfuge has been availed of for the same reason that Section 7 is an independent proceeding that stands by itself. As has been correctly pointed out by Shri Sinha, a discretionary jurisdiction under the fifth proviso to



Section 434(1)(c) of the Companies Act, 2013 cannot prevail over the undoubted jurisdiction of NCLT under the IBC once the parameters of Section 7 and other provisions of the IBC have been met. For all these reasons, therefore, the appeal is dismissed and the interim order that has been passed by this Court on 18-12-2020 [*A. Navinchandra Steels (P) Ltd. v. Srei Equipment Finance Ltd.*, 2020 SCC OnLine SC 1141] shall stand immediately vacated.”

[Emphasis supplied]

19. An analysis of the aforegoing judgments does show that a discretionary jurisdiction has been provided for under Section 434(1)(c) of the 2013 Act for transfer of proceedings to the NCLT for adjudication under Section 7 or Section 9 of the IBC.

20. Learned Counsel for the Ex-management has while objecting to such transfer, sought to rely on the judgement of a Coordinate Bench in ***Deutsche Trustee Company*** case to submit that since the Official Liquidator has already taken possession of immovable assets of the Company, the proceedings have reached an advanced stage, thus, the Petition should not be transferred to the NCLT.

20.1 A review of this judgement, however, shows that although in the ***Deutsche Trustee Company*** case, an Application was filed under Section 434(1)(c) of the 2013 Act, the facts are distinguishable. In the present case, initially a Scheme of arrangement was sanctioned for the revival of that Company, the Scheme, however, the Scheme could not fructify since the steps that were proposed under the Scheme were not taken by the Ex-Director/promoter. In addition, the order also reflects that there was no appearance on behalf of the applicant at the time of arguments and thus the Application was not pressed by the Applicant. The Coordinate Bench, in the given facts, did not transfer the matter. The relevant extract of the ***Deutsche***



Trustee Company case is set out below:

“CO. APPL. 322/2019 (seeking transfer)

10. This is an application by Punjab National Bank seeking transfer of the present company petition to the NCLT under Section 434 of the Companies Act, 1956. The Applicant-bank relies on the proviso to Section 434(1)(c) of the Companies Act, 1956, and the judgment in *Forech India Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* [Civil Appeal No. 818 of 2018, Judgment dated 22nd January 2019] to request for transfer of the current petition to the NCLT.

11. None appears for Punjab National Bank. *Ld. Counsel Ms. Shankari Mishra on the other hand opposes the transfer of this petition.*

xxx

xxx

xxx

“16. Vide OLR 30 of 2020, it is stated that the OL has already taken possession of certain immovable assets and properties of company in liquidation, as mentioned in paragraph 2 of the OLR. Therefore, given the present stage of proceedings in the petition, this Court is of the opinion that the proceedings have reached an advanced stage and hence the present petition does not deserve to be transferred to the NCLT.”

[Emphasis supplied]

21. The Supreme Court in the *Action Ispat* case has clarified the law in this behalf. It has been held that the discretion has been vested in this Court for a transfer and so long as nothing irreversible has been done, this power can be exercised. Each case has, however, to be decided on its specific facts and circumstances.

22. In the present case, a Petition under Section 7 of the IBC was filed on 09.05.2019 against the sister concern of the Respondent Company being C.P No. IB-I076(ND)/2019 captioned *Lavkash Verma v. M/s Vigneshwara Developers Pvt. Ltd*, initiating the Corporate Insolvency Resolution Process against the Vigneshwara Developers Pvt. Ltd. The admission was challenged in writ proceedings before this Court being W.P.(C) 11706/2019 captioned *Sunil Kumar Dahiya v. Union of India and Ors.*



22.1 A Coordinate Bench of this Court by its order dated 08.11.2019 had stayed the operation of the admission order passed by the NCLT directing that since a Scheme of revival of the Respondent Company had already been formulated and the Scheme would be set to naught if the order of the NCLT would be allowed to continue. In addition, it was held that since the Company Court was seized of the matter, since the Judgment was reserved on the Scheme by the Company Court at that time. Additionally, the parties were also in settlement talks before the Delhi High Court Mediation and Conciliation Centre. Given these circumstances, it was directed that the proceedings before the NCLT should not continue as the order of NCLT would be an interdiction to the proceedings pending before the Company Court.

23. As discussed above, the Scheme was approved by this Court on 27.01.2020 and the Ex-Directors/propounders of the Scheme were allowed by this Court to take steps to revive the Company. However, inspite of the lapse of 3 years, thereafter, this Court found that pre-requisites for the implementation of the Scheme had not been worked out. The statutory authorities were not paid nor were the claims of the land owners settled. The land for the projects could also not be handed over since the Propounders of the Scheme were in judicial custody. Since the Scheme had become unworkable, the Scheme was set aside by this Court on 04.01.2023.

24. Although the Official Liquidator has taken over the assets of the Company, it has confirmed in its Reply that no other irretrievable steps such as sale of the assets have been taken by the office of the Official Liquidator. The Official Liquidator has also averred that the Petition which was



previously filed before the NCLT as a company Petition being C.P.(IB)-1076(ND)/2019 captioned *Lavkash Verma v. Vigneshwara Developers Private Limited* can be revived.

25. The IBC is a self-contained creditor driven framework, where the costs of the corporate insolvency resolution process are defrayed from recoveries, and in terms of Section 12 of the IBC. The entire process is mandatory and to be undertaken in a time bound manner to ensure preservation of assets as well as that the creditors are paid in a defined framework. The IBC also contains a framework for effective powers to deal with fraudulent transactions.

26. Undisputedly, no actual sale of properties has taken place and as such no irreversible steps have taken place so far as concerns the Respondent Company. The claims of over 1250 creditors have been filed before the Official Liquidator. The Official Liquidator has also set out in his Reply that the Claimant's claims have not been scrutinized since many were incomplete. The Official Liquidator has valued the assets of the Respondent Company and has averred that in view of the recurring expenditure towards security and preservation of assets, storage and safekeeping of voluminous records and compliance of statutory obligations, expenses are being incurred from the common pool funds, reducing the distributable surplus for creditors and the claimants of the Respondent Company.

27. It is not disputed by the parties that the Ex-Directors still remain incarcerated. In these circumstances, and in view of the large number of investors involved, it would be apposite and in public interest that proceedings under the IBC be revived.



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28. Accordingly, and in view of the discussions above, the Application is allowed.

29. The Petition is transferred to the NCLT. The parties are at liberty to take appropriate steps in accordance with law for further proceedings before the NCLT.

30. The Petition is disposed of in the foregoing terms. All pending Applications stand closed.

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

TARA VITASTA GANJU, J

SEPTEMBER 12, 2025/ha/r