

HIGH COURT OF GUJARAT**JINDAL STEEL & POWER LTD***Versus***M/S SHAH ALLOYS LTD****Date of Decision:** 25 November 2021**Citation:** 2021 LawSuit(Guj) 4305**Hon'ble Judges:** [Bhargav D Karia](#)**Case Type:** Company Petition**Case No:** 226 of 2008, 57 of 2010, 174 of 2009**Subject:** Company**Acts Referred:**[Companies Act, 1956 Sec 433](#), [Sec 434](#), [Sec 439](#)**Advocates:** [Nanavati Associates](#), [Gaurav S Mathur](#)**Bhargav D. Karia, J.**

[1] These petitions are filed for winding up of the respondent Company M/s. Shah Alloys Ltd., as it has failed to pay the debts of the respective petitioners under sections 433, 434 and 439 of the Companies Act, 1956.

[2] It appears that only notices have been issued in the respective matters and thereafter, the matters have been adjourned from time to time at the request of the parties and the matters have never been heard on merits and no further progress has been made in the matters.

[3] Learned advocate for the petitioners submitted that sufficient efforts are made to resolve the disputes between the petitioners and the respondent-Company but the same have failed.

[4] On the other hand, learned advocates appearing for the respective respondent-Company submitted that in view of the decision of the Apex Court in case of **Action Ispat and Power Pvt Ltd. vs. Shyam Metalics and Energy Ltd.** rendered in of Civil Appeal No. 404 of 2020 on 15.12.2020, the proceedings of the company petition are required to be transferred to the National Company Law Tribunal ['NCLT' for short].

[5] Having heard learned advocates for the respective parties it appears that after issuing notice in the respective petitions, no further orders are passed by the Court with regard to order of winding up of the company nor the Court has appointed the provisional Liquidator. In such circumstances and in view of the following observations of the Apex Court in case of **Action Ispat and Power Pvt Ltd. vs. Shyam Metalics and Energy Ltd.**(supra), this petition is required to be transferred to the NCTL, Ahmedabad :

"22. 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 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 the 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."

[6] In view of the above Company Petition No. 226 of 2008, Company Petition No. 57 of 2010 and Company Petition No. 174 of 2009 are accordingly transferred to the National Company Law Tribunal, Ahmedabad Bench. Registry to forward the papers to the Tribunal within a period of four weeks from today along with order. Tribunal to do the needful in accordance with law to proceed with the matters from the stage at which it is transferred.