



NC: 2026:KHC:31386
CA No. 39 of 2025 IN
COP No. 236 of 2010



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

COMPANY APPLICATION NO. 39 OF 2025

IN

COMPANY PETITION NO. 236 OF 2026

BETWEEN

MR SANTOSH UMAKANT JAWADAR
AGED ABOUT 55 YEARS
S/O MR. UMAKANT GANPATRAO JAWADWAR
RESIDING AT NO. C-2/7, HIMALAYA PRIDE TECH
ZONE IV, GREATER NOIDA
GAUTAM BUDDHA NAGAR
UTTAR PRADESH 201308
CONTACT 9740133639
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... APPLICANT

(BY SRI. ANIRUDH SURESH., ADVOCATE)

AND

OFFICIAL LIQUIDATOR OF BROADCAST INFRATEL INDIA
PRIVATE LIMITED (IN LIQ)
ATTACHED TO HIGH COURT OF KARNATAKA,
CORPORATE BHAVAN NO. 26-27, 12 FLOOR,
RAHEJA TOWERS, MG ROAD,
BANGALORE 560001.

.... RESPONDENT

(BY SMT. KRUTIKA RAGHAVAN., ADVOCATE FOR O.L)





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THIS COMPANY APPLICATION IS FILED UNDER SECTION 434 OF THE COMPANIES ACT, 2013 PRAYING TO PLEASE TO TRANSFER THE COMPANY PETITION NO. 236/2010 PENDING ON THE FILE OF THIS HON'BLE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU IN THE INTEREST OF JUSTICE AND EQUITY.

THIS COMPANY APPLICATION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 20.02.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. Company Petition No.236/2010 has been filed seeking for the following reliefs.

Please to transfer the Company Petition No.236/2010 pending on the file of this Hon'ble Court to the Hon'ble National Company Law Tribunal, Bengaluru in the interest of justice and equity.

2. The allegation in the Company Petition is that the Respondent failed to discharge its admitted debts owed to the Petitioner. It is on this basis that the present Company Petition came to be instituted in the year 2010, seeking an order for the winding up of the Respondent Company.
3. By order dated 11.11.2011, the Company Petition was admitted, and the Petitioner was permitted to publish an advertisement in The Hindu, an English daily newspaper. Thereafter, by order dated



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09.01.2012, the petition was allowed, and the Respondent Company was ordered to be wound up. The Official Liquidator was directed to take charge of the assets and liabilities of the Respondent Company, and publication of the winding-up order was directed in The Hindu (English daily) and Vijaya Karnataka (Kannada daily).

4. This Court recorded a finding that a sum of ₹32,65,401/- was due and payable by the Respondent to the Petitioner and that the said amount had remained unpaid. Pursuant to the aforesaid order, the Petitioner also deposited a sum of ₹10,000/- with the Official Liquidator.
5. Subsequently, on 13.11.2014, time was sought on behalf of the Respondent Company to ascertain whether the dispute could be amicably settled. Despite several adjournments being granted for this purpose, no settlement was reported. In the meantime, the Official Liquidator submitted various reports under Rule 300 of the Companies (Court) Rules, 1959.
6. Thereafter, the Respondent filed applications seeking the recall of the winding-up order. By order dated 15.11.2017, this Court, while considering the said



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applications, directed learned counsel for the Respondent to obtain instructions regarding the deposit to be made as a precondition for consideration of the request for recall. Ultimately, Company Application Nos. 2579/2013 and 2580/2013 came to be dismissed by order dated 03.01.2018 on the ground that the Respondent had failed to establish bona fides warranting consideration of the relief sought.

7. Subsequent thereto, further reports submitted by the Official Liquidator under Rule 300 of the Companies (Court) Rules, 1959, were taken on record. It is at this stage that Company Application No. 39/2025 came to be filed under Section 434 of the Companies Act, 2013 seeking transfer of the Company Petition to the National Company Law Tribunal (NCLT), inter alia contending that although the Company Petition had been admitted and a winding-up order had been passed, no irreversible steps had yet been taken in the course of the liquidation proceedings.
8. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Action Ispat and Power Private Limited vs. Shyam***



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Metalics and Energy Limited¹ is applicable. The said application has been objected to by the Official Liquidator by filing his objections on 19.12.2025.

9. The submissions of Sri Aniruddh Suresh, learned counsel appearing on behalf of the applicant in CA No.39/2025, are as follows:

9.1. Learned counsel contends that, although the Company Petition was admitted and an order of winding up came to be passed on 09.01.2012, no irreversible steps have been taken in the course of the liquidation proceedings. It is therefore submitted that the Company Petition is liable to be transferred to the National Company Law Tribunal (NCLT) in exercise of the powers conferred under Section 434 of the Companies Act, 2013.

9.2. In this regard, he relies upon the decision ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited's¹*** case, more particularly Para 10, 12, 13, 14 and 25 thereof, which are reproduced hereunder for easy reference:

10. *The Court therefore finally held:*

¹ (2021) 2 SCC 641



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"20. ... We are of the view that NCLT was absolutely correct in applying Section 238 of the Code to an independent proceeding instituted by a secured financial creditor, namely, the Alchemist Asset Reconstruction Company Ltd. This being the case, it is difficult to comprehend how the High Court could have held that the proceedings before NCLT were without jurisdiction. On this score, therefore, the High Court judgment has to be set aside. NCLT proceedings will now continue from the stage at which they have been left off. Obviously, the company petition pending before the High Court cannot be proceeded with further in view of Section 238 of the Code. The writ petitions that are pending before the High Court have also to be disposed of in light of the fact that proceedings under the Code must run their entire course. We, therefore, allow the appeal and set aside the High Court's judgment

12. Resultantly, the Court thereafter held:

"22. This Section is of limited application and only bars a corporate debtor from initiating a petition under Section 10 of the Code in respect of whom a liquidation order has been made. From a reading of this Section, it does not follow that until a liquidation order has been made against the corporate debtor, an Insolvency Petition may be filed under Section 7 or Section 9 as the case may be, as has been held by the Appellate Tribunal. Hence, any reference to Section 11 in the context of the problem before us is wholly irrelevant. However, we decline to interfere with the ultimate order passed by the Appellate Tribunal because it is clear that the financial creditor's application which has been admitted by the Tribunal is clearly an independent proceeding which must be decided in accordance with the provisions of the Code.

23. Though, we are not interfering with the Appellate Tribunal's order dismissing the appeal, we grant liberty to the appellant before us to apply under the proviso to Section 434 of the Companies Act (added in 2018), to transfer the winding up proceeding pending before the High Court of Delhi to the NCLT, which can then be treated as a proceeding under Section 9 of the Code."

13. In *Kaledonia* (supra), the question which arose before the Court arose after a winding up order had been passed, but which had been kept in abeyance by the Company Court. The vexed question before the Court was whether the expression "any person could apply for transfer ..." contained in paragraph 17 of the judgment of this Court in *Forech* (supra) would refer to persons who are not parties



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to the proceeding. This Court, after setting out section 278 of the Companies Act, 2013, then held:

"42. Thus, the proceedings for winding up of a company are actually proceedings in rem to which the entire body of creditors is a party. The proceeding might have been initiated by one or more creditors, but by a deeming fiction the petition is treated as a joint petition. The official liquidator acts for and on behalf of the entire body of creditors. Therefore, the word "party" appearing in the 5th proviso to Clause (c) of Sub-section (1) of section 434 cannot be construed to mean only the single petitioning creditor or the company or the official liquidator. The words "party or parties" appearing in the 5th proviso to Clause (c) of Sub-section (1) of Section 434 would take within its fold any creditor of the company in liquidation.

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 Limited* (supra), 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 the 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 of the High Court rejecting the petition for



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transfer on the basis of Rule 26 of the Companies (Court) Rules, 1959 is flawed.” (emphasis in original)

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 the 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 (supra), 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 the NCLT. The question that arises before us in this case is how is such discretion to be exercised?*

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 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*



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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

- 9.3. By relying on ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited's¹*** case, his submission is that the Hon'ble Supreme Court has clarified that the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 is not confined to any particular stage of the winding-up proceedings. The discretion to transfer a winding-up proceeding to the NCLT continues to vest in the Company Court even after admission of the winding-up petition and even after appointment of the Company Liquidator.
- 9.4. It is further submitted that the Hon'ble Supreme Court has held that, so long as no irreversible steps have been taken in the liquidation process, particularly where no sale



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of the movable or immovable assets of the company in liquidation has taken place, the Company Court may exercise its discretion in favour of transfer of the proceedings to the NCLT.

- 9.5. Proceeding on the basis of the aforesaid principles laid down in ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited's¹*** case, learned counsel submits that, after the coming into force of the Insolvency and Bankruptcy Code, 2016, the legislative intent has been to consolidate insolvency and liquidation proceedings before the NCLT so as to avoid parallel proceedings before different fora. It is therefore contended that, in cases where winding-up proceedings are pending before the Company Court and have not reached a stage where the clock cannot be turned back, such proceedings ought to be transferred to the NCLT for consideration under the framework of the Insolvency and Bankruptcy Code. According to him, the facts of the present case clearly demonstrate that no such irreversible stage has been reached and,



consequently, the present Company Petition deserves to be transferred to the NCLT.

9.6. In this regard, he relies on the Transfer Rules, 2016. In this regard, he relies on Section 434 of the Companies Act, 2013, which is reproduced hereunder for easy reference:

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.



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(d)any appeal preferred to the Appellate Authority for Industrial and Financial Reconstruction or any reference made or inquiry pending to or before the Board of Industrial and Financial Reconstruction or any proceeding of whatever nature pending before the Appellate Authority for Industrial and Financial Reconstruction or the Board for Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986) immediately before the commencement of this Act shall stand abated:

Provided that a company in respect of which such appeal or reference or inquiry stands abated under this Clause may make a reference to the Tribunal under this Act within one hundred and eighty days from the commencement of this Act in accordance with the provisions of this Act:

Provided further that no fees shall be payable for making such reference under this Act by a company whose appeal or reference or inquiry stands abated under this Clause.

(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.

9.7. In further support of the application, learned counsel places reliance on the Companies (Transfer of Pending Proceedings) Rules, 2016, as well as Section 434 of the Companies Act, 2013. Particular emphasis is placed on Section 434(1)(c), which provides for the transfer of proceedings pending before the High Courts and other courts to the National Company Law Tribunal.

9.8. Elaborating upon the said provision, learned counsel submits that, in terms of Section 434 of



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the Companies Act, 2013, proceedings pending before the Company Court are liable to be transferred to the NCLT, which is thereafter required to proceed with and dispose of the matter from the stage at which it stood transferred. It is contended that the power to transfer is not extinguished merely because a winding-up order has been passed. On the contrary, even after the passing of a winding-up order, the Company Court retains the discretion to transfer the proceedings to the NCLT.

- 9.9. Learned counsel further submits that the parameters governing the exercise of such discretion have been authoritatively laid down by the Hon'ble Supreme Court in ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd***¹. According to him, the Hon'ble Supreme Court has held that the discretion ought ordinarily to be exercised in favour of transfer so long as no actual sale of the movable or immovable assets of the company in liquidation has taken place and no irreversible steps have been undertaken in the liquidation process. It is only when the winding-up proceedings have progressed to a stage

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where it is impossible to restore the status quo ante that the Company Court would be justified in declining transfer and continuing with the winding-up proceedings.

9.10. Applying the aforesaid principles to the facts of the present case, learned counsel submits that, although an Official Liquidator has been appointed and reports have been submitted from time to time under Rule 300 of the Companies (Court) Rules, 1959, no steps have been taken towards the sale of the assets of the company in liquidation. It is submitted that neither any advertisement inviting bids for the sale of the movable or immovable properties of the company has been issued, nor has any sale been effected. Thus, according to him, the proceedings have not progressed beyond the stage of the winding-up order, and no irreversible consequence has ensued. On this basis, it is contended that the present Company Petition is liable to be transferred to the NCLT for consideration in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.



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9.11. He relies on the decision of the Hon'ble Supreme Court in the case of ***State Bank of India vs Shakti Bhog Foods Limited***², more particularly, Para 1 of the said order, which is reproduced hereunder for easy reference:-

1. Leave granted. Pursuant to our order dated 08.12.2020 a Status Report has been furnished to this Court on 31.12.2019. The Report makes it clear that only possession of one office has been taken by the Liquidator. All other units are in physical possession with other parties. Obviously, nothing irreversible has taken place. As a result we set aside the order of the learned Single Judge and allow the appeals in terms of our judgment in Action Ispat & Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd. 2020 SCC OnLine SC 1025, more particularly, at paras 31 & 32.

9.12. By relying on ***State Bank of India vs Shakti Bhog Foods Limited***'s² case, his submission is that the Hon'ble Supreme Court, after taking note of the status report submitted by the Liquidator, observed that only one office premises had been taken into possession by the Liquidator and that the remaining units continued to remain in the physical possession of other parties. On that basis, the Hon'ble Supreme Court concluded that nothing irreversible had taken place and consequently set aside the order of the learned Single Judge, allowing the appeals in terms of the principles

² (2021) 18 SCC 294



laid down in ***Action Ispat & Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd¹***.

9.13. Relying upon the aforesaid decision, learned counsel submits that the mere taking over of possession of certain assets by the Official Liquidator would not, by itself, constitute an irreversible stage in the winding-up proceedings. According to him, what is material is whether the assets of the company in liquidation have been brought to sale or whether any irreversible steps affecting the rights of stakeholders have been undertaken. It is contended that, as held by the Hon'ble Supreme Court in ***State Bank of India v. Shakti Bhog Foods Limited²***, even where the Liquidator has taken possession of certain properties, the principles enunciated in ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited's¹*** case would continue to apply so long as the liquidation proceedings have not progressed to the stage of sale or any other irreversible consequence.

9.14. Applying the said principle to the present case, learned counsel submits that although the



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Official Liquidator has been appointed and has filed reports before this Court, no sale of any movable or immovable property of the company in liquidation has been undertaken. Hence, according to him, the proceedings have not reached an irreversible stage and the present Company Petition is liable to be transferred to the NCLT in exercise of the powers conferred under Section 434 of the Companies Act, 2013.

9.15. He relies on the decision of the Hon'ble Delhi High Court in the case of ***Cowi India Private Limited vs Pinnacle Air Private Limited***³, more particularly, Paras 6, 7, 8, 9, 13, 14 and 16 thereof, which are reproduced hereunder for easy reference:

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.

³ Manu/DE/0948/2025



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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.*

13. *The aforesaid provision has been interpreted by the Hon'ble Apex Court in the case titled Action Ispat and Power D MANU/SC/0942/2020: 2020:INSC: 699 (2021) 2 SCC 641, wherein it was held that P. Ltd. v. Shyam Metalics and Energy Ltd. 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 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 with the Tribunal 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. the winding up proceeding is 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



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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, Builders (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 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."

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.*



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9.16. By relying on ***Cowi India Private Limited vs Pinnacle Air Private Limited's***³ case, he submits that the Hon'ble Delhi High Court, after considering the provisions of Section 434 of the Companies Act, 2013 and the law laid down by the Hon'ble Supreme Court in ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited's***¹ case reiterated that even post-admission of a winding-up petition, the proceedings may be transferred to the NCLT, provided no irreversible steps have been taken towards liquidation of the company.

9.17. Learned counsel further points out that the Hon'ble Delhi High Court, while following its earlier decision in ***Gurbakhsh Singh BA Builders (P) Ltd. v. Fortis Hospital Ltd.***,⁴ held that the question of transfer is essentially one relating to the jurisdiction of the Court and that the power of transfer can be exercised by the Court even suo motu. It was further held that the mere absence of a formal application seeking transfer would not preclude the Court from directing such transfer if the intention of

⁴ 2024 SCC OnLine Del 3480



the party seeking transfer is otherwise evident from the record.

9.18.Placing reliance on the aforesaid decision, learned counsel submits that a separate and formal application seeking transfer is not an indispensable requirement under Section 434 of the Companies Act, 2013. According to him, once the intention of a party to seek transfer is brought to the notice of the Court, the Court is empowered to exercise its jurisdiction and direct transfer of the proceedings to the NCLT.

9.19.Learned counsel contends that the present case stands on a stronger footing than the facts considered in ***Cowi India Private Limited vs Pinnacle Air Private Limited's***³ case, inasmuch as the Respondent has not merely expressed its intention to seek transfer but has filed a specific application in Company Application No.39/2025 seeking transfer of the winding-up proceedings to the NCLT. It is therefore submitted that, having regard to the principles laid down in ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited's***¹, ***Gurbakhsh Singh BA***



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Builders (P) Ltd. v. Fortis Hospital Ltd.,⁴ and Cowi India Private Limited vs Pinnacle Air Private Limited³, this Court ought to exercise its discretion in favour of transfer and direct that the present Company Petition be transferred to the NCLT for consideration in accordance with law.

9.20. He relies upon the decision of a Coordinate Bench of this Court in the case of ***Magnifico Minerals Private Limited vs Saravana Alloys Steels Private Limited⁵***, more particularly, Paras 3, 11, 12, 16, 17 and 19 thereof which are reproduced hereunder for easy reference:

3. Learned Senior counsel Sri. B.K.Sampath Kumar, appearing for the applicant would contend that 5th proviso to Section 434(1)(c) of Companies Act 2013 (for short 'Act of 2013') enables any party to the winding up petition to seek transfer of the Company Petition to the National Company Law Tribunal. It is also urged that the Company Petition is not yet admitted and there is no progress in the petition which compels the Court to retain the petition before this Court. Reliance is placed on the judgment of the Hon'ble Apex Court in ACTION ISPAT AND POWER PRIVATE LIMITED VS. SHYAM METALICS AND ENERGY LIMITED, (AIR 2021 SC 309). Referring to paragraph No.22 of the said judgment, the learned senior counsel would urge that the application seeking transfer of the Company Petition has to be allowed notwithstanding the fact that the notice before admission is already served on the Respondent in the Company Petition. He would also submit that co-ordinate bench of this Court in COP No.21/2014 as well as in COP No.119/2014 has transferred the petitions to the National Company Law Tribunal for

⁵ Manu/KA/1125/2024)



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disposal in accordance with law despite service of notice to the respondents in those petitions.

11. *5th proviso to Section 434(1)(c) of the Act of 2013 provides for an application seeking transfer of the pending company petition to the National Company Law Tribunal. The plain reading of the said provision, particularly the use of the word "may" at two places in the provision, would clearly demonstrate that the party has the option to seek transfer and the Company Court may transfer the petition to the National Company Law Tribunal. To put it differently, 5th proviso to Section 434(1)(c) of the Act of 2013 confers the discretion on the Company Court either to retain the Company Petition or to transfer the Company Petition subject to inherent limitations in law on exercise of discretionary jurisdiction.*

12. *Thus, the transfer of the petition is not mandatory on the application by any of the parties to the proceeding. An element of discretion lies with the Court. Else there was no need to introduce the 5th proviso in the manner in which it is couched. Whenever a discretionary power is conferred to the Court, then the person who seeks such discretionary power to be exercised in his favour has to make out a valid ground for the exercise of such power.*

16. *The co-ordinate bench of this Court in NITESH HOTELS supra has also considered the effect of the judgment of the Apex Court in ACTION ISPAT supra. The co-ordinate bench of this Court has taken a view that the ACTION ISPAT supra, judgment has to be understood in the context in which the judgment was delivered. The co-ordinate bench of this Court has taken a view that ACTION ISPAT supra, does not mandate the automatic transfer of the Company Petition on an application by one of the parties to the proceeding to the National Company Law Tribunal.*

17. *It is true that in ACTION ISPAT supra, the Apex Court has also taken a view that the transfer of the Company Petition to the National Company Law Tribunal is permissible even post-admission of the Company Petition in a situation where no irreversible transactions have taken place pursuant to the court order which would desist the Company Court from transferring the petition to the National Company Law Tribunal. It is also true that the Company Petition is not yet admitted and no transactions have taken place pursuant to the Court order which can be termed as 'irreversible transactions'. Nevertheless, the power of the Company Court to retain the petition under certain circumstances post service of notice under Rule 26 of Rules, 1959 and before admission is evident from the language employed in 5th proviso to Section 434(1)(c) of the Act of 2013.*



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19. Applying the aforementioned well-established principles, this Court is of the view that 5th proviso to Section 434(1)(c) of the Act of 2013 does not mandate the transfer of a Company Petition to the National Company Law Tribunal on an application filed by the parties. However the Court has to consider whether a case is made out to exercise the discretion. The party who seeks the discretion to be exercised in his favour must make out a valid ground for the exercise of the discretion in his favour. 5th proviso to Section 434(1) (c) of the Act of 2013 is not an exception to such Rule. On perusal of the application it is evident that except citing the judgment in ACTION ISPAT (which has no application to this case) the applicant has not made out a case to exercise the discretion in his favour.

9.21. By relying on **Magnifico Minerals Private Limited vs Saravana Alloys Steels Private Limited**⁵ he again submits that the Coordinate Bench examined the scope of the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 and the principles laid down by the Hon'ble Supreme Court in **Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.**¹

9.22. Learned counsel submits that the Coordinate Bench recognized that the fifth proviso to Section 434(1)(c) confers a discretion upon the Company Court either to retain a winding-up petition or to transfer it to the NCLT. The judgment further clarifies that transfer is not automatic merely because an application



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seeking transfer has been filed and that the applicant must establish grounds warranting the exercise of such discretion. The Coordinate Bench also took note of the observations in ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹ that even after admission of a winding-up petition, transfer to the NCLT remains permissible provided no irreversible steps have been taken in the winding-up proceedings.

9.23. Relying upon the aforesaid decision, learned counsel submits that the Coordinate Bench of this Court has expressly applied the principles laid down in ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹ while considering applications under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013. According to him, the decision reinforces the proposition that the Company Court retains the jurisdiction to transfer a winding-up proceeding even after admission of the petition and after the passing of a winding-up order, so long as the proceedings have not reached an irreversible stage.



9.24. It is therefore contended that the facts of the present case squarely satisfy the test formulated in Action Ispat. Learned counsel submits that no sale of the assets of the company in liquidation has taken place, no irreversible transaction has been effected, and the liquidation proceedings have not advanced to a stage where the clock cannot be set back. Consequently, it is argued that the discretion vested in this Court under the fifth proviso to Section 434(1)(c) ought to be exercised in favour of transfer of the present Company Petition to the NCLT.

9.25. Learned counsel also places reliance upon a screenshot purportedly containing the results of research relating to decisions of the Hon'ble Supreme Court and various Hon'ble High Courts wherein applications for transfer of winding-up proceedings to the NCLT have been allowed. On the basis of the said material, it is contended that Courts have, in several instances, exercised their discretion in favour of transfer under Section 434 of the Companies Act, 2013.



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9.26. However, a perusal of the said screenshot merely discloses a list of case titles and references. The factual matrix of those cases, the issues that arose for consideration, and the reasons which weighed with the respective Courts while directing transfer are not discernible therefrom. Moreover, the decisions themselves have not been produced before this Court. In the absence of the judgments being placed on record, this Court is unable to examine the ratio decidendi thereof or determine their applicability to the facts of the present case. Consequently, no reliance can be placed on the said screenshot.

9.27. Learned counsel further relies upon an authority-check report generated through Manupatra with reference to the decision of the Hon'ble Supreme Court in ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***¹ It is submitted that the report demonstrates that the principles laid down in ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***,¹ have been followed and applied by several Courts and



Tribunals and, therefore, the same ought to be applied in the present case as well.

9.28. This Court, however, finds that the authority-check report merely indicates instances where ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***,¹ has been cited, referred to, followed, distinguished, or otherwise considered. The report does not furnish the factual background of those cases, the issues involved, or the reasoning adopted by the respective Courts while applying the decision. In the absence of the underlying judgments being placed on record, it is not possible to ascertain whether the cases referred to therein bear any factual or legal similarity to the present matter. Hence, the authority-check report, by itself, cannot constitute a substantive basis for determining the issues arising for consideration in the present proceedings.

9.29. He relies on Rule 5 of the Companies (Transfer of Pending Proceedings) Rules, 2016, which is reproduced hereunder for easy reference:



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5. Transfer of pending proceedings of Winding up on the ground of inability to pay debts.-

(1) All petitions relating to winding up of a company under Clause (e) of section 433 of the Act on the ground of inability to pay its debts pending before a High Court, and, where the petition has not been served on the Respondent under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal established under sub-section (4) of section 419 of the Companies Act, 2013 exercising territorial jurisdiction to be dealt with in accordance with Part II of the Code:

Provided that the Petitioner shall submit all information, other than information forming part of the records transferred in accordance with rule 7, required for admission of the petition under sections 7, 8 or 9 of the Code, as the case may be, including details of the proposed insolvency professional to the Tribunal upto 15th day of July, 2017, failing which the petition shall stand abated:

Provided further that any party or parties to the petitions shall, after the 15th day of July, 2017, be eligible to file fresh applications under sections 7 or 8 or 9 of the Code, as the case may be, in accordance with the provisions of the Code:

Provided also that where a petition relating to winding up of a company is not transferred to the Tribunal under this rule and remains in the High Court and where there is another petition under Clause (e) of section 433 of the Act for winding up against the same company pending as on 15th December, 2016, such other petition shall not be transferred to the Tribunal, even if the petition has not been served on the Respondent.

9.30. Rule 5 deals with the transfer of pending winding-up proceedings instituted on the ground of inability to pay debts under Clause (e) of Section 433 of the Companies Act, 1956. The said Rule provides that winding-up petitions pending before a High Court, in which



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notice has not been served on the Respondent in terms of Rule 26 of the Companies (Court) Rules, 1959, shall stand transferred to the jurisdictional Bench of the NCLT for being dealt with in accordance with Part II of the Insolvency and Bankruptcy Code, 2016.

9.31. Relying upon the aforesaid Rule 5, learned counsel submits that the legislative scheme governing the transfer of pending winding-up proceedings clearly manifests an intention to shift insolvency-related proceedings from the Company Courts to the NCLT. According to him, Rule 5 contemplates automatic transfer of winding-up petitions in cases where notice under Rule 26 of the Companies (Court) Rules, 1959 had not been served upon the respondent company as on the relevant date.

9.32. It is further submitted that Rule 5, when read in conjunction with Section 434 of the Companies Act, 2013 and the principles laid down by the Hon'ble Supreme Court in ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹ demonstrates a clear legislative preference for adjudication of



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insolvency matters by the NCLT. Learned counsel therefore contends that, where the proceedings have not attained an irreversible stage, the Company Court ought to exercise its discretion in favour of transfer so as to further the object underlying the Insolvency and Bankruptcy Code, 2016.

9.33. He relies on Rule 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016, which is reproduced hereunder for easy reference:

6. Transfer of pending proceedings of Winding up matters on the grounds other than inability to pay debts. -All petitions filed under clauses (a) and (f) of section 433 of the Companies Act, 1956 pending before a High Court and where the petition has not been served on the Respondent as required under rule 26 of the Companies (Court) Rules, 1959 shall be transferred to the Bench of the Tribunal exercising territorial jurisdiction and such petitions shall be treated as petitions under the provisions of the Companies Act, 2013 (18 of 2013).

9.34. He submits that Rule 6 deals with the transfer of winding-up petitions filed on grounds other than inability to pay debts, namely under clauses (a) and (f) of Section 433 of the Companies Act, 1956. The Rule provides that all such petitions pending before a High Court, where notice has not been served on the respondent in accordance with Rule 26 of the Companies (Court) Rules, 1959, shall stand



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transferred to the jurisdictional Bench of the NCLT and shall thereafter be treated as petitions under the provisions of the Companies Act, 2013. The provision is extracted hereinabove for ready reference.

9.35.Placing reliance on the aforesaid Rule 6, learned counsel reiterates that the statutory framework governing transfer of pending company proceedings contemplates transfer to the NCLT in cases where service of notice under Rule 26 of the Companies (Court) Rules, 1959 has not been effected upon the respondent company. According to him, Rules 5 and 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016 demonstrate the legislative intent that company matters pending before the High Courts should, wherever permissible, be adjudicated by the NCLT.

9.36.It is therefore submitted that the principles underlying the Transfer Rules, when read together with Section 434 of the Companies Act, 2013 and the law declared by the Hon'ble Supreme Court in ***Action Ispat and Power Private Limited vs. Shyam Metalics and***



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Energy Limtied¹ support the transfer of pending winding-up proceedings to the NCLT, particularly in cases where the proceedings have not progressed to an irreversible stage. Learned counsel accordingly submits that the present Company Petition is also liable to be transferred to the NCLT.

9.37. He relies on Rule 26 of the Company (Court) Rules, 1959 is reproduced hereunder for easy reference:

26. Service of petition - Every petition shall be served on the Respondent, if any, named in the petition and on such other persons as the Act or these rules may require or as the Judge or the Registrar may direct. Unless otherwise ordered, a copy of the petition shall be served along with the notice of the petition.

9.38. Learned counsel further places reliance upon Rule 26 of the Companies (Court) Rules, 1959, which prescribes the manner of service of a company petition. The Rule mandates that every petition shall be served on the respondent named therein and on such other persons as may be required under the Act or the Rules, or as may be directed by the Company Court. The Rule further provides that, unless otherwise ordered, a copy of the petition



shall accompany the notice served upon the respondent.

9.39. Referring to Rule 26, learned counsel submits that the Companies (Transfer of Pending Proceedings) Rules, 2016 make service of notice under Rule 26 the determinative factor for deciding whether a winding-up petition is liable to be transferred automatically to the NCLT. According to him, the distinction drawn under Rules 5 and 6 of the Transfer Rules is between petitions in which service under Rule 26 has been effected and those in which such service has not been effected.

9.40. It is therefore contended that the scheme of the Transfer Rules recognises service under Rule 26 as a significant procedural milestone in winding-up proceedings. Learned counsel submits that the principles underlying Rule 26, when read with Section 434 of the Companies Act, 2013 and the judgments relied upon by him, support the proposition that pending winding-up proceedings should ordinarily be transferred to the NCLT unless the proceedings have advanced to a stage where irreversible



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consequences have ensued. Consequently, according to him, the present Company Petition is liable to be transferred to the NCLT.

9.41. He relies on the decision of the Hon'ble Calcutta High Court in **Prasanta Kumar Mitra and ors., vs. V.S.Indian Steam Laundry⁶** more particularly at Paragraphs 37 to 49 and 59 to 62, which are reproduced hereunder for easy reference:

37. The third issue that has been argued extensively before this Court is with regard to the true and correct interpretation of Section 434(1)(c) of the 2013 Act. It is the appellant's case that the term "all" and "including" used in the section have to be given a restrictive meaning. In furtherance of their arguments with respect to the word "all" they had placed reliance on Jairam Narayan Raje (supra) and All India Indian Overseas Bank SC and ST Employees' Welfare Association and Others (supra) wherein the courts had held that in certain situations the word "all" may be interpreted in a restrictive manner depending on the context and subject in which the word has been used keeping in mind the object of the provisions enacted. In the present case one may examine the present provision once again that reads as follows:

"Section 434(1)(c): all proceedings under the Companies Act, 1956 (1/1956) 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....."

38. One has to understand the true intent of the legislature and put a proper construction to the same. I ask myself this question as to why the legislature would qualify the term proceedings with the word "all". If the legislature did not intend to include everything under the

⁶ Manu/WB/0821/2018



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Companies Act, 1956, there was no need to use the word "all" before the word "proceedings". However, one must keep in mind the words that follow and qualify the above sentence which is "including proceedings relating to arbitration, compromise, arrangement and reconstruction and winding up of companies....". The second part of the sentence that follows the first clearly would lead to a different meaning if the term "including proceedings" was absent. In such a situation, all proceedings relating to only arbitration, compromise, arrangement and reconstruction and winding up of companies would have stood transferred. Therefore, what follows suit is that the interpretation of the term "including" in the second sentence becomes paramount.

39. *In relation to the meaning to be given to the word "including", the appellants have cited various judgments that need to be examined in greater detail. In South Gujarat Roofing Tiles Manufacturing Association and Another (supra), the Apex Court examined the explanation to entry 22 to part I of the Schedule to the Minimum Wages Act, 1948. The explanation to entry 22 stated that for the purpose of this entry potteries industry "includes" the manufacture of the nine articles of pottery specified therein. The Apex Court on an examination of the said provision held that the word "include" has been used in the explanation in an exhaustive and restrictive manner. Paragraphs 3 to 5 are delineated below for a proper understanding:*

"3. The question turns on a true construction of the Explanation to entry 22 which says that for the purpose of this entry potteries industry "includes" the manufacture of the nine "articles of pottery" specified therein. Pottery in a wide sense will take in all objects that are made from clay and hardened by fire, from crude earthen pots to delicate porcelain. Mr. Patel appearing for the Respondent, State of Gujarat, contends that the explanation indicates that potteries industry in entry 22 is intended to cover all possible articles of pottery including Mangalore pattern roofing tiles. Referring to the well-known use of the word 'includes' in interpretation clauses to extend the meaning of words and phrases occurring in the body of the statute. Mr. Patel submits that the Explanation, when it says that potteries industry 'includes' the nine named objects, what is meant is that it includes not only these objects but other articles of pottery as well. It is true that 'includes' is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things that



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would not properly fall within its ordinary connotation. We may refer to the often-quoted observation of Lord Watson in *Dilworth v. Commr. Of Stamps*, (1899) AC 99 at pp. 105-106 that when the word 'include' is used in interpretation clauses to enlarge the meaning of words or phrases in the statute "these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include." Thus where 'includes' has an extending force, it adds to the word or phrase a meaning which does not naturally belong to it. It is difficult to agree that 'includes' as used in the Explanation to entry 22 has that extending force. The explanation says that for the purpose of entry 22 potteries industry includes the manufacture of the nine "articles of pottery" specified in the Explanation. If the objects specified are also "articles of pottery", then these objects are already comprised in the expression "potteries industry." It hardly makes any sense to say that potteries industry includes the manufacture of articles of pottery, if the intention was to enlarge the meaning of potteries industry in any way.

4. We are also unable to agree with Mr. Patel that the articles specified in the Explanation may have been mentioned out of abundant caution to emphasise the comprehensive character of the entry, to indicate that all varieties of pottery are included therein. This argument, though more plausible, does not also seem acceptable. It is possible that one might have doubts whether things like refractories or electrical or textile accessories would pass under the description pottery as that word is used in common parlance, but the explanation also mentions crockery and toys regarding which there could be hardly any doubt. The inclusion in the list of objects which are well-recognised articles of pottery makes it plain that the Explanation was added to the entry not by way of abundant caution.

5. The contention of Mr. Tarkunde for the appellants is that the articles mentioned in the Explanation were intended to be exhaustive of the objects covered by entry 22. According to Mr. Tarkunde if the legislature wanted to bring within the entry all possible articles of pottery, then there was hardly any point in mentioning only a few of them by way of Explanation. To this Mr. patel's reply is that it is well-known that where the legislature wants to exhaust the significance of the term defined, it uses the word 'means' or the expression 'means and includes' and that if the intention was to make the list exhaustive, the



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legislature would not have used the word 'includes' only. We do not think there could be any inflexible rule that the word 'include' should be read always as a word of extension without reference to the context. Take for instance entry 19 in the schedule which also has an Explanation containing the word 'includes'. Entry 19 is as follows:

"Employment is any tobacco processing establishment, not covered under entry No. 3.

Explanation. - For the purpose of this entry the expression "processing"

includes packing or unpacking, breaking up, sieving, threshing, mixing, grading, drying, curing or otherwise treating the tobacco (including tobacco leaves and stems) in any manner."

Entry 3 to which entry 19 refers reads:

*"Employment is any tobacco (including bidi-making) manufactory." It is clear from the Explanation to Entry 19 that there could be no other way or manner of "processing" besides what is stated as included in that expression. Though 'include' is generally used in interpretation clauses as a word of enlargement, in some cases the context might suggest a different intention. Pottery is an expression of very wide import, embracing all objects made of clay and hardened by heat. If it had been the legislature's intention to bring within the entry all possible articles of pottery, it was quite unnecessary to add an Explanation. We have found that the Explanation could not possibly have been introduced to extend the meaning of potteries industry or the articles listed therein added ex abundante cautela. It seems to us therefore that the legislature did not intend everything that the potteries industry turns out to be covered by the entry. What then could be the purpose of the Explanation? The Explanation says that, for the purpose of entry 22, potteries industry 'includes' manufacture of the nine articles of pottery named therein. It seems to us that the word 'includes' has been used herein the sense of 'means'; this is the only construction that the word can bear in the context. In that sense it is not a word of extension, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of entry 22. The use of the word 'includes' in the restrictive sense is not unknown. The observation of Lord Watson in *Dilworth v. Commr. Of Stamps*, 1899 AC 99*



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which is usually referred to on the use of 'include' as a word of extension is followed by these lines: "But the word 'includes' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include' and in that case it may afford an exhaustive explanation of the meaning which for the purpose of the Act, must invariably be attached to these words or expressions." It must therefore be held that the manufacture of Mangalore pattern roofing tiles is outside the purview of entry 22."

40. Next we need to examine the judgment of the Andhra Pradesh High Court in *Hakim and Co. (supra)* wherein it was held that the definition of forest produce though uses the term "includes", it is to be read as "means" or "includes and means". The Andhra Pradesh High Court held that the expression "includes" was used in an exhaustive manner. The relevant paragraph is delineated below:

*"14. We have already reproduced above the definition of "forest produce". It is true that the definition uses the word "includes" as opposed to the expression "means" or as opposed to the expression "means and includes". But the submission of the learned counsel for the appellant is that the expression really is not used as a word of extension and in the context and the reference such expression is used in the sense of "means", and in that sense it is not a word of extension but of limitation; it is exhaustive of the meaning which must be given to the expression "forest produce" used in the aforesaid sub-section i.e., 2(g). In support of this contention the learned counsel relies on a decision of the Supreme Court in *South Gujarat Roofing Tiles Manufacturers Association v. State of Gujarat*, AIR 1977 SC 90.*

Before we refer to the decision it is useful to analyse the definition with which we are concerned, viz., S. 2(g) of the Act. Though the definition "forest produce" refers to the expression "includes", it is divided into three board categories:-

- (i) Whether found in, or brought from a forest or not (sub-clause (1)),*
- (ii) When found in or brought from a forest (sub-clause (2)), and*



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(iii) Such other produce as may be prescribed (sub-clause (3)).

The 1st category mentions various articles including wood, rubber, charcoal, wood-oil, resin, natural varnish, bar,rousa grass In the 2nd category not merely trees but also "such leaves, flowers and fruits as may be prescribed and all other parts or produce not hereinbefore mentioned of trees" are mentioned. The second part of this category also includes plants which are not trees. Part (III) of sub-clause (2) of S. 2(9) includes wild animals, wild birds, skins, etc., and part (iv) of sub-clause (2) includes even surface soil, rock and minerals, etc. The last category mentions such other produce as may be prescribed. It can thus be noticed that the definition includes not only such produce which is normally referred to as forest produce, but also various products which are not normally referred to as forest produce. Added to that is the power given to the State Government to prescribe such produce by way of rules. Even those articles specified by way of rules can also come under the definition of 'forest produce'. It appears to us that in this context the definition of "forest produce" though it uses the expression "includes", is exhaustive. It is the common case that the item in dispute is not covered by sub-clause (2) or sub-clause (3) of S. 2(g) of the Act, that is to say, it is not covered by the 2nd and 3rd categories."

41. N.D.P. Namboodripad (Dead) By Lrs. (supra) was referred to by both the parties to interpret the meaning of the word "includes". The proposition of law discussed therein in paragraphs 18 to 20 are delineated below:

"18. The word "includes" has different meanings in different contexts. Standard dictionaries assign more than one meaning to the word "include".

Webster's Dictionary defines the word "include" as synonymous with "comprise" or "contain". Illustrated Oxford Dictionary defines the word "include" as: (i) comprise or reckon in as a part of a whole; (ii) treat or regard as so included. Collins Dictionary of English Language defines the word "includes" as: (i) to have as contents or part of the contents; be made up of or contain; (ii) to add as part of something else; put in as part of a set, group or a category; (iii) to contain as a secondary or minor ingredient or element. It is no doubt true that generally when the word "include" is used in a definition clause, -it is used as a word of enlargement, that is to make the definition extensive and not



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restrictive. But word "includes" is also used to connote a specific meaning, that is, as "means and includes" or "comprises or "consists of".

19. Justice G. P. Singh in his treatise *Principles of Statutory Interpretation* (10th Edn., 2006), has noticed that where a word defined is declared to "include" such and such, the definition is *prima facie* extensive, but the word "include" when used while defining a word or expression, may also be construed as equivalent to "mean and include" in which event, it will afford an exhaustive explanation of the meaning which for the purposes of the Act must invariably be attached to the word or expression [vide pp. 173 and 175 referring to and relying on the decisions of this Court in *Municipal Council, Raipur v. State of M. P.*, *South Gujarat Roofing Tiles Manufacturers Assn. v. State of Gujarat*, *Hindustan Aluminium Corpn. v. State of U. P.* and *Reserve Bank of India v. peerless General Finance & Investment Co. Ltd.* It is, therefore, evident that the word "includes" can be used in interpretation clauses either generally in order to enlarge the meaning of any word or phrase occurring in the body of a statute, or in the normal standard sense, to mean "comprises" or "consists of" or "means and includes" depending on the context.

20. If the words "and includes" were intended to rope in certain items which would not be part of the meaning, but for the definition, then Rule 62 would have specified only "dearness pay" as the item to be included but not "pay". If pay, dearness allowance and other allowances were already included in "emolument" with reference to its general or normal meaning, as contended by the appellant, there was no reason to specifically again include "pay" in rule 62. Inclusion of "pay" and "dearness Pay" and non-inclusion of "dearness allowance or other allowances" in the definition of "emolument" is significant. The definition in Rule 62 is intended to clarify that only pay and dearness pay would be considered as "emolument" for purposes of calculating pension. The words "and includes" have been used in Rule 62, as meaning "comprises" or "consists of."

42. For a proper comprehension of the term "includes" and "including", one should also examine the view taken by courts in different jurisdictions. In *Thompson West's, Words and Phrases, Permanent Edition, Vol 20A*, the different ways the phrase "includes" has been interpreted by the courts in the United States of America has been provided. Some of the illustrations are provided below:



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"Ill. 2007. Pursuant to statutory definition of the words "includes" or "including," either of these words, when followed by a listing of items, means that the preceding general term encompasses the listed items, but the list is not exhaustive; the preceding general term is to be construed as a general description of the listed items and other similar items. S.H.A. 720 ILCS 5/2-

10.-People v. Perry, 309 Ill.Dec. 330, 864 N.E.2d 196, 224 Ill.2d 312.-Statut 194, 199.

Ill.App. 2 Dist. 1943. The word "includes" as used in Policemen's Minimum Wage Act defining policemen to mean any member of a regularly constituted police department of a city and to "include" the chief of police, assistant chief of police, chief of detectives, and others, meant "comprises" and the statute manifested as intent to create a fixed class excluding from the definition all those not specifically named. S.H.A. ch. 24, §§ 860a, 860b; S.H.A. ch. 24, §§ 11-1, 11-2.-Patteson v. City of Peoria, 47 N.E.2d 867, 318 Ill.App. 245, reversed 54 N.E.2d 445, 386 Ill. 460.- Labor & Emp 2242.

La.App. 2 Cir, 1966. Omnibus Clause of automobile liability policy by its title and use of the word "includes", denotes extensiveness and comprehensiveness and its evident intent to refer to any and all persons entitled to protection under the policy. -Commercial Union Ins. Co. of New York v. Hardcastle, 188 So.2d 698, appeal after remand 197 So.2d 335, writ refused 199 So.2d 916, 250 La. 900.-Insurance 2660.

Mich.App. 2003. Word "includes," in phrase defining "verdict" in Rule assessing mediation sanctions against a party rejecting a mediation evaluation unless the verdict was more favourable to the rejecting party, was exclusive, rather than leaving to the courts' future interpretation as to what would constitute a "verdict," and thus only the three things listed after such word, a jury verdict, a judgment by the Court after a nonjury trial, and a judgment entered as a result of a ruling on a motion filed after mediation, qualified as verdicts for purposes of the Rule. MCR 2,403(O)(2).- Jerico Const., Inc. V. Quadrants, Inc., 666 N.W.2d 310, 257 Mich.App. 22, appeal denied 675 N.W.2d 37, 469 Mich. 1010.-Costs 2."

43. *As per Stroud's Judicial Dictionary of Words And Phrases, 4th Edition, Vol 3, 1334, the word "including" interpreted in English courts has been delineated as follows:*



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"INCLUDING. (1) "Including" is generally used to enlarge the meaning of the preceding word (*Reynolds v. Income Tax Commissioner for Trinidad and Tobago* [1966] 1 W.L.R. 19).

(2) Rent "including rates and taxes": see *Bradshaw v. M'Mullan* [1920] 2 I.R. (3) A bequest of "my personal effects in my room including pictures, roll-top desk and chiffonier complete with their contents" was held to be confined to chattels of the nature of personal effects and not to include securities forming part of the contents of the desk (*Joseph v. Phillips* [1934] A.C. 348).

(4) A provision for investment in property "including the purchase of freehold property in England or Wales" means for the income to be obtained and not for the occupation by the trustee or his nominee (*Re Powers' Will Trusts* [1947] Ch. 572).

(5) "Including fruit Juices" (*Purchase Tax Act 1963* (c. 9), Sched. 1, Pt. 1, Group 35 (a)). These words are to be construed in the context of the words preceding them ("manufactured beverages"), and do not include non-manufactured fruit juice (*Customs and Excise Commissioners v. Savoy Hotel* [1966] 1 W.L.R.

948)."

44. Finally, one should well remember the potent and vivid words of Justice Oliver Wendell Holmes Jr., in *Towne vs. Eisner*, 245 U.S. 418: -

"A word is not a crystal, transparent and unchanging, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."

45. On a careful analysis of the above judgments and the authorities on interpretation of statutes, it is clear that where a word defined is declared to "include" such and such, the definition is *prima facie* extensive but the word "include" when used while defining a word or expression, may also be construed as equivalent to "mean and include" in which event it will afford an exhaustive explanation of the meaning. As held in *N.D.P. Namboodripad (Dead) By Lrs.* (*supra*) the term "includes" in its normal sense is extensive in nature and should be read as such unless the context otherwise requires the same to be read in an exhaustive manner. In the case of *South Gujarat Roofing Tiles* (*supra*) and in the case of *Hakim*



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and Co. (supra) the courts interpreted the word "includes" to be exhaustive as in both cases it was used in a definitional capacity. In the present case the word "including" has been used in a sentence preceded by the term "all proceedings". In the event the legislature wanted to only refer to proceedings relating to arbitration, compromise, arrangement and reconstruction and winding up of companies, there was no need to add the word "including proceedings". The very fact that the legislature chose to add these words means that the legislature was aware of the other proceedings that were pending in the High Court and accordingly intended to transfer even those proceedings to the NCLT.

46. *The contention of the appellant that Section 434(1)(c) should be read by neglecting these two words being "including proceedings" cannot and must not be done. If I were to do so I would be changing the intention of the legislature. The role of the Court in statutory interpretation has been lucidly discussed in the Halsbury's Laws of England, 4th Edn., Reissue, Vol 4 at paragraph 1369 as follows:*

"1369. Role of Court in interpretation. The Court has the function of authoritatively construing legislation, that is, determining its legal meaning so far as is necessary to a case before it, This function is exclusive to the Court, and a meaning found by any other person, for example an authorising agency, an investigation agency, an executing agency, a prosecuting agency, or even parliament itself, except when intending to declare or amend the law, is always subject to the determination of the Court.

It is usually said that the making of law, as opposed to its interpretation, is a matter for the legislator, not for the courts, but, in so far as parliament does not convey its intention clearly, expressly and completely, it is taken to require the Court to spell out that intention where necessary. This may be done either by finding and declaring implications in words used by the legislator, or by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with the public policy (including legal policy) and the purpose of legislation. Whichever course is adopted, in accordance with the doctrine of precedent the Court's operation influences the future legal of the enactment by producing what may be called sub-rules, which are implied or expressed in the Court's judgement."



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47. *In view of the above, only when the Parliament does not convey its intention clearly, expressly and completely in a statute can the courts embark on a mission to spell out the intention of the Parliament, and not in any other situation. In the present case, I see no such predicament before me as the word "including" has been used specifically to connote the meaning it normally does. The fact that the word "including" has not been used to define a word, leads me to the conclusion that the same has been used in an expansive and extensive manner. Furthermore, as pointed above the very fact that the legislature added the words "including proceedings" following the words "all proceedings under the Companies Act, 2013" was to ensure that any other proceedings apart from the one's mentioned in the provision shall also be transferred to the newly constituted Tribunal.*

48. *One may argue, as noticed in the Custom and Excise Commissioner v. Savoy Hotel [1966], W.L.R. 948, that the words following "including" has to be construed in the context of the words preceding them. In the case above, "including fruit juices" was preceded by "manufactured beverages" and accordingly a restrictive meaning was assigned by the Court as not to include "non-manufactured fruit juices". Applying this logic also, the appellants have no case, as the words used in Section 434 (1)(c), preceding the word "including", are "all proceedings under the Companies Act, 1956". Hence, the axiomatic conclusion has to be that anything and everything under the Companies Act, 1956 is intended to be included. Reading the words in an exhaustive sense would also lead to an interpretation that proceedings under Sec. 397 to 405 of the 1956 Act would come within the fold of "all proceedings under the Companies Act, 1956" used in Section 434(1)(c) of the 2013 Act.*

49. *In the light of the discussion above, I come to the irrefutable conclusion that "including" in Section 434 (1)(c) is extensive and expansive and not restrictive in nature. Ergo, Section 434(1)(c) of the 2013 Act that states "all proceedings under the Companies Act 2013 including proceedings relating to...." would include all matters, without any exception, pending before the District Courts and High Court and all such matters would have to be transferred to the NCLT.*

59. *In summary, the four main issues are answered as follows:*



(a) Whether the ouster of the jurisdiction of the High Court in relation to company matters needs to be express or the same may be ousted by implication?

The jurisdiction of the High Court in company matters being a special jurisdiction conferred by the 1956 Act, and not being a civil jurisdiction under the Code of Civil Procedure, 1908, the same can always be ousted by the amendment of the enactment that conferred the said jurisdiction. Hence, no express repealing is required and the same can be repealed by implication.

(b) Whether parties to a lis can insist on continuing their dispute in the forum the same was initiated or have to bow down to the wishes to the legislature for transfer of the said jurisdiction to another forum? Change of forum is not a choice of parties, but is the choice of the legislature. The parties cannot contend that they have a vested right to continue in the forum the lis was initiated. The legislature can always change the forum. Forum is a matter of procedure and change of the same does not result in change of substantive rights of parties.

(c) Whether the term "all" and "including" in Section 434(1)(c) of the 2013 Act are expansive in nature or the same is to be read in a restrictive manner?

The term 'including' in Section 434(1)(c) of the 2013 Act is extensive and expansive and not restrictive in nature. Accordingly, Section 434(1)(c) of the 2013 Act that states "all proceedings under the Companies Act 2013 including proceedings relating to...." would include all matters, without any exception, pending before the District Courts and High Court and all such matters would have to be transferred to the NCLT.

(d) Whether Section 68 of the Amendment Act, 1988 continues to subsist regardless of the coming into force of Section 434(1)(c) of the 2013 Act in relation to matters that were filed in the High Court prior to coming into force of the Amendment Act, 1988?

The moment a new enactment comes into the statutory books, dealing with the same subject matter and specifically dealing with the same issue, and the transitional provision becomes inconsistent with the new enactment, the transitional provision has to go due to repugnancy. As held in (c) above, Section 434(1)(c) deals with all proceedings under the 1956 Act. Therefore, there is a clear inconsistency between the said provision and



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Section 68 of the Amendment Act, 1988. Consequentially, since the transitional provision is inconsistent with the new provision, it is impliedly repealed.

60. *In view of the above findings of this Court, I see no reason to interfere with the unexceptional judgment of the Hon'ble Single Judge and accordingly uphold the same with the additional reasons given herein.*

61. *The appeal is disposed of. No order as to costs.*

62. *Urgent photostat certified copy of this judgment, if applied for, be given to the parties, on priority basis.*

9.42. By relying on ***Prasanta Kumar Mitra and ors., vs. V.S. Indian Steam Laundry***⁶ his submission is that the Hon'ble Calcutta High Court undertook an elaborate examination of the scope and interpretation of Section 434(1)(c) of the Companies Act, 2013, with particular reference to the expressions "all proceedings" and "including" occurring therein.

9.43. It is submitted that the Hon'ble Calcutta High Court rejected the contention that the said expressions ought to be construed restrictively and held that the use of the word "including" in Section 434(1)(c) is expansive and not exhaustive in nature. According to learned counsel, the Court held that the Legislature, by employing the expression "all proceedings" under the Companies Act, 1956 including



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proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies”, intended to encompass every category of proceeding pending under the Companies Act, 1956 and not merely those specifically enumerated in the provision.

9.44. Learned counsel further submits that the Hon’ble Calcutta High Court held that a change of forum is a matter of legislative policy and procedure and that parties do not possess a vested right to insist that their disputes continue before the forum in which they were originally instituted. It was consequently held that proceedings pending before the High Courts and District Courts could be transferred to the NCLT in terms of the legislative scheme embodied in Section 434 of the Companies Act, 2013.

9.45. Relying upon ***Prasanta Kumar Mitra and ors., vs. V.S. Indian Steam Laundry***⁶, learned counsel submits that Section 434(1)(c) of the Companies Act, 2013 must receive a broad and purposive construction. According to him, the



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expressions “all proceedings” and “including” employed therein are indicative of the legislative intent to bring within the fold of the NCLT every proceeding arising under the Companies Act, 1956 that remains pending before the High Courts.

9.46. It is therefore contended that the jurisdiction vested in the Company Courts under the Companies Act, 1956 has substantially been shifted to the NCLT and that the legislative policy underlying the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 favours adjudication of such matters by the specialised Tribunal. Learned counsel submits that, viewed in the light of the principles enunciated in ***Prasanta Kumar Mitra and ors., vs. V.S. Indian Steam Laundry***⁶, the present winding-up proceedings also fall within the ambit of Section 434(1)(c) and are therefore liable to be transferred to the NCLT. On the aforesaid grounds, he submits that Company Application No.39/2025 deserves to be allowed and the Company Petition be transferred to the NCLT for further proceedings in accordance with law.



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10. Ms. Krutika Raghavan, learned counsel for the official liquidator objects to the said transfer and submits as under follows:

10.1.Learned counsel submits that the present application is not maintainable at the instance of the applicant. According to her, though the application purports to have been filed on behalf of the Respondent Company, a perusal of the cause title would indicate that it has in fact been filed by Mr. Santosh Umakanth Jawadwar, who is stated to be a former Director of the Respondent Company.

10.2.It is contended that, upon the passing of the winding-up order, the powers of the Board of Directors cease and the management and control of the affairs of the company vest in the Official Liquidator. Consequently, the directors are divested of their authority to represent or act on behalf of the company in liquidation. Once the Official Liquidator has been appointed and has taken charge pursuant to the winding-up order, it is the Official Liquidator alone who is empowered to deal with the assets, affairs



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and business of the company under the supervision of the Company Court.

10.3. On that basis, learned counsel submits that a former Director of the company in liquidation has no authority to maintain an application on behalf of the company and, consequently, lacks the requisite locus standi to invoke the jurisdiction of this Court under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 seeking transfer of the winding-up proceedings to the National Company Law Tribunal. It is therefore submitted that Company Application No.39/2025 is liable to be dismissed on this ground alone.

10.4. She relies upon the decision of the Hon'ble Supreme Court in the case of ***Kaledonia Jute and Fibres Private Limited vs. Axis Nirman and Industries Limited and others***⁷ more particularly Para 12, 19, 20, 21, 24, 42 and 43 which are reproduced hereunder for easy reference:

12. *The main issues that arise for consideration in this appeal are:*

⁷ (2021) 2 SCC 403



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(i) what are the circumstances under which a winding up proceeding pending on the file of a High court could be transferred to the NCLT and

(ii) at whose instance, such transfer could be ordered.

19. *Be that as it may, clause (c) of Subsection (1) is the provision that actually provides for the transfer of all the proceedings under the Companies Act, 1956 pending before any District Court or High Court, to the Tribunal. Broadly Clause (c) makes a mention about proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up. But Clause (c) is not limited in its application to proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up. This is due to the usage of the words "All proceedings.....including" in Clause (c).*

20. *However, the first proviso to Clause (c) which was not there in the original Section 434, but which was inserted only under IBC Act of 2016 when Section 434 was substituted, circumscribes what is contained in the main part of Clause (c). The first proviso to Clause (c) restricts the transferability of proceedings for winding up from the High Court to the Tribunal, by stipulating that only such proceedings for winding up which are at a stage as may be prescribed by the Central Government, be transferred to the Tribunal.*

21. *Subsection (2) of Section 434 empowers the Central Government to make Rules consistent with the provisions of the Act, to ensure timely transfer of all matters pending before the Company Law Board or the Courts, to the Tribunal. Therefore, in exercise of the power conferred by Subsection (2) of Section 434 of the Companies Act, 2013 read with Subsection (1) of Section 239 of the IBC, 2016, the Central Government issued a set of Rules known as 'The Companies (Transfer of Pending Proceedings) Rules, 2016.*

24. *The transferability, by operation of law, of winding up proceedings, other than those covered by the 4 the Proviso, depends upon the stage at which they are pending before the Company Court. But this is left by the law makers to be determined through subordinate legislation, in the form of Rules.*

42. *Thus, the proceedings for winding up of a company are actually proceedings in rem to which the entire body of creditors is a party. The proceeding might have been*



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initiated by one or more creditors, but by a deeming fiction the petition is treated as a joint petition. The official liquidator acts for and on behalf of the entire body of creditors. Therefore, the word "party" appearing in the 5th proviso to Clause (c) of Subsection (1) of section 434 cannot be construed to mean only the single petitioning creditor or the company or the official liquidator. The words "party or parties" appearing in the 5th proviso to Clause (c) of Subsection (1) of Section 434 would take within its fold any creditor of the company in liquidation.

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.*

10.5. Referring to ***Kaledonia Jute and Fibres Private Limited vs. Axis Nirman and Industries Limited and others***⁷, learned counsel submits that the Hon'ble Supreme Court examined, inter alia, the circumstances in which winding-up proceedings pending before a High Court could be transferred to the NCLT and the category of persons at whose instance such transfer could be sought. The Hon'ble Supreme Court, while interpreting Section 434(1)(c) of the Companies Act, 2013, held that though the provision is couched in broad language and encompasses all proceedings under the



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Companies Act, 1956, the transferability of winding-up proceedings is nevertheless regulated by the statutory framework and the Companies (Transfer of Pending Proceedings) Rules, 2016 framed thereunder.

- 10.6. Learned counsel further submits that the Hon'ble Supreme Court recognised that winding-up proceedings are proceedings in rem and that the Official Liquidator acts on behalf of the entire body of creditors. It was in that context that the Court held that the expression "party or parties" occurring in the fifth proviso to Section 434(1)(c) ought not to receive a narrow construction and would include creditors of the company in liquidation, thereby enabling such creditors to seek transfer of the proceedings to the NCLT.
- 10.7. Learned counsel submits that the ratio of ***Kaledonia Jute and Fibres Private Limited vs. Axis Nirman and Industries Limited and others***⁷ cannot be construed as conferring an unrestricted right upon every person claiming an interest in the company to seek transfer under the fifth proviso to Section 434(1)(c).



According to her, the observations of the Hon'ble Supreme Court regarding the maintainability of a transfer application were rendered in the context of applications filed by creditors of the company in liquidation, who, by virtue of the nature of winding-up proceedings, are treated as parties to the proceedings.

10.8. It is therefore contended that the decision cannot be extended to recognise a similar right in favour of a former Director of a company that has already been ordered to be wound up. Learned counsel submits that once a winding-up order has been passed and the Official Liquidator has assumed charge of the affairs of the company, the erstwhile directors cease to represent the company and cannot maintain proceedings on its behalf. Hence, according to her, the applicant, being a former Director of the company in liquidation, lacks the necessary locus standi to invoke the fifth proviso to Section 434(1)(c) and seek transfer of the present proceedings to the NCLT. Consequently, the application is liable to be rejected on the ground of maintainability itself.



10.9. Learned counsel further submits that the present application suffers from gross and unexplained delay and is liable to be rejected on that ground alone. She points out that the winding-up order in the present case was passed on 09.01.2012 and that the Official Liquidator has been functioning pursuant thereto for more than a decade. Despite being fully aware of the winding-up proceedings and the consequential actions initiated by the Official Liquidator, the applicant has chosen to invoke the jurisdiction of this Court under the fifth proviso to Section 434(1)(c) only in the year 2025, after nearly thirteen years from the date of the winding-up order.

10.10. According to her, the applicant has not furnished any explanation whatsoever for such extraordinary delay. The applicant neither sought transfer when the Insolvency and Bankruptcy Code, 2016 came into force nor at any point during the subsequent years when the liquidation proceedings were actively progressing before this Court. The conduct of the applicant, according to learned counsel, clearly demonstrates acquiescence in the



winding-up proceedings and acceptance of the jurisdiction of this Court. Having remained silent for over a decade, the applicant cannot now seek to reopen settled proceedings and seek transfer at a stage when multiple proceedings connected with the liquidation are pending consideration before this Court.

10.11. Learned counsel therefore submits that the application is liable to be dismissed on the principles of delay, laches and acquiescence, apart from the other objections raised by the Official Liquidator.

10.12. Learned counsel further submits that the entire foundation of the applicant's case proceeds on an erroneous assumption that transfer under Section 434 of the Companies Act, 2013 is automatic. According to her, neither the statutory provision nor the judgments relied upon by the applicant support such a proposition.

10.13. Referring to the language employed in the fifth proviso to Section 434(1)(c), learned counsel submits that the Legislature has consciously used the expression that the Company Court



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"may" transfer the proceedings to the Tribunal. The use of the word "may" is indicative of a discretionary jurisdiction and not a mandatory obligation. Thus, even if an application for transfer is maintainable, the Court is required to independently examine whether the facts and circumstances of the particular case warrant the exercise of such discretion.

10.14. She submits that the decisions in ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited¹, Kaledonia Jute and Fibres Private Limited vs. Axis Nirman and Industries Limited and others⁷ and Magnifico Minerals Private Limited vs Saravana Alloys Steels Private Limited⁵*** uniformly recognise the existence of such discretion. What those decisions emphasise is not automatic transfer but a judicial evaluation of whether the winding-up proceedings have reached a stage where transfer would be appropriate. Thus, according to her, the existence of a transfer application does not create any vested right in favour of the applicant.



10.15. Learned counsel further submits that the discretion vested in the Company Court is required to be exercised keeping in view the interests of creditors, contributories and the liquidation process as a whole. Such discretion cannot be exercised in favour of a person who lacks authority to represent the company and whose conduct throughout the liquidation proceedings has been non-cooperative.

10.16. It is therefore contended that even assuming that the applicant possesses the requisite locus, which is denied, the facts of the present case do not warrant exercise of discretionary jurisdiction in favour of transfer.

10.17. Learned counsel further submits that the conduct of the erstwhile Directors of the company in liquidation demonstrates persistent non-compliance with statutory obligations imposed upon them under the Companies Act, 1956.

10.18. She submits that after the passing of the winding-up order, notices were issued under Section 454 of the Companies Act, 1956 requiring the former Directors to submit the



Statement of Affairs of the company. The submission of a Statement of Affairs is a statutory obligation intended to enable the Official Liquidator and the Company Court to ascertain the true financial position of the company, identify its assets and liabilities, and facilitate an orderly liquidation process.

10.19. Despite the issuance of notices, the former Directors failed to submit the Statement of Affairs. Such failure compelled the Official Liquidator to initiate appropriate proceedings before this Court. Consequently, Company Application No.944/2012 came to be filed and criminal proceedings arising therefrom are presently pending consideration.

10.20. Learned counsel submits that the applicant has, therefore, not approached this Court with clean hands. Rather than complying with statutory obligations cast upon him as a former Director, he has consistently resisted the liquidation process and has failed to extend cooperation to the Official Liquidator.

10.21. She further points out that the applicant had earlier approached the appellate forum by filing



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OSA No.3/2025 seeking substantially similar relief. The said appeal came to be disposed of on the ground that the issue was already under consideration before this Court. Thus, according to her, the applicant has unsuccessfully attempted to secure the same relief through different proceedings.

10.22. Learned counsel submits that the timing of the present application is particularly significant. The application has been filed only after several proceedings initiated by the Official Liquidator have reached advanced stages. This circumstance, according to her, clearly indicates that the object of the application is not to secure any legitimate insolvency resolution but to avoid the consequences flowing from the defaults allegedly committed by the former Directors.

10.23. She further submits that the Official Liquidator has also instituted Company Application No.945/2012 seeking delivery of possession of the assets and properties of the company in liquidation. Those proceedings continue to



remain pending due to non-cooperation on the part of the former management.

10.24. In addition thereto, Company Application No.3/2018 has been instituted under Section 543(1) of the Companies Act, 1956 read with Rule 260 of the Companies (Court) Rules, 1959 alleging misfeasance, breach of trust and abuse of fiduciary position by the former Directors. In the said proceedings, the Official Liquidator has sought recovery of losses quantified at ₹1,75,55,188/- from the erstwhile Directors, who are alleged to be jointly and severally liable.

10.25. Learned counsel submits that all these proceedings are directly connected with the liquidation process and arise out of the conduct of the former Directors. The applicant cannot now seek transfer of the winding-up proceedings in a manner that would jeopardise or undermine those pending proceedings.

10.26. Building upon the aforesaid submissions, learned counsel contends that the proceedings already initiated under Sections 454, 468 and 543 of the Companies Act constitute substantial



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and irreversible steps taken in the winding-up process. According to her, the expression "irreversible steps" occurring in ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹ cannot be confined merely to sale of immovable or movable properties. The concept has to be understood in the broader context of the liquidation proceedings as a whole. Once statutory proceedings have been initiated against former Directors, criminal complaints have been lodged, applications seeking recovery of losses have been instituted, and multiple proceedings concerning the administration of the liquidation estate are pending adjudication, the liquidation process cannot be said to be at a nascent stage.

10.27. Learned counsel submits that permitting transfer at this stage would seriously prejudice the liquidation proceedings and disrupt the statutory mechanism that has been functioning under the supervision of this Court for more than thirteen years.



10.28. She further contends that the Companies Act, 1956 contains specific provisions such as Sections 454, 468 and 543 which empower the Company Court and the Official Liquidator to investigate the conduct of former management, compel disclosure of assets and information, and recover losses caused to the company. These proceedings have already been invoked and are pending before this Court. According to her, the NCLT, while exercising jurisdiction under the Insolvency and Bankruptcy Code, does not function within the same statutory framework as a Company Court conducting winding-up proceedings under the Companies Act, 1956. Consequently, transfer at this stage may result in serious procedural complications and may even render the pending proceedings ineffective.

10.29. Learned counsel therefore submits that the present application has not been filed with the object of facilitating any genuine insolvency resolution. Rather, it has been filed as a tactical device to delay the liquidation process, obstruct the proceedings initiated by the Official Liquidator and avoid potential civil and criminal

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consequences arising from the applicant's alleged non-compliance with statutory obligations. She accordingly submits that the application is a clear abuse of the process of Court and deserves to be rejected with costs.

10.30. Learned counsel further submits that there exists a fundamental distinction between the objectives of proceedings under the Insolvency and Bankruptcy Code, 2016 and those governing winding-up proceedings under the Companies Act, 1956. According to her, the primary objective of the Insolvency and Bankruptcy Code is resolution and revival of a corporate debtor. The Code is founded upon the principle that a financially distressed but potentially viable corporate entity should be afforded an opportunity to be revived as a going concern. Liquidation under the IBC is intended only as a measure of last resort when all attempts at resolution fail.

10.31. In contrast, the present proceedings have long crossed the stage where any possibility of revival can realistically be contemplated. The company has admittedly not carried on any



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business since the year 2010. The winding-up petition was admitted on 11.11.2011 and a final winding-up order was passed on 09.01.2012. More than thirteen years have elapsed thereafter.

10.32. Learned counsel submits that there is absolutely no material on record to indicate that the company possesses any operational business, workforce, commercial activity or viable enterprise capable of revival. No resolution plan has been proposed. No prospective resolution applicant has expressed interest in reviving the company. No material has been placed on record to demonstrate that revival is commercially feasible.

10.33. According to her, in such circumstances, transfer of the proceedings to the NCLT would serve no meaningful purpose and would merely result in further delay in concluding the liquidation process.

10.34. Learned counsel finally submits that the present application is fundamentally flawed because it has not been filed by any creditor, contributory



or stakeholder whose interests are directly affected by the liquidation proceedings.

10.35. The applicant is merely a former Director whose authority to represent the company is itself disputed. No creditor has come forward seeking transfer. No contributory has supported the application. No stakeholder has suggested that transfer would be beneficial to the liquidation estate.

10.36. On the contrary, learned counsel submits that transfer at this stage may seriously prejudice the interests of creditors whose claims are required to be adjudicated and satisfied through the ongoing liquidation proceedings. The creditors and contributories, who constitute the real beneficiaries of the winding-up process, have not even been impleaded as parties to the present application.

10.37. It is therefore submitted that the applicant seeks a discretionary relief while ignoring the interests of those whose rights are directly affected by the outcome of the proceedings. Such an application, according to learned counsel, cannot be entertained.



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- 10.38. For all the aforesaid reasons, learned counsel submits that Company Application No.39/2025 is wholly misconceived, suffers from lack of locus standi, is vitiated by delay and ulterior motives, seeks to disrupt long-pending liquidation proceedings, and therefore deserves to be dismissed with exemplary costs.
11. Heard Sri.Anirudh Suresh, learned counsel for the applicant and Smt.Krutika Raghavan, learned counsel for Official Liquidator and perused papers.
12. The points that would arise for determination are:
- i. **Whether the applicant, being an erstwhile Director of the company ordered to be wound up, has the requisite locus standi to maintain an application under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 seeking transfer of the present winding-up proceedings to the National Company Law Tribunal?**
 - ii. **Whether the application filed in the year 2025 seeking transfer of the winding-up proceedings, after the winding-up order dated 09.01.2012 and after substantial liquidation proceedings have been undertaken, is liable to be rejected on the ground of delay, laches, acquiescence and want of bona fides?**



- iii. **Whether the provisions of Section 434 of the Companies Act, 2013, read with the Companies (Transfer of Pending Proceedings) Rules, 2016, mandate transfer of the present winding-up proceedings to the NCLT, or whether the power of transfer is purely discretionary in nature?**
- iv. **Whether, in the facts and circumstances of the present case, the winding-up proceedings have reached a stage where irreversible steps have been taken, thereby disentitling the applicant from seeking transfer of the proceedings to the NCLT?**
- v. **Whether the pendency of proceedings initiated by the Official Liquidator under Sections 454, 468 and 543 of the Companies Act, 1956, together with other consequential proceedings arising out of the winding-up order, constitute circumstances warranting retention of the proceedings before this Court?**
- vi. **Whether any case has been made out for exercise of the discretionary jurisdiction vested in this Court under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 for transfer of Company Petition No.236/2010 to the National Company Law Tribunal?**
- vii. **What order?**

13. This Court answers the above points as follows:



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14. **Answer to Point No. (i): Whether the applicant, being an erstwhile Director of the company ordered to be wound up, has the requisite locus standi to maintain an application under the fifth proviso to Section 434(1)(c) of the Companies Act, 2013 seeking transfer of the present winding-up proceedings to the National Company Law Tribunal?**

14.1. Sri Anirudh Suresh submits that the transfer power under the fifth proviso to Section 434(1)(c) is available at the instance of a party to the winding-up proceedings and that the expression is not to be read narrowly. He relies principally upon ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***,¹ (Para 25); ***State Bank of India v. Shakti Bhog Foods Ltd.***,² (Para 1 relies on Para 25 of Action Ispat); ***Cowi India Private Limited v. Pinnacle Air Private Limited***,³ (Para 13 relies on Para 25 of Action Ispat); ***Magnifico Minerals Private Limited v. Saravana Alloys Steels Private Limited***⁵ (Para 17); ***and Prasanta Kumar Mitra v. V.S. Indian Steam Laundry***⁶ (Para 49) to submit that the law after insertion of the proviso favours transfer of pending winding-up matters



wherever the proceedings have not passed into an irreversible stage.

14.2. The submission of learned counsel is that the applicant, though described as an erstwhile Director, has a sufficient nexus with the company ordered to be wound up and is therefore competent to move an application requesting change of forum. According to him, the application does not seek restoration of management to the former Director, nor does it ask this Court to revive the company by judicial fiat; it only requests that the matter continue before the Hon'ble NCLT, which is now the specialised forum for insolvency matters.

14.3. He further submits that the authorities he relied on recognise the broad nature of the transfer provision and discourage the technical rejection of requests that seek to avoid fragmentation of proceedings. On that basis, he contends that the applicant cannot be denied a hearing merely because he was formerly on the Board when the winding-up order came to be passed.

14.4. Smt. Krutika Raghavan submits that the present application is not maintainable at the



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instance of the applicant. According to her, once the winding-up order was passed and the Official Liquidator was directed to take charge, the powers of the Board of Directors ceased, and the management and control of the company's affairs vested in the Official Liquidator under the supervision of the Company Court.

14.5. It is her specific submission that a former Director cannot maintain proceedings on behalf of the company after winding up, nor can they claim to represent the company in liquidation. She relies upon ***Kaledonia Jute and Fibres Private Limited v. Axis Nirman and Industries Limited and others***⁷ (Para 42) to submit that the broad construction adopted by the Hon'ble Supreme Court regarding the expression "party" was in the context of creditors in a proceeding in rem and not in the context of former Directors seeking to re-enter the proceedings after the company had passed into liquidation control.

14.6. Learned counsel further submits that the real persons affected by the liquidation are



creditors, contributories and the liquidation estate itself, and none of them has sought transfer. She therefore contends that the applicant seeks a discretionary order without demonstrating either authority to represent the company or a legally protected stakeholder interest of the kind recognised in the authorities relied upon.

14.7. The first question is not whether the applicant is likely to succeed on the transfer request, but whether the application is liable to be rejected at the threshold for total absence of standing. That distinction is necessary because maintainability and entitlement to discretionary relief, though related, are not identical enquiries.

14.8. The fifth proviso to Section 434(1)(c), enables any party or parties to any proceedings relating to winding up to file an application for transfer and provides that the Court may, by order, transfer such proceedings to the Tribunal. The provision itself does not define the expression "party" exhaustively.



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14.9. The applicant relies on ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***¹ (Para 25) to show that the proviso is not confined to any one stage of the winding-up proceedings and that even after admission and appointment of the Company Liquidator, transfer jurisdiction survives. That proposition is well borne out by the passages extracted above, particularly the discussion that discretion remains with the Company Court even post-admission and after assets come into custodia legis, subject to the stage of proceedings and the possibility of setting the clock back.

14.10. The applicant also draws support from the discussion in ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd***¹ (Para 13) ***regarding Kaledonia Jute and Fibres Private Limited v. Axis Nirman and Industries Limited and others***⁷. The extracted passages show that the Hon'ble Supreme Court described winding-up proceedings as proceedings in rem, noted that the Official Liquidator acts for and on behalf of the entire body of creditors, and held that the



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expression “party” in the fifth proviso cannot be confined only to the single petitioning creditor, the company or the Official Liquidator.

14.11. However, the Court must also note the limitation in the respondent’s submission. The discussion in ***Kaledonia Jute and Fibres Private Limited vs. Axis Nirman and Industries Limited and others***⁷ (Paras 42, 43) was directed to show that a creditor of a company in liquidation could seek transfer even if he was not the original petitioning creditor. The principle established there is that the expression “party” must receive a broad, practical and purposive construction in the context of winding-up as a proceeding in rem; the principle is not that every person once associated with the company automatically acquires an unqualified right to seek transfer.

14.12. The reliance placed by the applicant on ***Cowi India Private Limited v. Pinnacle Air Private Limited***³ (Para 16) also requires consideration. That judgment recognises that the Court may exercise transfer jurisdiction even where a separate formal application is not



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insisted upon, provided the intention to seek transfer is clear from the record. It therefore weakens purely technical objections regarding form, but it does not dispense with the judicial duty to examine whether the person invoking the power has a sufficient and legitimate connection with the proceedings.

14.13. ***Magnifico Minerals Private Limited v. Saravana Alloys Steels Private Limited***⁵

(Para 19) is also relevant. Though cited by the applicant on the question of post-admission transfer, the passages extracted from that judgment clearly state that the fifth proviso confers discretion and that the party seeking exercise of discretion must make out a valid ground. That principle equally bears upon the present issue because a former Director cannot be placed in the same position as a creditor whose legal and financial stake in liquidation is direct and immediate.

14.14. The respondent is, therefore, right in submitting that after a winding-up order the former Board does not continue to manage the company as of right. Once liquidation is ordered



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and the Official Liquidator takes charge, the company's affairs are no longer under the control of former Directors in the ordinary sense.

14.15. Yet, the materials placed on record do not justify an absolute proposition that an erstwhile Director can never maintain any application touching the winding-up proceedings. The broader language noticed in ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹ (Para 13 relies on Para 42 of *Kaledonia*) and ***Kaledonia Jute and Fibres Private Limited vs. Axis Nirman and Industries Limited and others***⁷ (Para 42) persuades this Court that the safer course is not to non-suit the applicant solely on a rigid technical objection, but to test the request on a strict merits-and-discretion standard.

14.16. This approach is also consistent with judicial discipline in writ-like supervisory scrutiny. Where the application can be dismissed on clear discretionary grounds after full consideration of the cited law, it is neither necessary nor desirable to adopt the broadest



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possible threshold bar unless the statute or binding precedent compels it.

14.17. Accordingly, this Court answers point No.(i) by holding that the applicant cannot claim an affirmative right to represent the company merely because he is an erstwhile Director. At the same time, the application is not rejected solely on the footing of absolute lack of locus; instead, his standing is treated as limited and precarious, and the request is examined on the stricter questions of delay, bona fides, prejudice to creditors, stage of liquidation, and whether any case for discretion is made out.

15. **Answer to Point No. (ii): Whether the application filed in the year 2025 seeking transfer of the winding-up proceedings, after the winding-up order dated 09.01.2012 and after substantial liquidation proceedings have been undertaken, is liable to be rejected on the ground of delay, laches, acquiescence and want of bona fides?**

15.1. Sri Anirudh Suresh submits that the decisive test is not mere passage of time but whether any irreversible step has been taken in the liquidation process. He contends that ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***¹ (Para 25) and



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State Bank of India v. Shakti Bhog Foods Ltd.² (Para 1 relies on Para 25 of Action Ispat) show that even after admission of the winding-up petition and even after possession by the Liquidator, transfer remains permissible so long as no sale of assets or other irreversible event has taken place.

- 15.2. He further submits that after the coming into force of the Insolvency and Bankruptcy Code, 2016, the legislative object has been to consolidate insolvency and liquidation proceedings before the Hon'ble NCLT. According to him, if the matter has not gone beyond the stage at which the clock can be turned back, delay by itself cannot defeat the statutory policy behind the transfer.
- 15.3. Smt. Krutika Raghavan submits that the application is vitiated by gross, unexplained and deliberate delay. She points out that the winding-up order was passed on 09.01.2012, the Official Liquidator has been functioning for more than a decade, and yet the applicant moved the present application only in the year 2025.



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- 15.4. She further submits that the applicant neither sought transfer when the Insolvency and Bankruptcy Code, 2016 came into force nor at any reasonable time thereafter, though the liquidation proceedings were actively continuing before this Court. According to her, this prolonged silence amounts to acquiescence in the continuation of the winding-up proceedings before this Court.
- 15.5. Learned counsel also relies on the applicant's surrounding conduct and the former management. She points out that notices under Section 454 were allegedly not complied with, Company Application No.944/2012 and criminal proceedings have arisen therefrom, Company Application No.945/2012 has been filed for delivery of possession of assets, earlier attempts were made through recall proceedings and also OSA No.3/2025, and the present application has been moved only after several proceedings initiated by the Official Liquidator have reached advanced stages.
- 15.6. On that basis, she submits that the application is not a bona fide attempt at insolvency



resolution but a tactical device to delay liquidation, obstruct the Official Liquidator and avoid the consequences flowing from the defaults of the former Directors.

15.7. This Point goes to the heart of the present application. Even where transfer is legally permissible, the Court is not bound to ignore conduct, delay and acquiescence, especially when the relief sought is discretionary.

15.8. The factual chronology, is significant. The company petition was admitted by order dated 11.11.2011; a final winding-up order was passed on 09.01.2012; the Official Liquidator was directed to take charge of the assets and liabilities; publication of the winding-up order was directed; Rule 300 reports were submitted; settlement efforts did not fructify; recall applications were later filed and ultimately dismissed on 03.01.2018 for failure to establish bona fides; and the present application under Section 434 came to be filed only in 2025.

15.9. Thus, the present request is not one made in proximity to the statutory transition brought about by the Code and the Transfer Rules. It is



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a request made after the winding-up order has remained in force for many years and after this Court and the Official Liquidator have spent substantial time and institutional effort in administering the liquidation.

15.10. The applicant's answer to this difficulty is that no sale of assets has taken place and therefore no irreversible consequence has occurred. This submission cannot be accepted in the absolute terms in which it is presented.

15.11. ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***¹ (Para 25) indeed treats absence of actual sale as a major indicator while considering whether the clock can be turned back. But the extracted passages from that judgment do not state that delay, acquiescence and prejudice become irrelevant merely because no auction sale has yet taken place.

15.12. The applicant also relies on ***State Bank of India v. Shakti Bhog Foods Ltd.***,² (Para 1) where the Hon'ble Supreme Court, on the basis of the Status Report before it, observed that only one office had been taken into possession



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by the Liquidator and that all other units remained in the physical possession of other parties, and on that basis held that nothing irreversible had taken place. That order turned on the particular factual report placed before the Hon'ble Supreme Court and cannot be understood as laying down a universal proposition that any liquidation without sale must be transferred regardless of the conduct of the applicant.

15.13. On the contrary, ***Magnifico Minerals Private Limited v. Saravana Alloys Steels Private Limited***⁵ (Paras 11, 12, 16, 17 and 19) makes it clear that the fifth proviso does not create automatic transfer and that the party seeking transfer must establish grounds warranting the exercise of discretion. The judgment in ***Magnifico*** also records that mere citation of ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹ (Paras 16, 17 and 19) is not enough where the applicant fails to make out a case for discretion.

15.14. This Court finds that principle directly applicable here. The present applicant does not



explain why, if transfer was truly sought to advance insolvency resolution, no such request was made at a reasonable point after the statutory changes took effect or even after the dismissal of earlier recall efforts.

15.15. There is another important feature. The respondent has specifically asserted that the former management did not comply with the statutory duty to submit the Statement of Affairs under Section 454, that proceedings were initiated on that account, that possession-related proceedings have also been instituted, and that the timing of the present application suggests a desire to derail those proceedings. These assertions are not peripheral; they bear directly on bona fides.

15.16. When a former Director, after years of silence, seeks transfer at a stage when proceedings initiated by the Official Liquidator may have civil or criminal consequences for former management, the Court cannot assess the application in isolation from that background. Delay in such a context is not merely



procedural delay; it becomes a factor indicating the purpose for which discretion is sought.

15.17. This Court is also unable to ignore the dismissal of the earlier recall applications on the ground that the respondent had failed to establish bona fides warranting the relief sought. Though that finding was rendered in another procedural setting, it remains part of the relevant litigation history of this very winding-up and strengthens the need for strict scrutiny of the present request.

15.18. Accordingly, this Court answers point no. (ii) by holding that the application suffers from extraordinary delay and laches. The delay is unexplained in any meaningful sense, the applicant's conduct shows acquiescence in the continuation of the winding-up proceedings before this Court, and the surrounding circumstances support the respondent's objection that the application lacks bona fides and has been moved at a strategically chosen stage rather than at a genuinely appropriate one.



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16. **Answer to Point No. (iii): Whether the provisions of Section 434 of the Companies Act, 2013, read with the Companies (Transfer of Pending Proceedings) Rules, 2016, mandate transfer of the present winding-up proceedings to the NCLT, or whether the power of transfer is purely discretionary in nature?**

16.1. Sri Anirudh Suresh relies upon Section 434 of the Companies Act, 2013, Rule 5 and Rule 6 of the Companies Transfer of Pending Proceedings Rules, 2016, and Rule 26 of the Companies Court Rules, 1959. He submits that the statutory framework shows a legislative preference for shifting company matters and insolvency-related proceedings from the Company Courts to the NCLT.

16.2. He further relies on ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***¹ (Para 25) ***and Prasanta Kumar Mitra v. V.S. Indian Steam Laundry***⁶ (Paras 45, 47, 48, 49 and 50) to submit that Section 434(1)(c) must receive a broad and purposive interpretation. According to him, the expressions “all proceedings” and “including” indicate that the transfer scheme is meant to be extensive and that the Company Court should ordinarily transfer pending winding-up



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matters unless the case has progressed to a truly irreversible stage.

- 16.3. He also relies on ***Cowi India Private Limited v. Pinnacle Air Private Limited***³ (Paras 7, 9 and 14 relies on Paras 13 of Gurbakhsh) to submit that the question is one of jurisdiction, that excessive formalism should be avoided, and that the Court ought to advance the object of avoiding parallel fora.
- 16.4. Smt. Krutika Raghavan submits that the applicant proceeds on an erroneous assumption that a transfer is automatic. Referring to the language of the fifth proviso to Section 434(1)(c), she submits that the Legislature has consciously used the word “may”, which shows that the power is discretionary and not mandatory.
- 16.5. She further submits that the Transfer Rules create automatic transfer only in limited categories, particularly where the petition had not been served under Rule 26 on the relevant date. Since the present winding-up petition had long since been admitted and a winding-up order had already been passed, learned counsel



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submits that the present case does not fall within any category of compulsory transfer under Rules 5 or 6.

- 16.6. She also relies on ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹ (Para 25) and ***Magnifico Minerals Private Limited vs Saravana Alloys Steels Private Limited***⁵ (Paras 11, 12 and 19) to submit that all these decisions recognise judicial discretion and not automatic transfer.
- 16.7. This Point concerns the legal character of the transfer power. Since the applicant's entire case substantially proceeds on the proposition that absence of irreversibility should ordinarily lead to transfer, it is necessary to identify with precision whether the statute mandates transfer or merely permits it in a proper case.
- 16.8. Section 434(1)(c), as extracted, states that all proceedings under the Companies Act, 1956 including proceedings relating to winding up pending before the High Court or District Court shall stand transferred to the Tribunal and that the Tribunal may proceed from the stage before



transfer. The fifth proviso, separately contemplates that any party or parties to any proceedings relating to winding up may file an application for transfer and that the Court may by order transfer such proceedings to the Tribunal.

16.9. The statutory scheme must be read as a whole. The main clause states the broad transfer principle, while the provisos and the Transfer Rules regulate how and to what extent that principle operates in the special context of pending winding-up proceedings.

16.10. Rule 5, as reproduced above, provides for the transfer of pending winding-up petitions on the ground of inability to pay debts where the petition had not been served on the respondent under Rule 26 of the Companies Court Rules, 1959. Rule 6 similarly deals with certain petitions on other grounds where service had not been effected under Rule 26.

16.11. Rule 26 itself, also extracted above, shows that service of the petition is a significant procedural milestone. These rules, therefore, identify limited classes in which transfer operates



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automatically by force of the statutory framework.

16.12. The present case does not fall within those automatic categories. The petition had not only been served; it had been admitted on 11.11.2011 and finally allowed on 09.01.2012, whereupon a winding-up order was passed, and the Official Liquidator was directed to take charge.

16.13. The applicant, therefore, necessarily moves beyond the sphere of automatic transfer and invokes the fifth proviso. Once that happens, the language of the proviso becomes decisive.

16.14. The word employed in the proviso is "may". That word cannot be ignored or treated as surplusage. Where the Legislature intended automatic transfer, it provided a specific scheme through the Rules tied to the stage of service under Rule 26; where it intended post-stage transfer upon application, it used language of permission and judicial choice.

16.15. This understanding is confirmed by ***Action Ispat and Power Pvt. Ltd. v. Shyam***



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Metalics and Energy Ltd.¹ (Para 25). Far from holding that all post-admission matters must be transferred, the Hon'ble Supreme Court expressly framed the question as one of how discretion is to be exercised and then stated that whether the irreversible stage has been reached depends upon the facts and circumstances of each case.

16.16. **Magnifico Minerals Private Limited v. Saravana Alloys Steels Private Limited**⁵ (Paras 11, 12, 16, 17 and 19) is even more direct. The Coordinate Bench held that the fifth proviso confers discretion on the Company Court either to retain the petition or to transfer it and that the person seeking discretion must make out a valid ground for its exercise. The judgment also states that transfer is not mandatory on the filing of an application.

16.17. The applicant's reliance on ***Prasanta Kumar Mitra v. V.S. Indian Steam Laundry***⁶ [Paras 45, 47, 49, 59(b) and 59(c)] does not change this conclusion. That decision, as extracted above, undertakes an elaborate discussion on the meaning of the words "all proceedings" and



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“including”, and holds that the transfer language is broad and expansive. It also states that a change of forum is a matter of legislative policy.

16.18. This Court respectfully accepts those propositions for the limited purpose for which they are relevant here. They support a broad understanding of the sweep of Section 434(1)(c). But a broad understanding of the class of proceedings that may fall within the transfer scheme does not eliminate the distinct question whether, in a given post-admission, post-winding-up case, transfer is automatic or discretionary.

16.19. Indeed, the respondent rightly points out that ***Kaledonia Jute and Fibres Private Limited vs. Axis Nirman and Industries Limited and others***⁷ (Paras 20, 21 and 24) itself notes that the transferability of winding-up proceedings is regulated by the statutory framework and the Transfer Rules. Therefore, the Court cannot read the main part of Section 434(1)(c) in a manner that erases the limiting role of the provisos and Rules.



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- 16.20. For all these reasons, this Court answers Point No. (iii) by holding that the present proceedings are not subject to compulsory transfer under Rules 5 or 6. The only source of possible transfer in the facts of this case is the fifth proviso to Section 434(1)(c), and the power under that proviso is plainly discretionary.
17. **Answer to Point No. (iv): Whether, in the facts and circumstances of the present case, the winding-up proceedings have reached a stage where irreversible steps have been taken, thereby disentitling the applicant from seeking transfer of the proceedings to the NCLT?**
- 17.1. Sri Anirudh Suresh submits that the test framed in ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***¹ (Para 25) is whether the actual sale of movable or immovable assets has taken place. According to him, no advertisement has been issued, no bids have been invited, and no sale has been effected in respect of the assets of the company in liquidation.
- 17.2. He also relies upon ***State Bank of India v. Shakti Bhog Foods Ltd.***² (Para 1) to submit that even where the Liquidator has taken possession of some assets, that fact alone does



not amount to irreversibility. His argument is that the proceedings have not gone beyond the stage where the status quo ante can be restored and that the matter should therefore be transferred to the Hon'ble NCLT.

17.3. Smt. Krutika Raghavan submits that the applicant wrongly reduces the concept of irreversibility to a single factual event, namely, the sale of assets. She contends that the winding-up order has remained in force since 09.01.2012, that the company has not carried on business since the year 2010, that the Official Liquidator has been acting under orders of this Court for more than a decade, and that multiple consequential proceedings have arisen out of the winding-up order.

17.4. She further submits that there is no material on record to indicate that the company has an operational business, workforce, commercial activity, proposed resolution plan or any realistic prospect of revival. According to her, transfer would serve no meaningful purpose and would only defer the completion of liquidation.



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- 17.5. The Court now turns to the meaning of the expression “irreversible steps” in the context of the present case. This expression must be understood in the light of the authorities cited by the parties and not in abstraction.
- 17.6. The leading authority relied upon by both sides is ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.,***¹ (Para 25) the extracted passages show that the Hon’ble Supreme Court held that, even post-admission and after the assets of the company have come into custodia legis, discretion remains with the Company Court to transfer the matter so long as no actual sale of the movable or immovable properties has taken place, because only where the winding-up has reached a stage where it would be irreversible, making it impossible to set the clock back, must the Company Court continue with winding up.
- 17.7. Two features of that principle require emphasis. First, the absence of actual sales is a very important indicator. Secondly, and equally importantly, the Hon’ble Supreme Court concluded the discussion by observing that



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whether this stage is reached depends upon the facts and circumstances of each case.

17.8. Therefore, ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹ (Para 25) does not create a single-factor rule under which the Court is bound to transfer every matter where no auction sale has yet occurred. If that were the law, the concluding words “facts and circumstances of each case” would become meaningless.

17.9. ***State Bank of India v. Shakti Bhog Foods Ltd.***² (Para 1) also does not justify such a narrow reading. In that matter, the Hon’ble Supreme Court considered a Status Report which showed that only one office had been taken into possession by the Liquidator and that the remaining units were in physical possession of others, and on that particular factual basis, concluded that nothing irreversible had taken place. The ratio of that order is therefore fact-sensitive.

17.10. The present case stands on materially different facts. Here, the company petition was admitted in 2011; a final winding-up order was passed in



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2012; the company has admittedly not carried on business since 2010; the Official Liquidator has been functioning for more than thirteen years; repeated reports have been submitted; earlier recall proceedings failed; proceedings under Sections 454, 468 and 543 and other connected matters are pending; and there is no material indicating operational revival, investor interest, business continuity or a realistic route to resolution.

17.11. In that factual situation, the applicant's emphasis on the absence of sale is too narrow. Irreversibility in law is not always identical with physical alienation of an asset. It may also arise when a court-supervised liquidation has matured into a structured process involving possession, investigation, statutory defaults, recovery steps, compliance proceedings and stakeholder positions that cannot be rolled back without disorder, duplication or prejudice.

17.12. This understanding does not contradict ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹ (Para 25); rather, it gives full meaning to its direction that



the matter depends on all facts and circumstances. The Court must therefore ask whether transfer at this stage would, in practical and legal effect, simply shift the forum, or whether it would unsettle a long-standing liquidation structure already built under the supervision of this Court.

17.13. In the opinion of this Court, the latter is true. The liquidation here is not at a nascent stage awaiting first action; it is a long-standing proceeding in which the Court has already passed the final winding-up order, the Official Liquidator has undertaken duties under that order, and several further proceedings have emerged from the obligations of former management and the needs of the liquidation process.

17.14. There is also force in the respondent's submission that no material is placed on record to show that the transfer would serve any real insolvency purpose. No resolution applicant is shown, no business continuity is shown, no workforce or operations are shown, and no factual basis is demonstrated for thinking that



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the NCLT process would revive a business that has not operated since 2010.

17.15. The applicant's case is thus reduced to a legal abstraction: that transfer is desirable because transfer is legally permissible and because the sale has not taken place. In the facts of this case, that is insufficient.

17.16. Accordingly, this Court answers point No. (iv) by holding that the winding-up proceedings have crossed the stage where a transfer can be treated as a simple, consequence-free forum change. Even if there has been no completed sale of assets, the proceedings have progressed, both in time and in substance, to a stage where transfer would unsettle a mature liquidation process and is therefore not warranted.

18. **Answer to Point No. (v): Whether the pendency of proceedings initiated by the Official Liquidator under Sections 454, 468 and 543 of the Companies Act, 1956, together with other consequential proceedings arising out of the winding-up order, constitute circumstances warranting retention of the proceedings before this Court?**



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- 18.1. Sri Anirudh Suresh submits in substance that the pendency of proceedings by the Official Liquidator does not, by itself, bar transfer if the overall liquidation has not become irreversible. His broader argument is that the legislative policy behind Section 434 and the IBC should prevail and that fragmentation between the Company Court and the Hon'ble NCLT ought to be avoided wherever possible.
- 18.2. Smt. Krutika Raghavan submits that the proceedings under Sections 454, 468 and 543 are direct consequences of the winding-up order and of the statutory duties cast on the former management. She points out that notices under Section 454 requiring the Statement of Affairs were allegedly not complied with, which compelled the Official Liquidator to institute Company Application No.944/2012 and criminal proceedings arising therefrom, and that Company Application No.945/2012 has also been filed seeking delivery of possession of the assets and properties of the company in liquidation.



- 18.3. She further submits that these proceedings show that the liquidation process is active, not dormant. According to her, a transfer at this stage would create serious procedural complications because the framework of a Company Court winding-up under the Companies Act, 1956, and that of proceedings under the IBC are not identical in object or machinery.
- 18.4. Section 454 of the Companies Act, 1956, casts a statutory obligation upon former Directors and officers to submit the Statement of Affairs after the winding-up order. The object of the provision, as rightly pointed out by learned counsel for the Official Liquidator, is to enable the Official Liquidator and the Company Court to ascertain the company's assets, liabilities, books, affairs and financial position so that liquidation can proceed in an orderly and informed manner.
- 18.5. The record shows the respondent's specific contention that notices under Section 454 were issued, that the former Directors failed to comply, and that Company Application



No.944/2012 and criminal proceedings have arisen in consequence. If that be so, the provision is not merely formal or incidental; it lies at the centre of the Company Court's capacity to supervise liquidation effectively.

- 18.6. The respondent also relies on Sections 468 and 543 of the Companies Act, 1956, which have been invoked as part of the statutory machinery by which the Company Court and the Official Liquidator may investigate conduct, compel compliance, and pursue steps necessary to protect the estate of the company in liquidation.
- 18.7. The Court is not required here to finally adjudicate the merits of those proceedings. What matters for present purposes is that such proceedings are said to have already been initiated and are pending before this Court as a consequence of the winding-up order.
- 18.8. This factual position materially distinguishes the present case from cases where the company petition remained substantially at a pre-admission or early stage. Once multiple liquidation-linked proceedings are pending, the



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question is no longer only about where the main petition should lie, but whether the existing supervisory framework should be displaced after several statutory branches of the liquidation have already spread out under this Court's control.

18.9. The respondent's contention that the IBC process has a different core orientation from the old Companies Act winding-up also deserves notice. She submits that the primary object of the IBC is resolution and revival, with liquidation being a last resort, whereas the present proceedings are already deep within a court-controlled winding-up under the Companies Act, 1956. That submission cannot by itself bar transfer in every case, because ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹ (Para 25) recognises that even post-admission transfer can be ordered.

18.10. Nevertheless, in the present factual setting, the distinction in procedural context has practical force. The applicant has shown neither how the pending proceedings under Sections 454, 468



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and 543 would be seamlessly accommodated nor how transfer would avoid duplication, jurisdictional confusion, or delay.

18.11. The Court must also bear in mind that the interests of creditors and contributories are central in winding up. The respondent has specifically submitted that no creditor or contributory has supported the application and that transfer at this stage may prejudice their interests. In the absence of material showing corresponding benefit to the liquidation estate, it would be unsafe to displace the present framework merely on the request of a former Director whose own compliance is in question.

18.12. Accordingly, this Court answers point No. (v) by holding that the pendency of proceedings under Sections 454, 468 and 543, together with connected proceedings such as those for possession and compliance, is a weighty and independent factor justifying retention of the matter before this Court.

19. **Answer to Point No. (vi): Whether any case has been made out for exercise of the discretionary jurisdiction vested in this Court under the fifth proviso to Section 434(1)(c) of the Companies**



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Act, 2013 for transfer of Company Petition No.236/2010 to the National Company Law Tribunal?

- 19.1. Sri Anirudh Suresh submits that the cumulative effect of ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***,¹ (Para 25); ***State Bank of India v. Shakti Bhog Foods Ltd.***,² (Para 1 relies on Para 25 of Action Ispat); ***Cowi India Private Limited v. Pinnacle Air Private Limited***³ (Para 16); ***and Prasanta Kumar Mitra v. V.S. Indian Steam Laundry***⁶ [Paras 45, 47, 48, 49, 59(b) and 59 (c)] is that this Court ought to exercise discretion in favour of transfer because no sale has taken place and the statutory policy prefers adjudication before the Hon'ble NCLT. He also relies on Section 434, Rules 5 and 6, and Rule 26 to submit that the present case falls within the spirit of the transfer scheme.
- 19.2. Smt. Krutika Raghavan submits that no case for exercise of discretion is made out because the applicant lacks equitable standing, has approached after an extraordinary delay, has not shown bona fides, seeks to disturb a long-standing liquidation after earlier unsuccessful



attempts, and ignores the interests of creditors and the integrity of ongoing proceedings. She emphasises that the judgments relied upon by the applicant themselves preserve judicial discretion and do not create a right to transfer.

- 19.3. This Point is the culmination of the preceding issues. Once it is found that the power is discretionary, the Court must determine whether the applicant has brought the case within the zone where that discretion should be exercised.
- 19.4. The answer must be in the negative. The reasons are several, and are as follows:
- 19.5. First, as held under Point No. i, the applicant is only an erstwhile Director and cannot claim a vested or representative right to dictate the future forum of the liquidation. At best, he may invite the Court to exercise discretion, but the burden on him is correspondingly high.
- 19.6. Secondly, as held under Point No. ii, the application is marked by extraordinary delay, laches, acquiescence and want of satisfactory explanation. A discretionary power, particularly



one capable of unsettling a long-standing winding-up, cannot ordinarily be exercised in favour of a person who has slept over his rights and then approached at a stage suggestive of strategic timing.

- 19.7. Thirdly, as held under Point No. iii, the statutory framework does not mandate transfer in the present case. The applicant, therefore, cannot succeed by showing only that transfer is legally conceivable; he must show why this is a fit case for transfer.
- 19.8. Fourthly, as held under Point No. iv, the proceedings have passed beyond the stage where absence of sale alone can justify a forum shift. The long life of the liquidation, the failure of earlier recall attempts, the absence of any material indicating real revival potential, and the presence of active liquidation-linked proceedings together show that transfer would not advance the interests of justice.
- 19.9. Fifthly, as held under Point No. v, there are pending proceedings under Sections 454, 468 and 543 and related proceedings arising from non-compliance and possession issues. The



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applicant has not shown that the transfer would preserve those proceedings without complication or prejudice.

19.10. ***Action Ispat and Power Pvt. Ltd. v. Shyam Metalics and Energy Ltd.***¹ (Para 25) supports the proposition that post-admission transfer is legally permissible and that the Court must examine whether the proceedings have become irreversible. Applying that very judgment to the present facts, this Court finds that the matter has progressed too far, in time and in substance, for transfer to be judicially appropriate.

19.11. ***State Bank of India v. Shakti Bhog Foods Ltd.***² (Para 1) turned on a Status Report which showed a much narrower degree of liquidator action and led the Hon'ble Supreme Court to conclude that nothing irreversible had taken place. The present case, involving more than a decade of liquidation and several consequential proceedings, is factually distinguishable.

19.12. ***Cowi India Private Limited v. Pinnacle Air Private Limited***³ (Paras 7, 9 and 16) assists the applicant only on the point that a formal



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transfer request need not be viewed narrowly and that post-admission transfer is legally possible where no irreversible steps have been taken. However, that judgment does not compel transfer where the factual matrix is materially different and where the balance of justice points to retention.

19.13. **Magnifico Minerals Private Limited v. Saravana Alloys Steels Private Limited⁵**, (Para 19); in fact, supports the respondent to the extent that it stresses discretion and the applicant's burden to justify its exercise. On the present facts, that burden remains undischarged.

19.14. **Prasanta Kumar Mitra v. V.S. Indian Steam Laundry⁶** [Paras 45, 47, 48, 49 and 59(b)] supports a broad construction of Section 434(1)(c) and the proposition that forum change is a matter of legislative policy. Yet even that broad construction cannot be used to neutralise the express discretionary structure of the fifth proviso or to override the factual circumstances that make transfer inappropriate here.



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19.15. The Court must also deal with two further matters referred to. The applicant relied on a screenshot of research results and on an authority-check report from Manupatra in relation to ***Action Ispat and Power Private Limited vs. Shyam Metalics and Energy Limited***¹. These materials do not disclose the factual matrix, issues or reasoning of the supposed cases and that the underlying judgments have not been placed before the Court. Therefore, no substantive reliance can be placed upon those materials.

19.16. For all these reasons, this Court answers point no. (vi) by holding that this Court is satisfied that no case has been made out for the exercise of discretionary jurisdiction in favour of the applicant. On the contrary, the facts demonstrate that transfer would be more likely to delay, fragment or complicate the existing liquidation rather than serve any genuine insolvency purpose.

20. **Answer to Point No. (vii): What order?**

20.1. In view of the findings recorded on Point Nos. i to vi, Company Application No.39/2025 seeking



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transfer of Company Petition No.236/2010 to the Hon'ble National Company Law Tribunal, does not merit acceptance. The application fails both on the discretionary plane and on the cumulative evaluation of delay, bona fides, stage of liquidation, pending consequential proceedings, and absence of demonstrated benefit to the creditors or the liquidation estate.

20.2. In the above background, this court passes the following:

ORDER

- i. Company Application No.39/2025 stands ***dismissed.***
- ii. Company Petition No.236/2010 and all consequential proceedings shall continue before this Court in accordance with law.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

List No.: SI No.: