

HIGH COURT OF GUJARAT**STAR ORECHEM INTERNATIONAL PRIVATE LIMITED***Versus***MEGHA INSULATIONS PVT LTD****Date of Decision:** 12 April 2022**Citation:** 2022 LawSuit(Guj) 3090**Hon'ble Judges:** [Bhargav D Karia](#)**Case Type:** Company Petition**Case No:** 156 of 2014**Subject:** Company**Acts Referred:**[Companies Act, 1956 Sec 433](#), [Sec 434](#), [Sec 439](#)**Advocates:** [Aditi Sharma](#), [Nanavati Associates](#), [G M Joshi](#)**Bhargav D Karia, J.**

[1] Heard learned advocate Ms. Aditi Sharma for Nanavati Associates for the petitioner and learned Senior Advocate Mr. G.M. Joshi for the respondent.

[2] This petition is filed for winding up of the respondent-Company as it has failed to pay the debt of the petitioner under sections 433, 434 and 439 of the Companies Act, 1956.

[3] This Court (Coram : Hon'ble Mr. Justice S.R. Brahmbhatt, As His Lordship was then) issued notice on 25th July, 2014. Thereafter, the matter was adjourned from time to time at the request of the learned advocates for either sides. This Court (Coram : Hon'ble Mr. Justice R.M. Chhaya) thereafter vide order dated admitted the matter vide order dated 4th July, 2018.

[4] It appears that thereafter, the matter has again been adjourned from time to time at the request of the parties to explore the possibilities of settlement and matter has never been heard on merits and no further progress has been made in the matter.

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

[6] On the other hand, learned advocate appearing for the 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].

[7] Having heard learned advocates for the respective parties, it appears that after the order of admission, no further orders are passed by the Court with regard to order of winding up of the company or advertisement of the petition 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 NCLT, 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."

[8] In view of the above, Company Petition No. 156 of 2014 is accordingly transferred to the National Company Law Tribunal, Ahmedabad Bench. Registry to forward the papers to the Tribunal within a period of Eight weeks from today along with order. Tribunal to do the needful in accordance with law to proceed with the matter from the stage at which it is transferred.

